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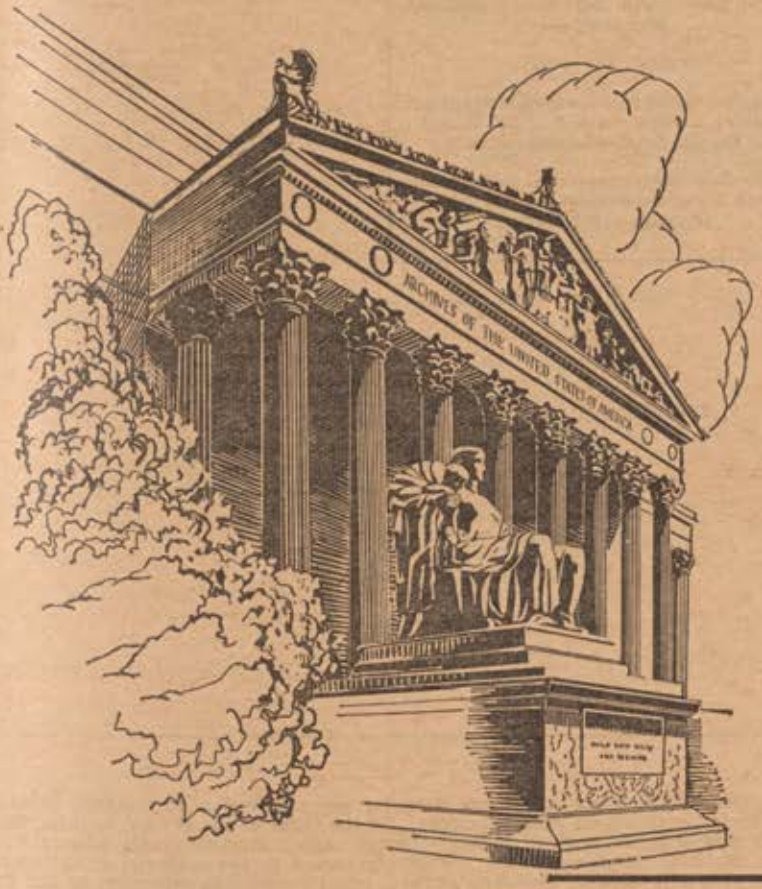
PART I



Part II begins on page 297

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Contents

(Continued on next page)

List of Parts Affected

(Codification Guide)

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

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1965, and specifies how they are affected.

5 CFR

213 ... 251

7 CFR

16 ... 251
868 ... 251
878 ... 253
900 ... 254
905 (4 documents) ... 254–256
907 ... 257
944 ... 257
970 ... 257
1601 ... 258
PROPOSED RULES:
907 ... 273
1099 ... 273

9 CFR

40 ... 258

13 CFR

112 ... 298

14 CFR

23 ... 258
121 ... 258
1250 ... 301
PROPOSED RULES:
378 ... 281

15 CFR

8 ... 305

18 CFR

302 ... 311

20 CFR

237 ... 270

21 CFR

147 ... 270

22 CFR

141 ... 314
209 ... 317

32A CFR

OEP (Ch. I):
OEP Reg. 5 ... 321

43 CFR

PUBLIC LAND ORDERS:
1621 (See PLO 3521) ... 271
3520 ... 271
3521 ... 271

45 CFR

1010 ... 325

46 CFR

PROPOSED RULES:
527 ... 285

50 CFR

33 ... 272

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Interstate Commerce Commission

Section 213.3322 is amended to show the exception under Schedule C of the position of Congressional Liaison Officer in the Interstate Commerce Commission. Effective upon publication in the FEDERAL REGISTER, paragraph (c) is added to § 213.3322 as set out below.

§ 213.3322 **Interstate Commerce Commission.**

* * * * *

(c) One Congressional Liaison Officer.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633; E.O. 10577, 19 F.R. 7521, 3 CFR, 1954–1958 Comp., p. 218)

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

[F.R. Doc. 65–179; Filed, Jan. 8, 1965; 8:45 a.m.]

Title 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture

[Amdt. 1]

PART 16—MILK INDEMNITY PAYMENT PROGRAM

Subpart—Regulations Governing Milk Indemnity Payments

MISCELLANEOUS AMENDMENTS

The regulations issued by the Department of Agriculture, which set forth the terms and conditions under which the indemnity payments will be made to eligible dairy farmers whose milk is removed from the market because of pesticide residue content, 29 F.R. 14837, are amended as follows:

1. Section 16.2 (h) and (j) is amended to read as follows:

§ 16.2 **Definitions.**

* * * * *

(h) "Eligible farmer" means a person who produces milk which is removed from the commercial market anytime from January 1, 1964, through January 31, 1965, pursuant to direction of a public agency or a milk handler because of detection of pesticide residue in such milk by tests made by a public agency or under a milk testing program deemed adequate for the purpose by a public agency.

* * * * *

(j) "Application period" means any period with respect to which application for payment is made beginning not earlier than January 1, 1964, and ending not later than January 31, 1965, during which an eligible farmer's milk is removed from the commercial market pursuant to direction of a public agency or milk handler for reason specified in paragraph (h) of this section.

* * * * *

2. Section 16.8 is amended to read as follows:

§ 16.8 **Application for payment.**

Application for payment shall be made, on a form prescribed therefor by the Deputy Administrator, by the eligible farmer or his legal representative, as set forth in § 16.12, who must sign and file the form with the ASCS county office for the county where the farm headquarters are located no later than March 1, 1965. However, applications may be accepted after such date if the State Committee determines that the eligible dairy farmer was prevented from filing by such date because of illness, or other reasons beyond his control. Applications for payment shall cover application periods of at least 28 days, except that, if the entire application period or the last application period, is shorter than 28 days, applications for payment may be filed for such shorter period.

(Sec. 331, Economic Opportunity Act of 1964, 78 Stat. 525)

Effective date: Date of publication.

Signed at Washington, D.C., on January 5, 1965.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 65–259; Filed, Jan. 8, 1965; 8:46 a.m.]

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

SUBCHAPTER H—DETERMINATION OF WAGE RATES

[Sugar Determination 868.17]

PART 868—SUGARCANE; VIRGIN ISLANDS

Wage Rates; Calendar Year 1965

Pursuant to the provisions of section 301(c)(1) of the Sugar Act of 1948, as amended, (herein referred to as "act"), after investigation, and consideration of the evidence obtained at the public hearing held in Christiansted, St. Croix, Virgin Islands, on October 27, 1964, the following determination is hereby issued.

§ 868.17 **Fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugarcane in the Virgin Islands during the calendar year 1965.**

(a) *Requirements.* A producer of sugarcane in the Virgin Islands shall be deemed to have complied with the wage provisions of the act during the calendar year 1965 if all persons employed on the farm in the production, cultivation, or harvesting of sugarcane shall have been paid in accordance with the following:

(1) *Wage rates.* All such persons shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates as agreed upon between the producer and the worker, but after January 9, 1965, the date of publication of this section in the FEDERAL REGISTER, or January 1, 1965, whichever is later, not less than the following:

(i) *Basic time rates.* The basic rate per hour for the first 8 hours of work performed in any 24-hour period shall be as follows:

Class of worker	*Basic rates per hour*
A—Operator of mechanical loaders	$0.90
B—Operator of tractors and trucks	.75
C—Chemical sprayers	.70
D—All others	.65

(ii) *Apprentice operators of mechanical loaders and tractors.* For a learner or apprentice the hourly wage rate for Class A work in subdivision (i) of this subparagraph may be reduced by not more than 15 cents per hour, and the hourly rate for tractor operators in Class B of subdivision (i) of this subparagraph may be reduced by not more than 10 cents per hour: *Provided,* That the training period for such workers shall not exceed six work-weeks: *And provided further,* That the producer shall file with the Caribbean Area Agricultural Stabilization and Conservation Service Office, Santurce, Puerto Rico (herein referred to as Area Office), a certified statement containing the names of all such workers, the hourly wage rate paid to each, and the period each was employed as a learner or as an apprentice.

(iii) *Handicapped workers.* For an individual whose productive capacity is impaired by age or physical or mental deficiency, the hourly wage rates provided under subdivision (i) of this subparagraph may be decreased by not more than one-third: *Provided,* That the producer shall file with the Area Office, a certified statement containing the names of all such workers, the hourly wage rates paid to each, and the nature of the handicap of each such worker.

(iv) *Overtime.* Persons employed in excess of 8 hours in any 24-hour period or in excess of 40 hours in any one week shall be paid for the overtime work at a rate not less than one and one-half times the applicable hourly rate provided in subdivisions (i), (ii), and (iii) of this subparagraph: *Provided,* That this provision shall be inapplicable to workers who are employed under extraordinary emergencies as defined in applicable Municipal or Territorial laws or regulations.

(v) *Piecework rates.* If work is performed on a piecework basis, the rate shall be as agreed upon between the producer and the worker: *Provided,* That

the hourly rate of earnings for each worker employed on piecework during each pay period (such pay period not to be in excess of two weeks) shall average for the time involved not less than the applicable hourly rate provided under subdivisions (i), (ii), (iii), and (iv) of this subparagraph.

(2) *Compensable working time.* For work performed under subparagraph (1) of this paragraph, compensable working time includes all time which the worker spends in the performance of his duties except time taken out for meals during the work day. Compensable working time commences at the time the worker is required to start work in the field and ends upon completion of work in the field. However, if the producer requires the operator of mechanical equipment, driver of animals, or any other class of worker to report to a place other than the field, such as an assembly point, stable, tractor shed, etc., located on the farm, the time spent in transit from such place to the field and from the field to such place is compensable working time. Any time spent in performing work directly related to the principal work performed by the worker such as servicing equipment, is compensable working time. Time of the worker while being transported from a central recruiting point or labor camp to the farm is not compensable working time.

(b) *Evidence of compliance.* Each producer subject to the provisions of this section shall keep and preserve, for a period of two years following the date on which his application for a Sugar Act payment is filed, such wage records as will fully demonstrate that each worker has been paid in full in accordance with the requirements of this section. The producer shall furnish upon request to the Area office records or such other evidence as may satisfy such office that the requirements of this section have been met.

(c) *Subterfuge.* The producer shall not reduce the wage rates to workers below those determined in accordance with the requirements of this section through any subterfuge or device whatsoever.

(d) *Claim for unpaid wages.* Any person who believes he has not been paid in accordance with this section may file a wage claim with the Area office against the producer on whose farm the work was performed. Detailed instructions and wage claim forms may be obtained by writing to the Caribbean Area Agricultural Stabilization and Conservation Service Office, Santurce, Puerto Rico. Such claim must be filed within two years from the date the work with respect to which the claim is made was performed. Upon receipt of a wage claim the Area office shall thereupon notify the producer against whom the claim is made concerning the representation made by the worker. The Area office shall make such investigation as it deems necessary and shall notify the producer and worker in writing of its recommendations for settlement of the claim. If the recommendation of the Area office is not acceptable, either party may file an appeal with the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C., 20250. All such appeals shall be filed within 15 days after receipt of the recommended settlement from the Area office, otherwise such recommended settlement will be applied in making payments under the act. If a claim is appealed to the Deputy Administrator, State and County Operations, his decision shall be binding on all parties insofar as payment under the act is concerned.

STATEMENT OF BASES AND CONSIDERATIONS

(a) *General.* The foregoing determination establishes the minimum wage rates to be paid for work performed by persons employed on the farm in the production, cultivation, or harvesting of sugarcane during the calendar year 1965, as one of the conditions with which producers must comply to be eligible for payments under the act.

(b) *Requirements of the act and standards employed.* Section 301(c)(1) of the act requires that all persons employed on the farm in the production, cultivation, or harvesting of sugarcane with respect to which an application for payment is made shall have been paid in full for all such work, and shall have been paid wages therefor at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing; and in making such determinations the Secretary shall take into consideration the standards therefor formerly established by him under the Agricultural Adjustment Act, as amended (i.e., cost of living, prices of sugar and byproducts, income from sugarcane, and cost of production), and the differences in conditions among the various producing areas.

(c) *1965 Wage determination.* This determination continues the wage rates and other provisions of the 1964 determination, except that producers are required to keep and preserve for a period of two years records which will fully demonstrate that workers have been paid in full in accordance with the requirements of this determination.

A public hearing was held in Christiansted, St. Croix, Virgin Islands, on October 27, 1964, at which interested persons were afforded the opportunity to testify with respect to fair and reasonable wage rates for the calendar year 1965. A representative of Harvlan, Inc. (recent purchaser of the sugarcane production and processing facilities of the Virgin Islands Corporation), the largest producer and only processor of sugarcane in the Virgin Islands, recommended that there be no change in the minimum wage provisions of the determinations. The witness testified that the outlook for the 1965 crop was very poor, due to severe drought conditions and continued low prices for raw sugar. He stated that the company employed about 140 workers, all of whom were paid the minimum hourly rates or more; that it was necessary to import foreign workers because the local supply of labor was insufficient; and that the company was committed to operate the mill only through the 1966 crop year.

A representative of one of the larger independent producers recommended that there be no change in the minimum wage provisions of the determination. The witness testified that the drought was such that the crop would be very poor, or perhaps no crop at all. He stated that he was employing 28 workers, of whom 2 were skilled and the remainder were unskilled; that in 1964 cane cutters were paid $1.80 per ton as compared to $1.50 in 1963; that workers who loaded cane on trucks were paid $1.08 per ton, while those who loaded cane in carts were paid $0.90; that truck drivers were paid 75–85 cents per hour, depending upon experience; that it was necessary to import foreign workers; and that there had been no change in local laws affecting the minimum wage.

Consideration has been given to the testimony presented at the hearing, to the economic position of sugarcane producers, and to other pertinent factors. The returns, costs, and profits for the sugarcane producing operations of the corporation (now Harvlan, Inc.) and of independent producers, obtained by field study in prior years, have been recast in terms of prospective price and production conditions for the 1965 crop. The analysis indicates that sugarcane production costs have varied substantially during recent years as a result of major differences in annual production and yields of sugarcane and that the production of sugarcane is profitable only when weather and growing conditions are favorable. Present prospects indicate that the 1965 crop will not be profitable.

Prior wage determinations have provided that the producer was required to furnish, upon request, to the Area office acceptable and adequate proof that all workers had been paid in accordance with the requirements of the determination. This determination strengthens that requirement. Producers are required to keep and preserve for a two-year period beyond the date of filing his application for a Sugar Act payment, adequate records relating to wage payments to sugarcane workers on the farm. The requirement that wage payment records be kept for a period of two years after applying for a Sugar Act payment coincides generally with the period in which a worker may file a wage claim. This additional requirement will facilitate the settlement of wage claims which may be filed by workers.

After consideration of the pertinent factors involved, the rates established in this determination are deemed to be fair and reasonable.

Accordingly, I hereby find and conclude that the foregoing wage determination will effectuate the wage provisions of the Sugar Act of 1948, as amended.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies sec. 301, 61 Stat. 929, as amended; 7 U.S.C. 1132)

(The recordkeeping and reporting requirements of these regulations have been approved by, and subsequent recordkeeping and reporting requirements will be subject to, the approval of the Bureau

of the Budget in accordance with the Federal Reports Act of 1942.)

Effective date. This determination shall become effective on January 9, 1965.

Signed at Washington, D.C., on January 6, 1965.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 65-274; Filed, Jan. 8, 1965; 8:48 a.m.]

SUBCHAPTER I—DETERMINATION OF PRICES

[Sugar Determination 878.17]

PART 878—SUGARCANE; VIRGIN ISLANDS

Prices; 1965 Crop

Pursuant to the provisions of section 301(c)(2) of the Sugar Act of 1948, as amended (herein referred to as "act"), after investigation and due consideration of the evidence obtained at the public hearing held in Christiansted, St. Croix, Virgin Islands, on October 27, 1964, the following determination is hereby issued:

§ 878.17 Fair and reasonable prices for the 1965 crop of Virgin Islands sugarcane.

A producer of sugarcane in the Virgin Islands who is also a processor of sugarcane (herein referred to as "processor"), shall have paid, or contracted to pay, for sugarcane of the 1965 crop grown by other producers and processed by him at rates not less than those determined in accordance with the following requirements, or at a combined rate of not less than the sum of the rates determined in accordance with the following requirements:

(a) *Definitions.* For the purpose of this section, the term:

(1) "Raw sugar" means raw sugar as made converted to a 96° basis.

(2) "Settlement period" means the two-week period in which sugarcane is delivered by the producer to the processor. The first such period shall start on Monday of the week grinding commences and successive periods shall start at two-week intervals thereafter. Odd days at the end of the grinding season shall be included in the preceding period if less than 7 days and if 7 days or more shall constitute a separate settlement period.

(3) "Price of raw sugar" means the simple average of the daily spot quotations for sugar deliverable under the New York Coffee and Sugar Exchange No. 7 domestic contract (bulk sugar) for the settlement period, except that, if the Director of the Policy and Program Appraisal Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C., 20250, determines that any such price quotation does not reflect the true market value of raw sugar because of inadequate volume or other factors, he may designate the price to be effective under this determination, which he determines will reflect the true market value of raw sugar.

(4) "F.O.B. mill price" means the price of raw sugar minus selling and delivery expenses actually incurred by the processor in marketing raw sugar of the 1965 crop.

(5) "Yield of raw sugar" means the quantity of raw sugar recovered per 100 pounds of sugarcane determined for each settlement period in accordance with the following procedure:

(i) A representative sample shall be taken of each producer's daily deliveries of sugarcane during the settlement period and ground by a laboratory power mill. The juice extracted therefrom shall be analyzed for Brix and sucrose content by standard methods of analysis.

(ii) Application shall then be made of the formula, R=(S−0.3B) F, where:

R=Yield of raw sugar.
S=Sucrose content of the laboratory power mill juice obtained from the sugarcane of each producer.
B=Brix of the laboratory power mill juice obtained from the sugarcane of each producer.
F=Yield factor which is determined as follows:

(*a*) Determine the "tentative recovery of raw sugar" for each producer delivering sugarcane during the settlement period, from the product of the formula (S−0.3B), and the number of hundredweight of sugarcane; and

(*b*) Divide the pounds of raw sugar, 96° basis, produced and estimated from all sugarcane received and tested during the settlement period by the sum of the "tentative recoveries of raw sugar" for all producers to obtain the yield factor F.

(iii) In the event any sugarcane was not processed during the settlement period in which it was received and tested, the quantity of sugar produced during such period shall be increased by attributing to such sugarcane an estimated quantity determined by multiplying the number of tons of such unprocessed sugarcane by the average percentage of sugar, 96° basis, that was recovered from all sugarcane processed during such settlement period. The quantity of sugar so estimated shall be deducted from the sugar produced during the subsequent period.

(b) *Payment for sugarcane.* (1) The payment for sugarcane delivered by the producer to the processor during a settlement period shall be calculated on the basis of the f.o.b. mill price for that portion of the raw sugar determined by applying not less than the following applicable percentage to the yield of raw sugar from the producer's sugarcane:

Pounds of raw sugar per 100 pounds of sugarcane	*Percentage*
6.0	53.0
7.0	54.0
8.0	55.0
9.0	56.0
10.0	57.0
11.0	58.0
12.0	59.0

Intermediate points within the scale are to be interpolated to the nearest one-tenth point. Points below 6 pounds or above 12 pounds of raw sugar are to be in proportion to the immediately preceding interval.

(2) The processor shall pay to the producer for each 100 pounds of sugarcane delivered an amount for molasses computed by applying the following applicable percentage to the product of 11.5 cents per gallon and the average number of gallons of blackstrap molasses produced per 100 pounds of sugarcane of the 1965 crop:

Pounds of raw sugar per 100 pounds of sugarcane	*Percentage*
6.0	86.0
7.0	80.0
8.0	74.0
9.0	68.0
10.0	62.0
11.0	56.0
12.0	50.0

Intermediate points within the scale are to be interpolated to the nearest one-tenth point. Points below 6 pounds or above 12 pounds of raw sugar are to be in proportion to the immediately preceding interval.

(c) *Delivery point and transportation allowances.* The price for sugarcane established by this section shall be applicable to sugarcane delivered to the mill. For each 100 pounds of sugarcane delivered to the mill the processor shall make an allowance to the producer for loading and transporting such sugarcane in an amount not less than one-half of the loading and transportation rate applicable to the 1964 crop. The rates and allowances shall be posted at the mill by the processor.

(d) *Reporting requirements.* The processor shall submit in duplicate to the Caribbean Area Agricultural Stabilization and Conservation Service Office, San Juan, Puerto Rico, for approval a certified statement itemizing the actual expenses deducted in determining the f.o.b. mill price of raw sugar.

(e) *Subterfuge.* The processor shall not reduce the returns to the producer below those determined in accordance with the requirements of this determination through any subterfuge or device whatsoever.

STATEMENT OF BASES AND CONSIDERATIONS

(a) *General.* The foregoing determination establishes the fair and reasonable price requirements which must be met, as one of the conditions for payment under the act, by a producer who processes sugarcane of the 1965 crop grown by other producers.

(b) *Requirements of the act.* Section 301(c)(2) of the act provides as a condition for payment, that the producer on the farm who is also directly or indirectly a processor of sugarcane, as may be determined by the Secretary, shall have paid, or contracted to pay, under either purchase or toll agreements, for sugarcane grown by other producers and processed by him at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing.

(c) *1965 price determination.* This determination continues the provisions of the 1964 crop determination, except that the molasses payment to producers is based on a price of 11.5 cents per gallon instead of 10 cents per gallon. This reflects the most recent 5-year average net proceeds received from sales of molasses by processors in Puerto Rico.

A public hearing was held in Christiansted, St. Croix, Virgin Islands on October 27, 1964, at which interested persons were afforded the opportunity to testify with respect to fair and reasonable prices for the 1965 crop of sugarcane. The witness for Harvlan, Inc., recommended that there be no change in the 1965 crop determination. He stated that the prolonged drought would limit production of sugarcane and, if continued, jeopardize the entire crop, and that the outlook was worsened further by the very low prices for raw sugar. The witness stated that it was the intention of Harvlan to pay producers a higher percentage of raw sugar recovered from sugarcane than was required by the determination, and that the method of payment to the producers for molasses used in the prior determination was satisfactory. One of the larger independent producers recommended that the 1965 crop determination adopt the same sharing relationship used by the processor to purchase 1964 crop sugarcane from the producers; and that the molasses payment to producers be based on the actual net proceeds per gallon received by the processor from the sale of molasses.

Consideration has been given to the recommendations made at the public hearing, to prospective production and price conditions for the 1965 crop, and to other pertinent factors. Analysis of these factors indicate that the sharing relationship provided in this determination is favorable to independent producers. Accordingly, the recommendations of producers that the 1965 crop determination adopt the higher percentage share used by the processor to purchase 1964 crop sugarcane has not been adopted.

The recommendation by a representative of independent producers that the molasses payment to producers be based on the actual net proceeds received by the processor has not been adopted. In recent years the determinations have provided that the molasses payment to producers was to be based on the most recent 5-year average net proceeds per gallon received by processors in Puerto Rico. This formula has resulted in stable returns to producers for molasses. Under present arrangements between the processor and users of molasses the price is contingent upon importations from foreign counties, and if no molasses is imported the price must then be negotiated or arbitrated. Accordingly, it is deemed desirable to continue a fixed price in the determination based on the average net proceeds realized by processors in Puerto Rico where more competitive practices prevail.

The price determinations for a number of years have provided that the processor make allowances to producers equivalent to 50 percent of the commercial carrier rates for the loading of sugarcane at the farm and its transportation to the mill. The allowance is applied to rates developed by the processor which are related to the rates a producer would have to pay a commercial carrier for such services. In 1964, representatives of growers and the processor negotiated a 20 percent increase in the loading and transportation rates and higher rates may be negotiated for the 1965 crop. However, this determination continues the requirements that as a minimum the processor make an allowance of not less than 50 percent of the commercial carrier rates applicable to the 1964 crop.

On the basis of an examination of all relevant factors, the provisions of this determination are deemed to be fair and reasonable. Accordingly, I find and conclude that the foregoing price determination will effectuate the price provisions of the act.

(Sec. 403, 61 Stat. 932; 7 U.S.C. Sup. 1153. Interprets or applies sec. 301, 61 Stat. 929; 7 U.S.C. 1131, as amended)

Effective date. This determination shall become effective on January 9, 1965, and is applicable to the 1965 crop of Virgin Islands sugarcane.

Signed at Washington, D.C., on January 6, 1965.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 65-275; Filed, Jan. 8, 1965; 8:48 a.m.]

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

PART 900—GENERAL REGULATIONS

Filing; Extensions of Time; Effective Date of Filing; and Computation of Time

By virtue of the authority vested in the Secretary of Agriculture by Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and by Executive Order No. 10199, December 22, 1950 (15 F.R. 9217), the General Regulations issued thereunder (7 CFR 900.1 et seq.), as amended, are hereby further amended as follows:

Section 900.15(a) is amended by adding thereto the following sentence:

§ 900.15 Filing; extensions of time; effective date of filing; and computation of time.

(a) * * * The provisions of this subpart concerning filing with the hearing clerk of hearing notices, recommended and final decisions, marketing agreements and orders, and all documents described in § 900.17 shall be met by filing a true copy thereof with the hearing clerk.

* * * * *

Done at Washington, D.C., this 6th day of January 1965.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 65-276; Filed, Jan. 8, 1965; 8:49 a.m.]

[Orange Reg. 45]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 905.444 Orange Regulation 45.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, including Temple 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 thereof 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; 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. Shipments of oranges, including Temple oranges, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on January 5, 1965, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of

oranges, including Temple oranges, and compliance with this regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140–51.1178 of this title).

(2) During the period beginning at 12:01 a.m., e.s.t., January 11, 1965, and ending at 12:01 a.m., e.s.t., January 25, 1965, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any oranges, except Temple oranges, grown in Regulation Area I, which do not grade at least U.S. No. 1;

(ii) Any oranges, except Temple oranges, grown in Regulation Area II, which do not grade at least U.S. No. 1 Russet;

(iii) Any oranges, except Temple oranges, grown in the production area, which are of a size smaller than 2$^{5}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said United States Standards for Florida Oranges and Tangelos: *Provided*, That in determining the percentage of oranges in any lot which are smaller than 2$^{5}/_{16}$ inches in diameter, such percentage shall be based only on those oranges in such lot which are of a size 2$^{1}/_{16}$ inches in diameter or smaller;

(iv) Any Temple oranges, grown in the production area, which do not grade at least U.S. No. 1 Russet; or

(v) Any Temple oranges, grown in the production area, which are of a size smaller than 2$^{5}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of Temple oranges smaller than such minimum diameter shall be permitted which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the aforesaid United States Standards for Florida Oranges and Tangelos.

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

Dated: January 7, 1965.

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

[F.R. Doc. 65–298; Filed, Jan. 8, 1965; 8:50 a.m.]

[Grapefruit Reg. 46]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 905.445 Grapefruit Regulation 46.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, 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 thereof 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; 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. Shipments of all grapefruit, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on January 5, 1965, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Grapefruit (§§ 51.750–51.783 of this title).

(2) During the period beginning at 12:01 a.m., e.s.t., January 11, 1965, and ending at 12:01 a.m., e.s.t., January 25, 1965, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any seeded grapefruit, grown in the production area, which do not grade at least U.S. No. 1;

(ii) Any seeded grapefruit, grown in the production area, which are 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 said United States Standards for Florida Grapefruit;

(iii) Any seedless grapefruit, grown in Regulation Area I, which do not grade at least U.S. No. 1;

(iv) Any seedless grapefruit, grown in Regulation Area II, which do not grade at least U.S. No. 1 Russet: *Provided*, That such grapefruit which grade U.S. No. 2 or U.S. No. 2 Bright may be shipped if such grapefruit (*a*) meet the requirements as to form (shape) and color specified in the U.S. No. 1 grade, and (*b*) are not smaller than 4$^{3}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of such 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 said United States Standards for Florida Grapefruit; or

(v) Any seedless grapefruit, grown in the production area, which are smaller than 3$^{5}/_{16}$ 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 said United States Standards for Florida Grapefruit.

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

Dated: January 7, 1965.

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

[F.R. Doc. 65–299; Filed, Jan. 8, 1965; 8:50 a.m.]

[Tangelo Reg. 25]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 905.446 Tangelo Regulation 25.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangelos, 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 thereof 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; 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. Shipments of tangelos, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on January 5, 1965, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangelos; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangelos, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140–51.1178 of this title).

(2) During the period beginning at 12:01 a.m., e.s.t., January 11, 1965, and ending at 12:01 a.m., e.s.t., January 25, 1965, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangelos, grown in the production area, which do not grade at least U.S. No. 1 Russet; or

(ii) Any tangelos, grown in the production area, which are of a size smaller than 2⅜ inches in diameter, except that a tolerance of 10 percent, by count, of tangelos smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said United States Standards for Florida Oranges and Tangelos.

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

Dated: January 7, 1965.

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

[F.R. Doc. 65-296; Filed, Jan. 8, 1965; 8:50 a.m.]

[Tangerine Reg. 25]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 905.447 Tangerine Regulation 25.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangerines, 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 thereof 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; a reasonable time to permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangerines, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on January 5, 1965, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangerines; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangerines, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, and standard pack, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Tangerines (§§ 51.1810–51.1834 of this title).

(2) During the period beginning at 12:01 a.m., e.s.t., January 11, 1965, and ending at 12:01 a.m., e.s.t., January 25, 1965, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangerines, grown in the production area, which do not grade at least U.S. No. 1 Russet; or

(ii) Any tangerines, grown in the production area, which are of a size smaller than 2 1/16 inches in diameter, except that a tolerance of 10 percent, by count, of tangerines smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said United States Standards for Florida Tangerines.

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

Dated: January 7, 1965.

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

[F.R. Doc. 65-297; Filed, Jan. 8, 1965; 8:50 a.m.]

[Navel Orange Reg. 68]

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

Limitation of Handling

§ 907.368 **Navel Orange Regulation 68.**

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), 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 7, 1965.

(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 10, 1965, and ending at 12:01 a.m., P.s.t., January 17, 1965, are hereby fixed as follows:

(i) District 1: 500,000 cartons;

(ii) District 2: 150,000 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 8, 1965.

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 65-357; Filed, Jan. 8, 1965; 11:20 a.m.]

[Grapefruit Reg. 7, Amdt. 2]

PART 944—FRUITS; 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 7 (§ 944.103; 29 F.R. 12762, 13603) are hereby amended to read as follows:

§ 944.103 **Grapefruit Regulation No. 7.**

(a) On and after 12:01 a.m., e.s.t., January 15, 1965, 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 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; or

(2) Seedless grapefruit shall grade at least U.S. No. 1 Russet and be of a size not smaller than $3^{9}/_{16}$ inches in diameter, except that seedless grapefruit which grade U.S. No. 2 or U.S. No. 2 Bright may be imported if such grapefruit (i) meet the requirements as to form (shape) and color specified in the U.S. No. 1 grade and (ii) are not smaller than $4^{1}/_{16}$ inches in diameter: *Provided*, That a tolerance of 10 percent, by count of grapefruit which is smaller than the aforesaid minimum sizes 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 46 (§ 905.445); (c) compliance with this amended import regulation will not require any special preparation which cannot be completed by the effective time hereof; (d) notice hereof in excess of three days, the minimum that is prescribed by said section 8e, is given with respect to this import regulation; and (e) such notice is hereby determined, under the circumstances, to be reasonable.

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

Dated, January 7, 1965, to become effective at 12:01 a.m., e.s.t., January 15, 1965.

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

[F.R. Doc. 65-300; Filed, Jan. 8, 1965; 8:50 a.m.]

[970.305, Amdt. 1]

PART 970—CARROTS GROWN IN SOUTH TEXAS

Limitation of Shipments

Findings. (a) Pursuant to Marketing Agreement No. 142 and Order No. 970, both as amended (7 CFR Part 970), regulating the handling of carrots grown in designated counties in South Texas, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 et seq.), and upon the basis of the recommendation and information submitted by the South Texas Carrot Committee, established pursuant to said marketing agreement and order, and upon other available information, it is hereby found that the amendment to the limitation of shipments hereinafter set forth will maintain orderly marketing conditions tending to increase returns to carrot growers in the production area.

(b) It is hereby found that it is impracticable and contrary to the public interest to give preliminary notice, or engage in public rule making procedure, and that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1003) in that (1) the 1964–65 marketing season for South Texas carrots is currently in progress and a heavy volume of shipments is now being made, (2) to maximize benefits to growers, this amendment should apply to as many shipments of carrots as possible during the remainder of the 1964–65 season, (3) compliance with this amendment will not require any special preparation on the part of handlers, and (4) information regarding the committee's recommenda-

tion has been disseminated to producers and handlers in the production area.

Order, as amended. In § 970.305 (29 F.R. 15018, 15019), amend the introductory paragraph and paragraphs (a) and (b) to read as follows:

§ 970.305 Limitation of shipments.

During the period from January 12, 1965, through June 30, 1965, no handler shall (1) package or load carrots on Sundays, or (2) handle any lots of carrots grown in the production area unless such carrots meet the grade requirements of paragraph (a) of this section, and one of the size designations of paragraph (b) of this section, and meet the container and pack requirements of paragraphs (c) and (d) of this section, or unless such carrots are handled in accordance with provisions of paragraphs (e), (f), (g), and (h) of this section.

(a) *Minimum grade requirements.* U.S. No. 1, or better, and which are "clean", averaging at least 50 percent well formed, with no individual sample under 35 percent well formed.

(b) *Sizing requirements*—(1) *Medium-to-large.* ⅞ inch minimum diameter to 1½ inches maximum diameter, 6 inches minimum length, with an average of 30 percent by count 1 inch minimum diameter or larger and no sample with less than 15 percent by count 1 inch or larger in diameter.

(2) *Jumbos.* 1¼ inches minimum diameter to 3 inches maximum diameter and 6 inches minimum length.

* * * * *

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

Dated January 6, 1965, to become effective January 12, 1965.

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

[F.R. Doc. 65-295; Filed, Jan. 8, 1965; 8:50 a.m.]

Chapter XVI—Agricultural Marketing Service (Food Stamp Program), Department of Agriculture

PART 1601—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Effective Date

The regulations governing the Food Stamp Program as issued in 29 F.R. 16784, are amended as follows:

The last paragraph following § 1601.9 is amended to read as follows:

The provisions of this part shall become effective as provided in § 1600.5(d) of this chapter.

S. R. SMITH,
Administrator.

Approved: January 6, 1965.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 65-277; Filed, Jan. 8, 1965; 8:49 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

PART 40—SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCT

Miscellaneous Amendments

Under the authority contained in sections 203 and 205 of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1622 and 1624), §§ 40.2 and 40.3 of Part 40, Subchapter A, Chapter I, Title 9, Code of Federal Regulations, as amended, are hereby further amended in the following respects:

1. Section 40.2 is changed by adding a new paragraph (j) to read:

§ 40.2 Definitions.

* * * * *

(j) *Reindeer.* Domesticated reindeer.

2. Section 40.3 is changed by adding a new paragraph (d) to read:

§ 40.3 Types and availability of service.

* * * * *

(d) *Reindeer inspection service.* An inspection and certification service for wholesomeness relating to the slaughter of reindeer. All applicable provisions of this subchapter shall apply to the slaughter of reindeer, and the preparation, labeling, and certification of the reindeer meat and reindeer products prepared under this reindeer inspection service.

(Secs. 203, 205, 60 Stat. 1087 and 1090, as amended; 7 U.S.C. 1622 and 1624; 29 F.R. 16210)

Effective date. The foregoing amendments shall become effective upon publication in the FEDERAL REGISTER.

The foregoing amendments provide for reindeer inspection service upon the request of interested persons and on a reimbursable basis. Inasmuch as the amendments provide for an inspection service not heretofore available, they should become effective as soon as possible in order to be of maximum benefit to persons desiring to use such service. Accordingly, it is found upon good cause under Section 4 of the Administrative Procedure Act (5 U.S.C. 1003) that notice and other public procedure with respect to the amendments are impracticable and contrary to the public interest; and good cause is found for making the amendments effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 6th day of January 1965.

GEORGE W. IRVING, JR.,
Acting Administrator, Agricultural Research Service.

[F.R. Doc. 65-279; Filed, Jan. 8, 1965; 8:49 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Reg. Docket No. 4080]

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, AND ACROBATIC CATEGORY AIRPLANES

Correction

In F.R. Doc. 64-12987, appearing at page 17955, of the issue for Friday, December 18, 1964, the following changes are made:

1. In the last line of § 23.365(d), the factor "1.3" is changed to read "1.33".

2. In § 23.427, the word "local" in the second line of the formula is changed to read "load".

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

Appendixes A, B, and C to Part 121 of Title 14, Chapter I, published in the FEDERAL REGISTER dated December 31, 1964 (F.R. Doc. 64-13424, 29 F.R. 19186), read as follows:

Appendix A—First-Aid Kits

Approved first-aid kits required by § 121.309 must meet the following specifications and requirements.

(1) Each first-aid kit must be dust and moisture proof, and contain only materials that meet Federal Specifications GG-K-391a, as revised.

(2) The type of first-aid kit and the contents thereof based upon the capacity of the airplane is as follows:

(a) No. 1 kit for airplanes of 1 to 5 persons capacity.

Contents	No.
Adhesive bandage compresses, 1-inch (16 per unit)	1
Antiseptic swabs, 10mm. (10 per unit)	1
Ammonia inhalants, 6mm. (10 per unit)	1
2-inch bandage compresses (4 per unit)	1
4-inch bandage compresses (1 per unit)	1
Triangular bandage compressed, 40-inch (1 per unit)	2
Burn compound, ⅛ oz. (6 per unit) or equivalent amount of other burn remedy	1
Ophthalmic ointment, ⅛ oz. (6 per unit)	1

(b) No. 2 kit for airplanes of 6 to 25 persons capacity.[1]

Contents	No.
Adhesive bandage compresses, 1-inch (16 per unit)	2
Antiseptic swabs, 10mm. (10 per unit)	2
Ammonia inhalants, 6mm. (10 per unit)	1
2-inch bandage compresses (4 per unit)	3
4-inch bandage compresses (1 per unit)	2
Triangular bandage compressed, 40-inch (1 per unit)	3
Burn compound, ⅛ oz. (6 per unit) or equivalent amount of other burn remedy	2
Ophthalmic ointment, ⅛ oz. (6 per unit)	1

[1] Kit No. 2 in canvas may also be used on liferafts.

(c) No. 3 kit for airplanes of over 25 persons capacity.

Contents	No.
Adhesive bandage compresses, 1-inch (16 per unit)	4
Antiseptic swabs, 10mm. (10 per unit)	4
Ammonia inhalants, 6mm. (10 per unit)	2
2-inch bandage compresses (4 per unit)	3
4-inch bandage compresses (1 per unit)	3
Triangular bandage compressed, 40-inch (1 per unit)	5
Burn compound, ⅛ oz. (6 per unit) or an equivalent amount of other burn remedy	2
Ophthalmic ointment, ⅛ oz. (6 per unit)	1

Appendix B—Minimum Standards for the Approval of Airplane Simulators

1. *Application for approval.* An application for approval of an airplane simulator is submitted, in triplicate, to the Administrator. The application must include the following:

(a) Enough information to show that the simulator adequately simulates the type of airplane with respect to the items and systems listed in section 3 of this appendix.

(b) Comparative data sheets showing that the performance and flight characteristics of the airplane simulator have been flight checked and found to be within the limits prescribed for the items listed in section 4 of this appendix. The airplane data used for comparison purposes must be applicable to the currently certificated airplanes. This data may be obtained:

(1) From the approved Airplane Flight Manual, Type Inspection Reports, or other flight test data provided by the airplane manufacturer. Other sources of airplane data may be used if approved by the Administrator. Such data must be submitted so as to allow sufficient time for investigation of their adequacy.

(2) By flight tests conducted in the certificate holder's own airplane. If this procedure is used, performance and flight characteristics data for the center of gravity limits and weights used during training will be satisfactory. Before starting these flights, an outline of the tests to be conducted in the airplane must be prepared and coordinated by the certificate holder with the Administrator. This outline must contain procedures to be followed and data to be obtained during each phase of the flight testing program. Administrator may observe and participate in the flight test program to the extent he considers necessary and appropriate. Any data so obtained will be acceptable for use by other certificate holders using the same type of airplane if appropriate arrangements are made with the certificate holder originating the data.

2. *General requirements.*

(a) The effect of changes on the basic forces and moments must be introduced for all combinations of drag and thrust normally encountered in flight. The effect of changes in airplane attitude, power, drag, altitude, temperature, gross weight, center of gravity location, and configuration must be included.

(b) In response to control movement by a flight crew member, all instrument indications involved in the simulation of the applicable airplane must be entirely automatic in character unless otherwise specified.

(c) The rate of change of simulator instrument readings and of control forces must, unless specific tolerances are otherwise specified in this Appendix, reasonably correspond to the rate of change which would occur on the applicable airplane under actual flight conditions, for any given change in the applied load on the controls, in the applied power or in aircraft configuration.

(d) Control forces and degree of actuating control travel must, unless specific tolerances are otherwise specified in this Appendix, reasonably correspond to that which would occur in the airplane under actual flight conditions.

(e) Through the medium of instrument indication, it must be possible to use the simulator for the training and checking of a pilot in the operational use of controls and instruments on the applicable airplane model during the simulated execution of ground operation, takeoff, landing, normal flight, unusual attitudes, navigation problems, and instrument approach procedures. In addition, the simulator must be designed so that malfunction of aircraft engines, propellers, and primary systems may be presented and corrective action taken by the crew to cope with such emergencies.

(f) Suitable course and altitude recorders must be provided.

(g) Communication and navigation aids of the applicable airplane must be simulated for on-the-ground and in-flight operations.

3. *Minimum standards for simulation of airplane systems.* The simulator must simulate at least the following items and systems which are appropriate to the airplane being simulated:

(a) All normal cockpit noise related to engine or aerodynamic noise (adjustable volume is permissible);

(b) All flight controls;

(c) Gust locks;

(d) Trim tabs;

(e) Landing gear operation;

(f) Wheel brakes;

(g) Steering mechanisms used on the ground;

(h) Wing flaps and spoilers;

(i) Powerplant operations;

(j) Propeller controls and circuity;

(k) Antidetonation injection systems;

(l) Fuel and oil systems;

(m) Cockpit—the simulator must represent a full scale mockup, including normal flight crew stations and accommodations for the instructor or check airman, and shall be representative of a typical fleet airplane;

(n) Circuit breaker stations manageable by the flight crew in the flight compartment (those not related to essential flight equipment or systems need not be operative);

(o) Hydraulic systems;

(p) Fire detection and extinguishing systems;

(q) Pneumatic systems (including emergency airbrakes);

(r) Electrical systems;

(s) Interior cockpit lights;

(t) Exterior light controls;

(u) Pressurization and air-conditioning systems (instrument indication and warning signals);

(v) Deicing and anti-icing systems; and

(w) Supplemental breathing systems (the systems may be charged with or vented to air).

4. *Minimum standards of tolerance for performance and flight characteristics.* The simulator must simulate the performance and flight characteristics of the particular type of airplane being simulated within the tolerance limits specified in paragraphs (a) and (b) of this section. If alternate tolerance limits are given, whichever is the greater shall apply.

(a) *Performance characteristics.* (Airplane weight and center of gravity optional.)

(1) Propeller feathering time, ±3 seconds.

(2) Landing gear operating time, ±3 seconds.

(3) Wing flap operating time, ±3 seconds.

(4) Takeoff acceleration time, ±10 percent.

(5) Calibration of gyrocompass and turn-and-bank indicator in standard rate turns and 30-degree banked turns, through a range of 180 degrees. Average rate of turn shall be within ±10 percent.

(6) Minimum control speed (in flight), ±5 knots.

(7) Stall speeds and stall warning speeds (wings level), as follows:

(i) Stall warning speed (initial buffet) in the takeoff, approach, and landing configuration, ±3 knots.

(ii) Stall speeds in the takeoff, approach, and landing configuration, ±5 knots.

(iii) The difference between stall warning (initial buffet) and stall speed shall be within ±5 knots of that for the appropriate airplane, but in no case should the stall occur before the stall warning.

(8) Engine power (thrust) calibration at takeoff and maximum continuous ratings over an altitude range, as follows:

(i) Reciprocating engines: MP, for a given BMEP and RPM, ±1 inch.

(ii) Turbine engines: N_1 and N_2, for a given EPR, ±2 percent.

(iii) Critical altitude, piston engine simulators only, ±800 feet or ±10 percent.

(9) Speed versus power in level flight at cruise altitude, ±5 knots, or 3 percent, or .03 Mach.

(10) Rates of climb versus altitude in the following configurations (propeller airplane simulators, ±50 feet or 10 percent; jet airplane simulators, ±100 feet or 10 percent):

(i) Takeoff gear down (one engine inoperative),

(ii) Takeoff gear up (one engine inoperative),

(iii) Final takeoff (one engine inoperative),

(iv) All engines en route,

(v) One-engine-inoperative en route climb,

(vi) Two-engine-inoperative en route climb (for airplanes with four or more engines),

(vii) Approach (one engine inoperative), and

(viii) Landing.

NOTE: At least two airplane weights must be included in at least one configuration, and at least two outside air temperatures must be included in at least one other configuration.

(11) Rates of climb versus airspeed for one takeoff, and one en route configuration (propeller airplane simulators ±50 feet or ±10 percent; jet airplane simulators ±100 feet or ±10 percent).

(12) In determining compliance with subparagraphs (9), (10), and (11) of this paragraph, MP/BMEP/RPM relationships must conform to airplane data within the tolerance specified in subparagraph (8)(i), and EPR/Compressor RPM relationships must conform to airplane data within the tolerance specified in subparagraph (8)(ii) of this paragraph.

(b) *Flight characteristics.* (Airplane weight and center of gravity optional.)

(1) Static longitudinal control stability: In the landing, approach, cruise (high and low altitude), and climb configurations, return to trim, when the simulator speed is caused to depart 15 percent from trim speed, must be within ±5 knots of approved airplane data. The slope of the stick force curve must be positive. One of these configurations must cover a center of gravity range.

(2) Control forces: Simulator control forces in the following areas must be within ±8 pounds or ±25 percent of the forces encountered in the airplane as indicated by the required data; except that, in regard to rudder forces, the tolerances must be ±10 pounds or ±20 percent:

(i) Longitudinal control forces during flap retraction (power off and power on), flap extension, power or thrust application, go-around following a balked landing.

(ii) Minimum control speed (in flight), rudder and aileron forces.

(iii) Stick force per "g."

(3) The roll rate of the simulator must be within ±2 seconds or ±25 percent, whichever is greater, of that of the airplane.

NOTE: If data for items in subparagraphs (2)(ii), (2)(iii) and (3) of this paragraph are not contained in the Type Inspection Report, the Administrator may adjudge the adequacy of simulation.

(4) In the following areas, specified tolerance limitations are not set forth in these standards. In these areas of flight characteristics, when appropriate to the type of airplane being simulated, the adequacy of simulation must be subject to the approval of the Administrator:

(i) Compressibility trim change.

(ii) Approaches to stall in the takeoff, approach, and landing configuration (wings level), from initial buffet to stall; except that at least one approach to a stall must be done in a 20-degree bank turn.

(iii) Buffet at high Mach numbers up to design Mach limits.

(iv) Dutch roll.

(v) Emergency descents.

5. *Minimum standards of tolerance for simulator navigational accuracy.* At any altitude, on any heading, and at any airspeed, the navigational accuracy of the simulator must be as follows:

(a) The distance traveled with zero wind in a particular time interval must be equivalent to ±5 percent of the horizontal component of the true airspeed multiplied by the time interval.

(b) The track of the simulator with no wind must agree with the true heading of the simulator within ±3 degrees which must include allowances for instrument error. (This applies when the simulator is turning as well as flying a straight course.)

(c) During simulated ILS approaches with zero wind, the descent path of the simulator, as indicated by airspeed, altitude, and rate of descent, must agree with the descent path as indicated by the flight instrument indicating glide path deviation, within ±20 feet from 0 to 200 feet, ±10 percent of the height above the runway, from 200 to 1,000 feet, and ±100 feet from 1,000 to 5,000 feet above the airport elevation.

Appendix C—C–46 Nontransport Category Airplanes

Cargo Operations

1. *Required engines.* (a) Except as provided in paragraph (b) of this section, the engines specified in subparagraphs (1) or (2) of this section must be installed in C–46 nontransport category airplanes operated at gross weights exceeding 45,000 pounds:

(1) Pratt and Whitney R2800–51–M1 or R2800–75–M1 engines (engines converted from basic model R2800–51 or R2800–75 engines in accordance with FAA approved data) that—

(i) Conform to Engine Specification 5E–8;

(ii) Conform to the applicable portions of the operator's manual;

(iii) Comply with all the applicable airworthiness directives; and

(iv) Are equipped with high capacity oil pump drive gears in accordance with FAA approved data.

(2) Other engines found acceptable by the FAA Regional Flight Standards Division having type certification responsibility for the C–46 airplane.

(b) Upon application by an operator conducting cargo operations with nontransport category C–46 airplanes between points within the State of Alaska, the appropriate FAA Air Carrier District Office, Alaskan Region, may authorize the operation of such airplanes, between points within the State of Alaska; without compliance with paragraph (a) of this section if the operator shows that, in its area of operation, installation of the modified engines is not necessary to provide adequate cooling for single-engine operations. Such authorization and any conditions or limitations therefor is made a part of the Operations Specifications of the operator.

2. *Minimum acceptable means of complying with the special airworthiness requirements.* Unless otherwise authorized under § 121.213, the data set forth in §§ 3 through 34 of this Appendix, as correlated to the C–46 nontransport category airplane, is the minimum means of compliance with the special airworthiness requirements of §§ 121.215 through 121.281.

3. *Susceptibility of material to fire.* [Deleted as unnecessary]

4. *Cabin interiors.* C–46 crew compartments must meet all the requirements of § 121.215, and, as required in § 121.221, the door between the crew compartment and main cabin (cargo) compartment must be flame resistant.

5. *Internal doors.* Internal doors, including the crew to main cabin door, must meet all the requirements of § 121.217.

6. *Ventilation.* Standard C–46 crew compartments meet the ventilation requirements of § 121.219 if a means of ventilation for controlling the flow of air is available between the crew compartment and main cabin. The ventilation requirement may be met by use of a door between the crew compartment and main cabin. The door need not have louvers installed; however, if louvers are installed, they must be controllable.

7. *Fire precautions.* Compliance is required with all the provisions of § 121.221.

(a) In establishing compliance with this section, the C–46 main cabin is considered as a Class A compartment if—

(1) The operator utilizes a standard system of cargo loading and tiedown that allows easy access in flight to all cargo in such compartment, and, such system is included in the appropriate portion of the operator's manual; and

(2) A cargo barrier is installed in the forward end of the main cabin cargo compartment. The barrier must—

(i) Establish the most forward location beyond which cargo cannot be carried;

(ii) Protect the components and systems of the airplane that are essential to its safe operation from cargo damage; and

(iii) Permit easy access, in flight, to cargo in the main cabin cargo compartment.

The barrier may be a cargo net or a network of steel cables or other means acceptable to the Administrator which would provide equivalent protection to that of a cargo net. The barrier need not meet crash load requirements of FAR § 25.561; however, it must be attached to the cargo retention fittings and provide the degree of cargo retention that is required by the operators' standard system of cargo loading and tiedown.

(b) C–46 forward and aft baggage compartments must meet, as a minimum, Class B requirements of this section or be placarded in a manner to preclude their use as cargo or baggage compartments.

8. *Proof of compliance.* The demonstration of compliance required by § 121.223 is not required for C–46 airplanes in which—

(1) The main cabin conforms to Class A cargo compartment requirements of § 121.219; and

(2) Forward and aft baggage compartments conform to Class B requirements of § 121.221, or are placarded to preclude their use as cargo or baggage compartments.

9. *Propeller deicing fluid.* No change from the requirements of § 121.225. Isopropyl alcohol is a combustible fluid within the meaning of this section.

10. *Pressure cross-feed arrangements, location of fuel tanks, and fuel system lines and fittings.* C–46 fuel systems which conform to all applicable Curtiss design specifications and which comply with the FAA type certification requirements are in compliance with the provisions of §§ 121.227 through 121.231.

11. *Fuel lines and fittings in designated fire zones.* No change from the requirements of § 121.233.

12. *Fuel valves.* Compliance is required with all the provisions of § 121.235. Compliance can be established by showing that the fuel system conforms to all the applicable Curtiss design specifications, the FAA type certification requirements, and, in addition, has explosion-proof fuel booster pump electrical selector switches installed in lieu of the open contact type used originally.

13. *Oil lines and fittings in designated fire zones.* No change from the requirements of § 121.237.

14. *Oil valves.* C–46 oil shutoff valves must conform to the requirements of § 121.239. In addition, C–46 airplanes using Hamilton Standard propellers must provide, by use of stand pipes in the engine oil tanks or other approved means, a positive source of oil for feathering each propeller.

15. *Oil system drains.* The standard C–46 "Y" drains installed in the main oil inlet line for each engine meet the requirements of § 121.241.

16. *Engine breather line.* The standard C–46 engine breather line installation meets the requirements of § 121.243 if the lower breather lines actually extend to the trailing edge of the oil cooler air exit duct.

17. *Firewalls and firewall construction.* Compliance is required with all of the provisions of §§ 121.245 and 121.247. The following requirements must be met in showing compliance with these sections:

(a) *Engine compartment.* The engine firewalls of the C–46 airplane must—

(1) Conform to type design, and all applicable airworthiness directives;

(2) Be constructed of stainless steel or approved equivalent; and

(3) Have fireproof shields over the fairleads used for the engine control cables that pass through each firewall.

(b) *Combustion heater compartment.* C–46 airplanes must have a combustion heater fire extinguishing system which complies with AD–49–18–1 or an FAA approved equivalent.

18. *Cowling.* Standard C–46 engine cowling (cowling of aluminum construction employing stainless steel exhaust shrouds) which conforms to the type design and cowling configurations which conform to the C–46 transport category requirements meet the requirements of § 121.249.

19. *Engine accessory section diaphragm.* C–46 engine nacelles which conform to the C–46 transport category requirements meet the requirements of § 121.251. As provided for in that section, a means of equivalent protection which does not require provision of a diaphragm to isolate the engine power section and exhaust system from the engine accessory compartment is the designation of the entire engine compartment forward of and including the firewall as a designated fire zone, and the installation of adequate fire detection and fire extinguishing systems which meet the requirements of § 121.263 and § 121.273, respectively, in such zone.

20. *Powerplant fire protection.* C–46 engine compartments and combustion heater compartments are considered as designated fire zones within the meaning of § 121.253.

21. *Flammable fluids—*

(a) *Engine compartment.* C–46 engine compartments which conform to the type design and which comply with all applicable airworthiness directives meet the requirements of § 121.255.

(b) *Combustion heater compartment.* C–46 combustion heater compartments which conform to type design and which meet all the requirements of AD–49–18–1 or an FAA approved equivalent meet the requirements of § 121.255.

22. *Shutoff means*—

(a) *Engine compartment.* C–46 engine compartments which comply with AD–62–10–2 or FAA approved equivalent meet the requirements of § 121.257 applicable to engine compartments, if, in addition, a means satisfactory to the Administrator is provided to shut off the flow of hydraulic fluid to the cowl flap cylinder in each engine nacelle. The shutoff means must be located aft of the engine firewall. The operator's manual must include, in the emergency portion, adequate instructions for proper operation of the additional shutoff means to assure correct sequential positioning of engine cowl flaps under emergency conditions. In accordance with § 121.315, this positioning must also be incorporated in the emergency section of the pilot's checklist.

(b) *Combustion heater compartment.* C–46 heater compartments which comply with paragraph (5) of AD–49–18–1 or FAA approved equivalent meet the requirements of § 121.257 applicable to heater compartments if, in addition, a shutoff valve located above the main cabin floor level is installed in the alcohol supply line or lines between the alcohol supply tank and those alcohol pumps located under the main cabin floor. If all of the alcohol pumps are located above the main cabin floor, the alcohol shutoff valve need not be installed. In complying with paragraph (5) of AD–49–18–1, a fail-safe electric fuel shutoff valve may be used in lieu of the manually operated valve.

23. *Lines and fittings.*—(a) *Engine compartment.* C–46 engine compartments which comply with all applicable airworthiness directives, including AD–62–10–2, by using FAA approved fire-resistant lines, hoses, and end fittings, and engine compartments which meet the C–46 transport category requirements, meet the requirements of § 121.259.

(b) *Combustion heater compartments.* All lines, hoses, and end fittings, and couplings which carry fuel to the heaters and heater controls, must be of FAA approved fire-resistant construction.

24. *Vent and drain lines.*—(a) *Engine compartment.* C–46 engine compartments meet the requirements of § 121.261 if—

(1) The compartments conform to type design and comply with all applicable airworthiness directives or FAA approved equivalent; and

(2) Drain lines from supercharger case, engine-driven fuel pump, and engine-driven hydraulic pump reach into the scupper drain located in the lower cowling segment.

(b) *Combustion heater compartment.* C–46 heater compartments meet the requirements of § 121.261 if they conform to AD–49–18–1 or FAA approved equivalent.

25. *Fire-extinguishing system.* (a) To meet the requirements of § 121.263, C–46 airplanes must have installed fire extinguishing systems to serve all designated fire zones. The fire-extinguishing systems, the quantity of extinguishing agent, and the rate of discharge shall be such as to provide a minimum of one adequate discharge for each designated fire zone. Compliance with this provision requires the installation of a separate fire extinguisher for each engine compartment. Insofar as the engine compartment is concerned, the system shall be capable of protecting the entire compartment against the various types of fires likely to occur in the compartment.

(b) Fire-extinguishing systems which conform to the C–46 transport category requirements meet the requirements set forth in paragraph (a). Furthermore, fire-extinguishing systems for combustion heater compartments which conform to the requirements of AD–49–18–1 or an FAA approved equivalent also meet the requirements in paragraph (a).

In addition, a fire-extinguishing system for C–46 airplanes meets the adequacy requirement of paragraph (a) if it provides the same or equivalent protection to that demonstrated by the CAA in tests conducted in 1941 and 1942, using a CW–20 type engine nacelle (without diaphragm). These tests were conducted at the Bureau of Standards facilities in Washington, D.C., and copies of the test reports are available through the FAA Regional Engineering Offices. In this connection, the flow rates and distribution of extinguishing agent substantiated in American Airmotive Report No. 128–52–d, FAA approved February 9, 1953, provides protection equivalent to that demonstrated by the CAA in the CW–20 tests. In evaluating any C–46 fire-extinguishing system with respect to the aforementioned CW–20 tests, the Agency would require data in a narrative form, utilizing drawings or photographs to show at least the following:

Installation of containers; installation and routing of plumbing; type, number, and location of outlets or nozzles; type, total volume, and distribution of extinguishing agent; length of time required for discharging; means for thermal relief, including type and location of discharge indicators; means of discharging, e.g., mechanical cutterheads, electric cartridge, or other method; and whether a one- or two-shot system is used; and if the latter is used, means of crossfeeding or otherwise selecting distribution of extinguishing agent; and types of materials used in makeup of plumbing.

High rate discharge (HRD) systems using agents such as bromotrifluoromethane, dibromodifluoromethane and chlorobromomethane (CB), may also meet the requirements of paragraph (a).

26. *Fire-extinguishing agents, Extinguishing agent container pressure relief, Extinguishing agent container compartment temperatures, and Fire-extinguishing system materials.* No change from the requirements of §§ 121.265 through 121.271.

27. *Fire-detector system.* Compliance with the requirements of § 121.273 requires that C–46 fire detector systems conform to:

(a AD–62–10–2 or FAA approved equivalent for engine compartments; and

(b) AD–49–18–1 or FAA approved equivalent for combustion heater compartments.

28. *Fire detectors.* No change from the requirements of § 121.275.

29. *Protection of other airplane components against fire.* To meet the requirements of § 121.277, C–46 airplanes must—

(a) Conform to the type design and all applicable airworthiness directives; and

(b) Be modified or have operational procedures established to provide additional fire protection for the wheel well door aft of each engine compartment. Modifications may consist of improvements in sealing of the main landing gear wheel well doors. An operational procedure which is acceptable to the Agency is one requiring the landing gear control to be placed in the up position in case of in-flight engine fire. In accordance with § 121.315, such procedure must be set forth in the emergency portion of the operator's emergency checklist pertaining to in-flight engine fire.

30. *Control of engine rotation.* C–46 propeller feathering systems which conform to the type design and all applicable airworthiness directives meet the requirements of § 121.279.

31. *Fuel system independence.* C–46 fuel systems which conform to the type design and all applicable airworthiness directives meet the requirements of § 121.281.

32. *Induction system ice prevention.* The C–46 carburetor anti-icing system which conforms to the type design and all applicable airworthiness directives meets the requirements of § 121.283.

33. *Carriage of cargo in passenger compartments.* Section 121.285 is not applicable to nontransport category C–46 cargo airplanes.

34. *Carriage of cargo in cargo compartments.* A standard cargo loading and tiedown arrangement set forth in the operator's manual and found acceptable to the Administrator must be used in complying with § 121.287.

35. *Performance data.* Performance data on Curtiss model C–46 airplane certificated for maximum weight of 45,000 and 48,000 pounds for cargo-only operations.

1. The following performance limitation data, applicable to the Curtiss model C–46 airplane for cargo-only operation, must be used in determining compliance with §§ 121.199 through 121.205. These data are presented in the tables and figures of this Appendix.

TABLE 1—TAKEOFF LIMITATIONS

(a) Curtiss C–46 certificated for maximum weight of 45,000 pounds.

(1) "Effective length" of runway required when effective length is determined in accordance with § 121.171 (distance to accelerate to 93 knots TIAS and stop, with zero wind and zero gradient). (Factor = 1.00)

Standard altitude in feet	Airplane weight in pounds		
	39,000	42,000	[1] 45,000
	Distance in feet		
S.L.	4,110	4,290	4,570
1,000	4,250	4,440	4,720
2,000	4,400	4,600	4,880
3,000	4,650	4,880	5,190
4,000	4,910	5,170	5,500
5,000	5,160	5,450	5,810
6,000	5,420	5,730	6,120
7,000	5,680	6,000	6,440
8,000	5,940	6,280	(1)

[1] Ref. Fig. 1(a)(1) for weight and distance for altitudes above 7,000'.

(2) Actual length of runway required when "effective length," considering obstacles, is not determined (distance to accelerate to 93 knots TIAS and stop, divided by the factor 0.85).

Standard altitude in feet	Airplane weight in pounds		
	39,000	42,000	[1] 45,000
	Distance in feet		
S.L.	4,830	5,050	5,370
1,000	5,000	5,230	5,550
2,000	5,170	5,410	5,740
3,000	5,470	5,740	6,100
4,000	5,770	6,080	6,470
5,000	6,070	6,410	6,830
6,000	6,380	6,740	7,200
7,000	6,680	7,070	7,570
8,000	6,990	7,410	(1)

[1] Ref. Fig. 1(a)(2) for weight and distance for altitudes above 7,000'.

(b) Curtiss C–46 certificated for maximum weight 48,000 pounds.

(1) "Effective length" of runway required when effective length is determined in accordance with § 121.171 (distance to accelerate to 93 knots TIAS and stop, with zero wind and zero gradient). (Factor = 1.00)

Standard altitude in feet	Airplane weight in pounds			
	39,000	42,000	45,000	[1] 48,000
	Distance in feet			
S.L.	4,110	4,290	4,570	4,950
1,000	4,250	4,440	4,720	5,130
2,000	4,400	4,600	4,880	5,300
3,000	4,550	4,880	5,190	5,670
4,000	4,910	5,170	5,500	6,050
5,000	5,160	5,450	5,810	6,420
6,000	5,420	5,730	6,120	6,800
7,000	5,680	6,000	6,440	(1)
8,000	5,940	6,280	6,750	(1)

[1] Ref. Fig. 1(b)(1) for weight and distance for altitudes above 6,000'.

(2) Actual length of runway required when "effective length," considering obstacles, is not determined (distance to accelerate to 93 knots TIAS and stop, divided by the factor 0.85).

Standard altitude in feet	Airplane weight in pounds			
	39,000	42,000	45,000	[1] 48,000
	Distance in feet			
S.L.	4,830	5,050	5,370	5,830
1,000	5,000	5,230	5,550	6,030
2,000	5,170	5,410	5,740	6,230
3,000	5,470	5,740	6,100	6,670
7,000	5,770	6,080	6,470	7,120
4,000	6,070	6,410	6,830	7,560
5,000	6,380	6,740	7,200	8,010
6,000	6,680	7,070	7,570	(1)
8,000	6,990	7,410	7,940	(1)

[1] Ref. Fig. 1(b)(2) for weight and distance for altitudes above 6,000'.

TABLE 2—EN ROUTE LIMITATIONS

(a) Curtiss model C–46 certificated for maximum weight of 45,000 pounds (based on a climb speed of 113 knots (TIAS)).

Weight (pounds)	Terrain clearance (feet) [1]	Blower setting
45,000	6,450	Low.
44,000	7,000	Do.
43,000	7,500	Do.
42,200	8,000	High.
41,000	9,600	Do.
40,000	11,000	Do.
39,000	12,300	Do.

[1] Highest altitude of terrain over which airplanes may be operated in compliance with § 121.201.

Ref. Fig. 2(a).

(b) Curtiss model C–46 certificated for maximum weight of 48,000 pounds or with engine installation approved for 2,550 revolutions per minute (1,700 brake horsepower). Maximum continuous power in low blower (based on a climb speed of 113 knots (TIAS)).

Weight (pounds)	Terrain clearance (feet) [1]	Blower setting
48,000	5,850	Low.
47,000	6,300	Do.
46,000	6,700	Do.
45,000	7,200	Do.
44,500	7,450	Do.
44,250	8,000	High.
44,000	8,550	Do.
43,000	10,800	Do.
42,000	12,500	Do.
41,000	13,000	Do.

[1] Highest altitude of terrain over which airplanes may be operated in compliance with § 121.201.

Ref. Fig. 2(b).

TABLE 3—LANDING LIMITATIONS

(a) Intended Destination.

"Effective length" of runway required for intended destination when effective length is determined in accordance with § 121.171 with zero wind and zero gradient.

(1) Curtiss model C–46 certificated for maximum weight of 45,000 pounds. (0.60 factor.)

Standard altitude in feet	Airplane weight in pounds and approach speeds [1] in knots							
	40,000	V_{50}	42,000	V_{50}	44,000	V_{50}	45,000	V_{50}
	Distance in feet							
S.L.	4,320	86	4,500	88	4,700	90	4,800	91
1,000	4,440	86	4,620	88	4,830	90	4,930	91
2,000	4,550	86	4,750	88	4,960	90	5,050	91
3,000	4,670	86	4,880	88	5,090	90	5,190	91
4,000	4,800	86	5,000	88	5,220	90	5,320	91
5,000	4,920	86	5,140	88	5,360	90	5,460	91
6,000	5,040	86	5,270	88	5,500	90	5,600	91
7,000	5,170	86	5,410	88	5,650	90	5,750	91
8,000	5,310	86	5,550	88	5,800	90	5,900	91

[1] Steady approach speed through 50-foot height TIAS denoted by symbol V_{50}.

Ref. Fig. 3(a)(1).

(2) Curtiss model C–46 certificated for maximum weight of 48,000 pounds.[1] (0.60 factor.)

Standard altitude in feet	Airplane weight in pounds and approach speeds [1] in knots							
	42,000	V_{50}	44,000	V_{50}	46,000	V_{50}	48,000	V_{50}
	Distance in feet							
S.L.	3,370	80	3,490	82	3,620	84	3,740	86
1,000	3,460	80	3,580	82	3,710	84	3,830	86
2,000	3,540	80	3,670	82	3,800	84	3,920	86
3,000	3,630	80	3,760	82	3,890	84	4,020	86
4,000	3,720	80	3,850	82	3,980	84	4,110	86
5,000	3,800	80	3,940	82	4,080	84	4,220	86
6,000	3,890	80	4,040	82	4,180	84	4,320	86
7,000	3,980	80	4,140	82	4,280	84	4,440	86
8,000	4,080	80	4,240	82	4,390	84	4,550	86

[1] Steady approach speed through 50 height knots TIAS denoted by symbol V_{50}.

Ref. Fig. 3(a)(2).

(b) Alternate Airports.

"Effective length" of runway required when effective length is determined in accordance with § 121.171 with zero wind and zero gradient.

(1) Curtiss model C–46 certificated for maximum weight of 45,000 pounds. (0.70 factor.)

Standard altitude in feet	Airplane weight in pounds and approach speeds [1] in knots							
	40,000	V_{50}	42,000	V_{50}	44,000	V_{50}	45,000	V_{50}
	Distance in feet							
S.L.	3,700	86	3,860	88	4,030	90	4,110	91
1,000	3,800	86	3,960	88	4,140	90	4,220	91
2,000	3,900	86	4,070	88	4,250	90	4,340	91
3,000	4,000	86	4,180	88	4,360	90	4,450	91
4,000	4,110	86	4,290	88	4,470	90	4,560	91
5,000	4,210	86	4,400	88	4,590	90	4,680	91
6,000	4,330	86	4,510	88	4,710	90	4,800	91
7,000	4,430	86	4,630	88	4,840	90	4,930	91
8,000	4,550	86	4,750	88	4,970	90	5,060	91

[1] Steady approach speed through 50 foot-height-knots TIAS denoted by symbol V_{50}.

Ref. Fig. 3(b)(1).

(2) Curtiss model C–46 certificated for maximum weight of 48,000 pounds.[1] (0.70 factor.)

Standard altitude in feet	Airplane weight in pounds and approach speeds [1] in knots							
	42,000	V_{50}	44,000	V_{50}	46,000	V_{50}	48,000	V_{50}
	Distance in feet							
S.L.	2,890	80	3,000	82	3,110	84	3,220	86
1,000	2,960	80	3,070	82	3,180	84	3,280	86
2,000	3,040	80	3,150	82	3,260	84	3,360	86
3,000	3,110	80	3,220	82	3,340	84	3,440	86
4,000	3,180	80	3,300	82	3,410	84	3,520	86
5,000	3,260	80	3,380	82	3,500	84	3,610	86
6,000	3,330	80	3,460	82	3,580	84	3,700	86
7,000	3,420	80	3,540	82	3,670	84	3,800	86
8,000	3,500	80	3,630	82	3,760	84	3,900	86

[1] Steady approach speed through 50 foot-height-knots TIAS denoted by symbol V_{50}.

Ref. Fig. 3(b)(2).

[1] For use with Curtiss model C–46 airplanes when approved for this weight.

(c) Actual length of runway required when effective length, considering obstacles, is not determined in accordance with § 121.171.

(1) Curtiss model C-46 certificated for maximum weight of 45,000 pounds. (0.55 factor.)

Standard altitude in feet	Airplane weight in pounds and approach speeds [1] in knots							
	40,000	V_{SI}	42,000	V_{SI}	44,000	V_{SI}	45,000	V_{SI}
	Distance in feet							
S.L.	4,710	86	4,910	88	5,130	90	5,230	91
1,000	4,840	86	5,050	88	5,270	90	5,370	91
2,000	4,960	86	5,180	88	5,410	90	5,510	91
3,000	5,090	86	5,320	88	5,550	90	5,660	91
4,000	5,230	86	5,460	88	5,700	90	5,810	91
5,000	5,360	86	5,600	88	5,850	90	5,960	91
6,000	5,500	86	5,740	88	6,000	90	6,110	91
7,000	5,640	86	5,900	88	6,170	90	6,280	91
8,000	5,790	86	6,050	88	6,34 (	90	6,450	91

[1] Steady approach speed through 50 foot-height-knots TIAS denoted by symbol V_{SI}.

Ref. Fig. 3(c)(1).

(2) Curtiss C-46 certificated for maximum weight of 48,000 pounds.[1] (0.55 factor.)

Standard altitude in feet	Airplane weight in pounds and approach speeds [1] in knots							
	42,000	V_{SI}	44,000	V_{SI}	46,000	V_{SI}	48,000	V_{SI}
	Distance in feet							
S.L.	3,680	80	3,820	82	3,960	84	4,090	86
1,000	3,770	80	3,910	82	4,050	84	4,180	86
2,000	3,860	80	4,000	82	4,140	84	4,280	86
3,000	3,960	80	4,090	82	4,240	84	4,380	86
4,000	4,050	80	4,190	82	4,340	84	4,490	86
5,000	4,150	80	4,290	82	4,450	84	4,600	86
6,000	4,240	80	4,400	82	4,560	84	4,710	86
7,000	4,350	80	4,510	82	4,670	84	4,840	86
8,000	4,450	80	4,620	82	4,790	84	4,960	86

[1] Steady approach speed through 50 foot-height-knots TIAS denoted by symbol V_{SI}.

Ref. Fig. 3(c)(2).

[1] For use with Curtiss model C-46 airplanes when approved for this weight.

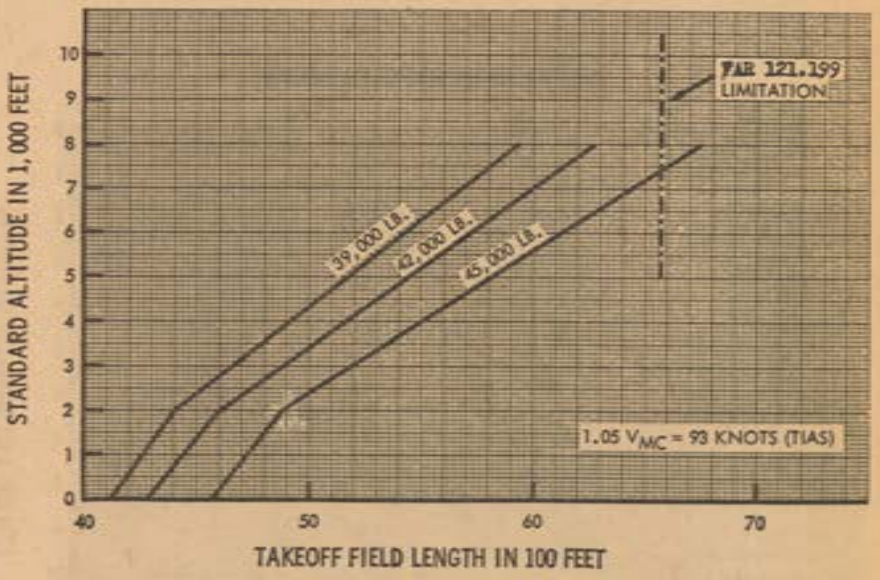
CURTISS C-46 MODELS

CERTIFICATED FOR MAX. WEIGHT OF 45,000 LBS.

TAKEOFF LIMITATION.
ZERO WIND AND ZERO GRADIENT.

BASED ON EFFECTIVE TAKEOFF LENGTH. (1.00 FACTOR)

FAR 121.199



REFERENCE TABLE 1(c) (1)

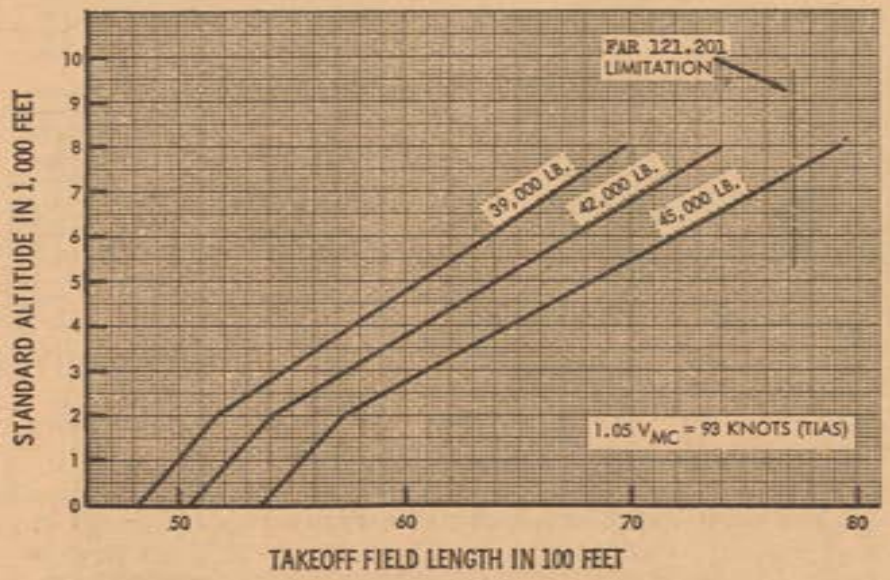
FIG. 1 (c)(1)

CURTISS C-46 MODELS

CERTIFICATED FOR MAX. WEIGHT OF 45,000 LBS.

TAKEOFF LIMITATION
ZERO WIND AND ZERO GRADIENT

BASED ON ACTUAL TAKEOFF LENGTH
WHEN EFFECTIVE LENGTH IS NOT
DETERMINED. (0.85 FACTOR)



REFERENCE TABLE 1 (a) (2)

FIG. 1(a) (2)

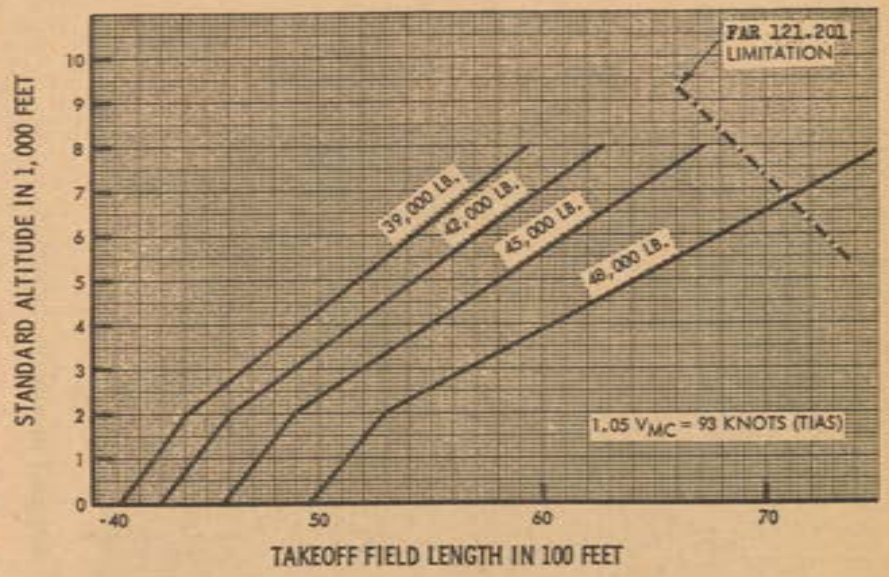
CURTISS C-46 MODELS

CERTIFICATED FOR MAX. WEIGHT OF 48,000 LBS.

TAKEOFF LIMITATION
ZERO WIND AND ZERO GRADIENT

BASED ON EFFECTIVE TAKEOFF
LENGTH. (1.00 FACTOR)

FAR 121.199



REFERENCE TABLE 1(b) (1)

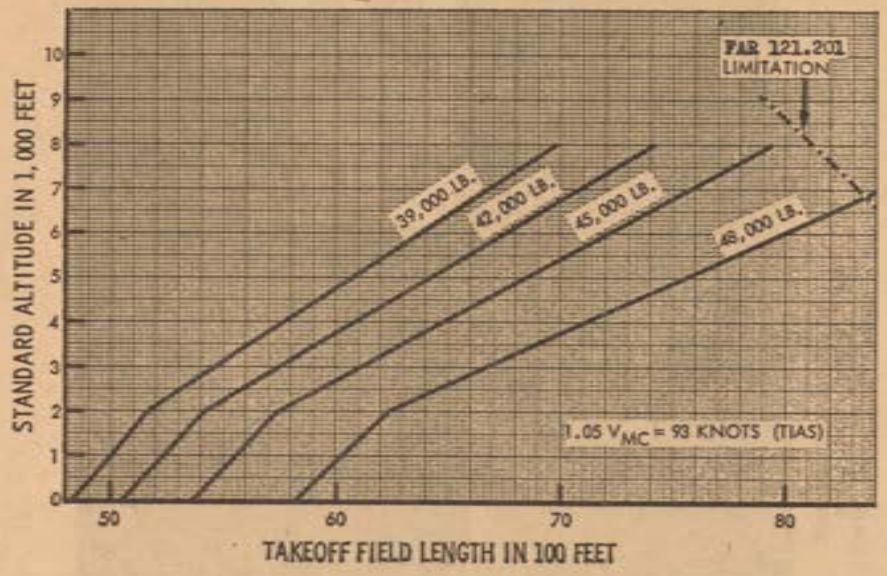
FIG. 1(b) (1)

CURTISS C-46 MODELS

CERTIFICATED FOR MAX. WEIGHT OF 48,000 LBS.

TAKEOFF LIMITATION
ZERO WIND AND ZERO GRADIENT

BASED ON ACTUAL TAKEOFF LENGTH
WHEN EFFECTIVE LENGTH IS NOT
DETERMINED. (0.85 FACTOR)



REFERENCE TABLE 1(b) (2)

FIG. 1(b) (2) 1-27-64

RUNWAY GRADIENT CORRECTION
FOR ACCELERATE - STOP DISTANCE

FOR C-46 AIRPLANES UNDER FAR 121.199

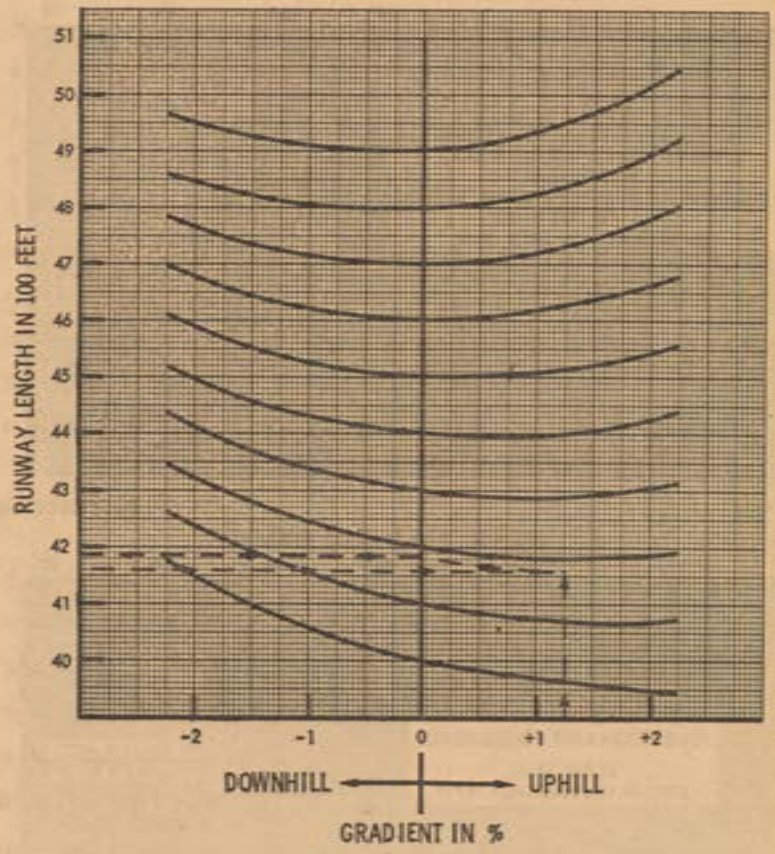


FIG. 1(c)

CURTISS C-46 MODELS

ENROUTE LIMITATIONS - ONE ENGINE INOPERATIVE

FAR 121.201

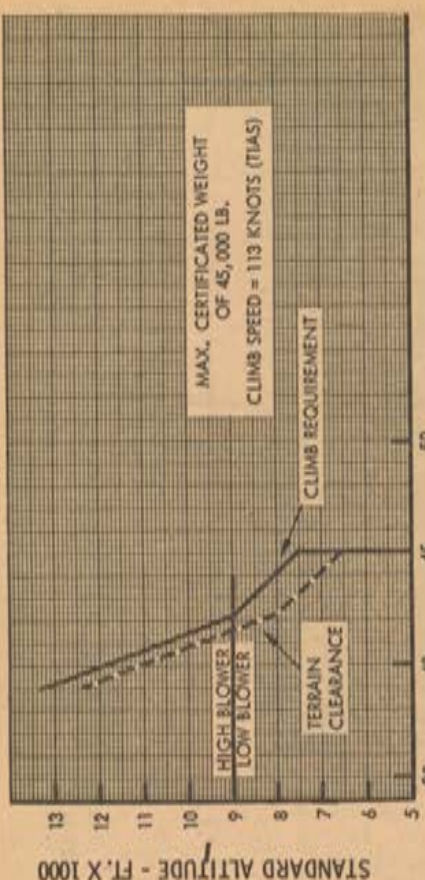


FIG. 26a)

REFERENCE TABLE 26a)

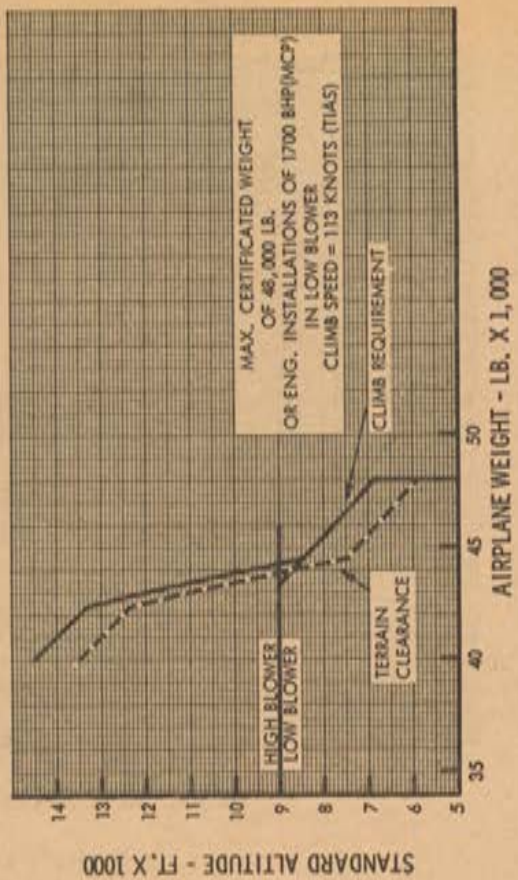


FIG. 26b)

REFERENCE TABLE 26b)

C-46 MAX. CERTIFICATED WEIGHT 48,000 LBS.
DRIFT-DOWN CHART FAR 121.201
SINGLE ENGINE ENROUTE OPERATION

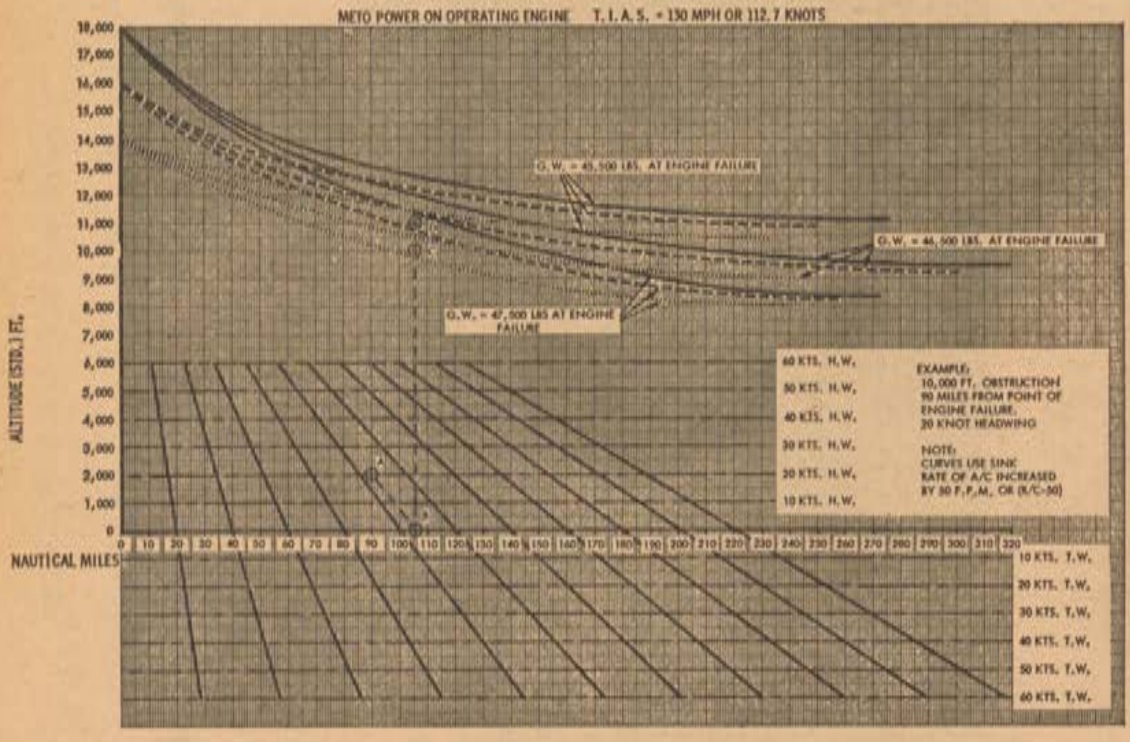


FIG. 26b)

C-46 MAX. CERTIFICATED WEIGHT 48,000 LBS.
ENROUTE CLIMB SUMMARY

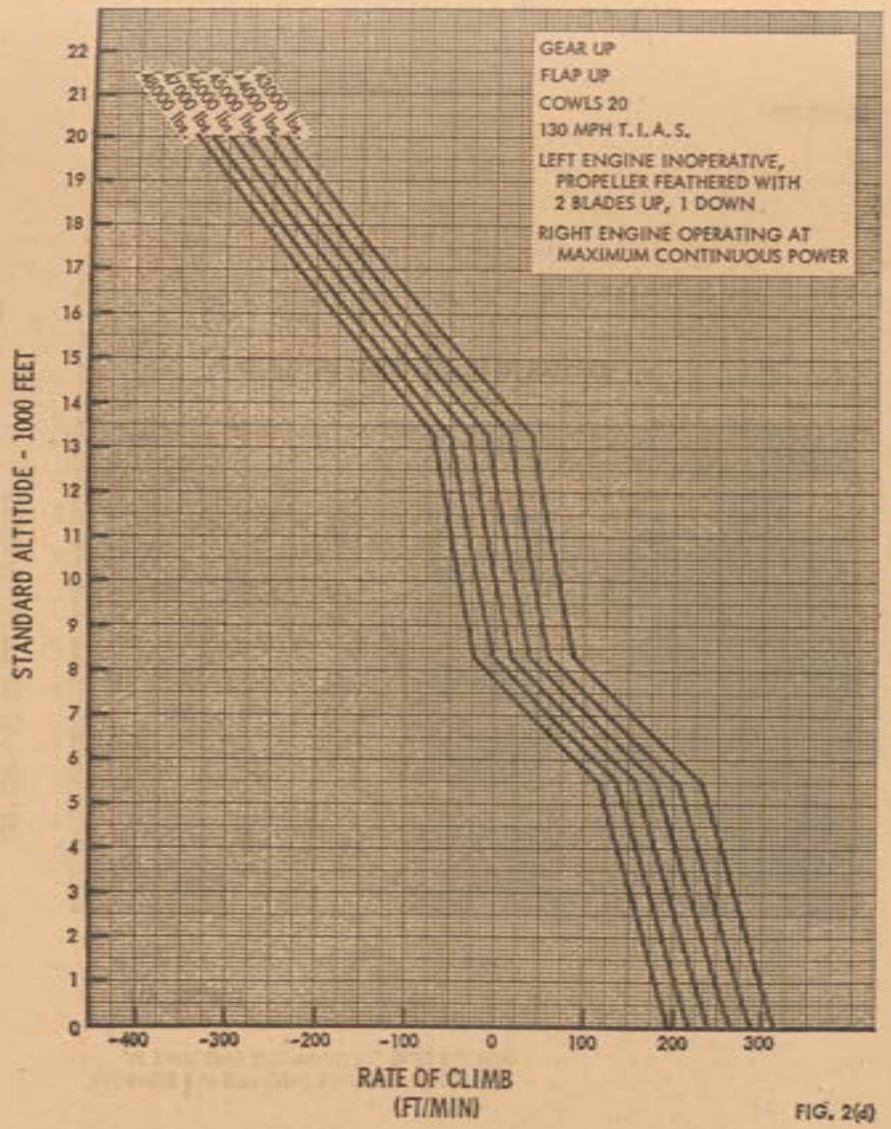


FIG. 2(d)

CURTISS C-46 MODELS

CERTIFICATED FOR MAX. WEIGHT OF 45,000 LBS.

LANDING LIMITATIONS.
ZERO WIND AND ZERO GRADIENT

BASED ON EFFECTIVE LANDING LENGTH AT INTENDED DESTINATION. (0.60 FACTOR)

FAR 121.203

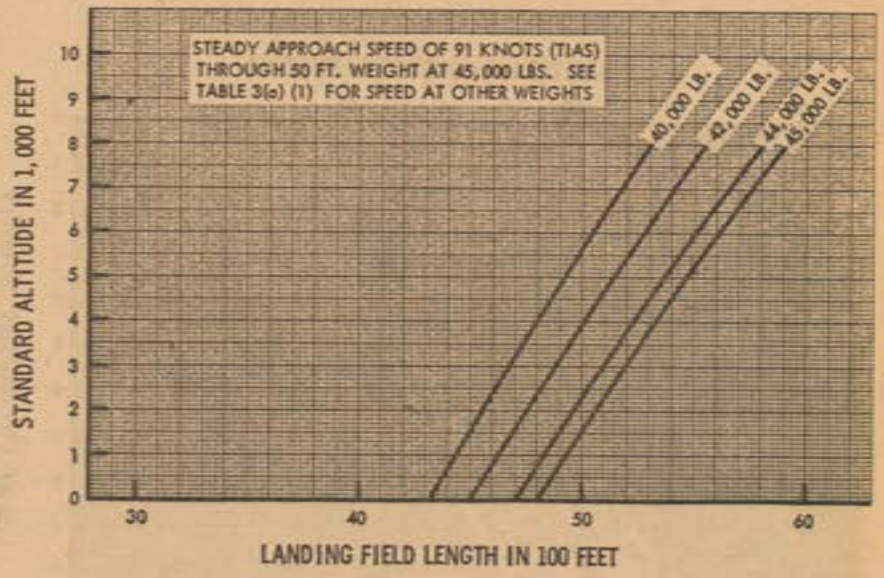


FIG. 3(e) (1)

CURTISS C-46 MODELS

CERTIFICATED FOR MAX. WEIGHT OF 48,000 LBS.

LANDING LIMITATIONS.
ZERO WIND AND ZERO GRADIENT

BASED ON EFFECTIVE LANDING LENGTH
AT INTENDED DESTINATION. (0.60 FACTOR)

FAR 121.203

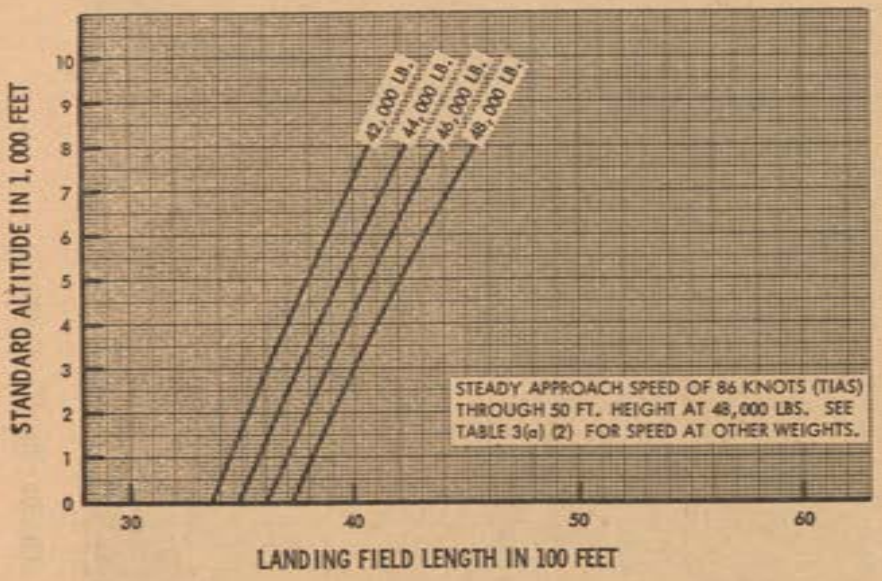


FIG. 3(a) (2)

CURTISS C-46 MODELS

CERTIFICATED FOR MAX. WEIGHT OF 45,000 LBS.

LANDING LIMITATIONS.
ZERO WIND AND ZERO GRADIENT

BASED ON EFFECTIVE LANDING LENGTH
AT ALTERNATE AIRPORTS. (0.70 FACTOR).

FAR 121.205

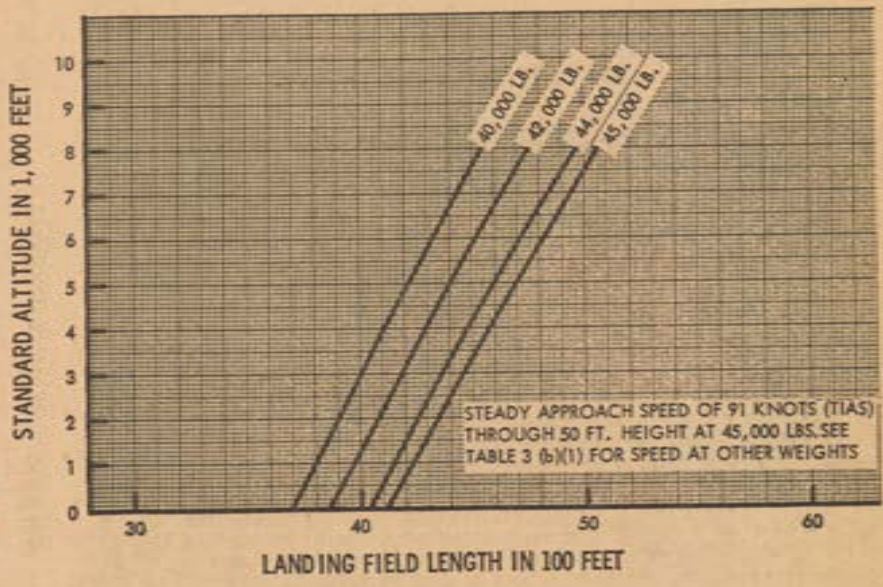


FIG. 3(b) (1)

CURTISS C-46 MODELS

CERTIFICATED FOR MAX. WEIGHT OF 48,000 LBS.

LANDING LIMITATIONS.
ZERO WIND AND ZERO GRADIENT

BASED ON EFFECTIVE LANDING LENGTH
AT ALTERNATE AIRPORTS. (0.70 FACTOR).

FAR 121.205

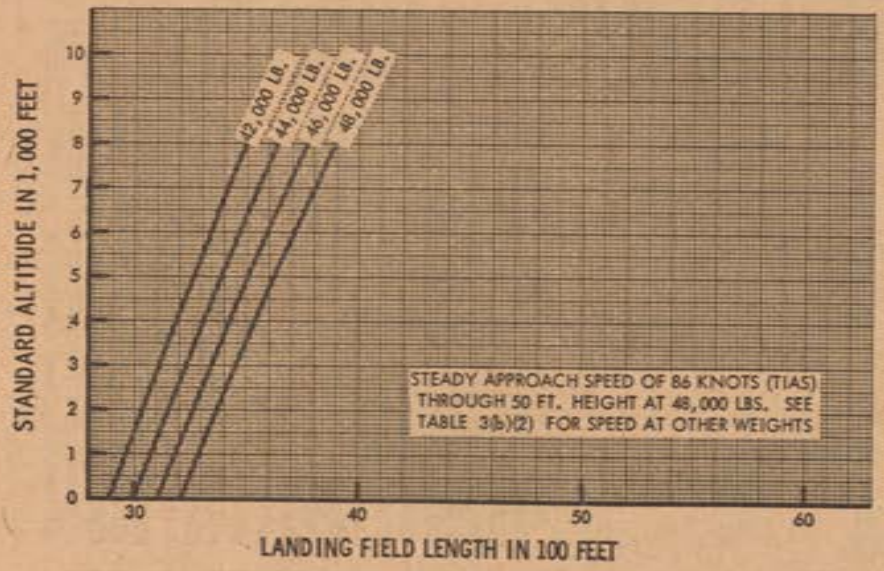


FIG. 3(b) (2)

CURTISS C-46 MODELS

CERTIFICATED FOR MAX. WEIGHT OF 45,000 LBS.

LANDING LIMITATIONS.
ZERO WIND AND ZERO GRADIENT

BASED ON ACTUAL LANDING LENGTH
WHEN EFFECTIVE LENGTH IS NOT
DETERMINED. (0.55 FACTOR)

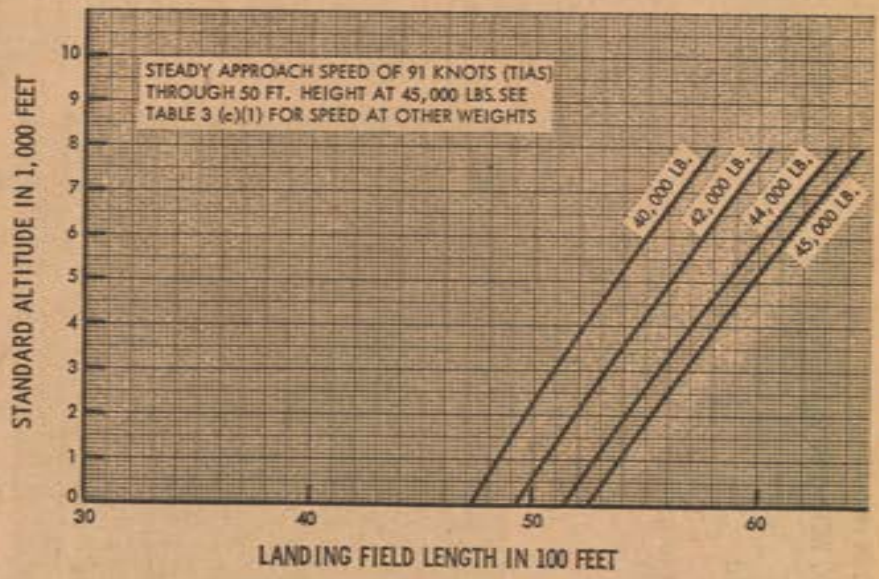


FIG. 3(c) (1)

CURTISS C-46 MODELS

CERTIFICATED FOR MAX. WEIGHT OF 48,000 LBS.

LANDING LIMITATIONS,
ZERO WIND AND ZERO GRADIENT

BASED ON ACTUAL LANDING LENGTH
WHEN EFFECTIVE LENGTH IS NOT
DETERMINED. (0.55 FACTOR)

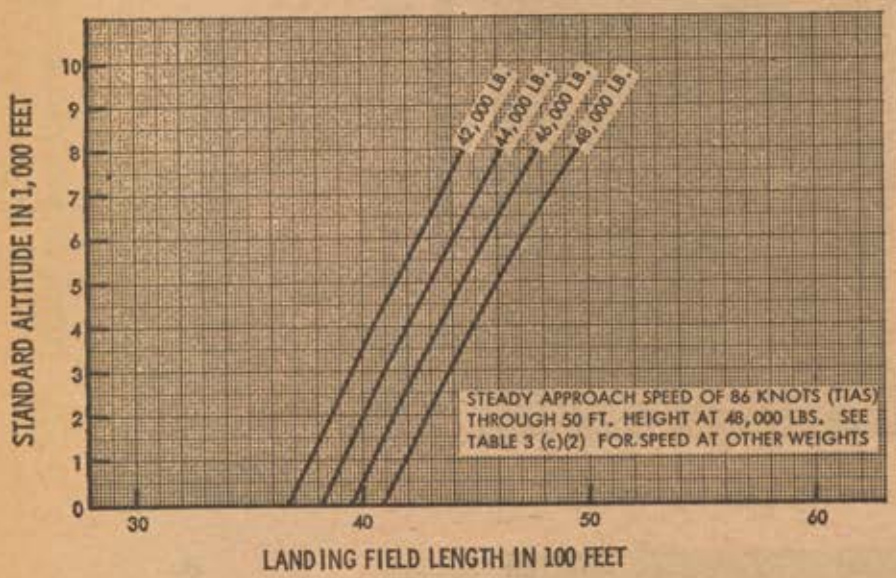


FIG. 3(c) (2)

Title 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board

PART 237—INSURANCE ANNUITIES AND LUMP SUMS FOR SURVIVORS

Application Deemed To Be Filed

Pursuant to the general authority contained in section 10 of the act of June 24, 1937 (50 Stat. 314, 45 U.S.C. 228j), § 237.808 of Part 237 (20 CFR 237.808) of the Regulations under such act is amended by Board Order 64-153, dated December 28, 1964, to read as follows:

§ 237.808 Application deemed to have been filed.

An acceptable application shall be deemed to have been filed in accordance with sections 237.802, 237.803, and 237.805 by:

(a) The widow or widower of an employee for an annuity under § 237.406, § 237.407, or § 237.408, as the case may be, and on behalf of the employee's child(ren) for an annuity under § 237.409, in the month in which the employee died: *Provided, however,* That the widow or widower shall have been in receipt of an annuity under Part 232 of this chapter (disregarding the application of § 232.402 thereof) in the month next preceding the month in which the employee died: *Provided, further,* That in the case of a child, such child shall have been in such widow's care at the time the employee died.

(b) The widow of an employee for an annuity under § 237.406 in the month in which she attains age 60: *Provided, however,* That such widow shall have been in receipt of an annuity under § 237.408 (disregarding the application of § 237.702) in the month next preceding the month in which she attains age 60.

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

Dated: January 5, 1965.

By authority of the Board.

LAWRENCE GARLAND,
Secretary of the Board.

[F.R. Doc. 65-262; Filed, Jan. 8, 1965; 8:46 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER C—DRUGS

PART 147—ANTIBIOTICS INTENDED FOR USE IN THE LABORATORY DIAGNOSIS OF DISEASE

Antibiotic Sensitivity Discs; Assay Procedure for Erythromycin- and Neomycin-Containing Discs

In the matter of amending the regulations for antibiotics intended for use in the laboratory diagnosis of disease (21 CFR 147.1; 29 F.R. 7091, 9958) by changing the assay procedures for erythromycin- and neomycin-containing sensitivity discs to effect more precise assay results:

No comments were received in response to the notice published in the FEDERAL REGISTER of November 13, 1964 (29 F.R. 15264), setting forth a proposal of the Commissioner of Food and Drugs in the above-identified matter. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended, 21 U.S.C. 357), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.90; 29 F.R. 471), the proposed amendments, with minor editorial changes, are adopted as hereinafter set forth.

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

Dated: January 4, 1965.

JOHN L. HARVEY,
Deputy Commissioner of Food and Drugs.

Section 147.1 is amended by adding to paragraph (b) a new subparagraph (11); by changing in the table in paragraph (c) (3) the items "Erythromycin" and "Neomycin * * *"; by changing in the table in paragraph (d) the item "Neomycin * * *"; and by changing the fourth sentence of paragraph (e) (1). As amended, the affected portions read as follows:

§ 147.1 Antibiotic sensitivity discs; tests and methods of assay; potency.

* * * * *

(b) * * *

(11) *Suspension 11. Streptococcus fecalis* (A.T.C.C. 14506) is maintained

on medium E and transferred to a fresh agar slant once a week. After transfer, the culture is incubated at 37° C. for 24 hours and then kept refrigerated. Transfer from a freshly incubated agar slant to a tube containing 10 milliliters of culture medium described in § 147.3

(b) (1). Incubate the broth culture for 16 to 18 hours at 37° C. and store in the refrigerator. This culture may be used for no more than 1 week.

(c) * * *

(3) * * *

Antibiotic	Volume of suspension added to each 100 ml. of seed agar used for test	Suspension number	Medium	
			Base layer	Seed layer
* * *	* * *	* * *	* * *	* * *
Erythromycin	2.0	11	C.	C.
* * *	* * *	* * *	* * *	* * *
Neomycin (sulfate)	2.5	6	C.	C.
* * *	* * *	* * *	* * *	* * *

(d) * * *

Antibiotic	Solvent	Standard curve (antibiotic concentration per disc)
* * *	* * *	* * *
Neomycin (sulfate).	Water	3.3, 6.3, 12.2, 23.4, 45.0 μg.
* * *	* * *	* * *

(e) *Assay*—(1) *Individual discs one-fourth inch in diameter.* On each of three plates prepared as directed in paragraph (c) of this section, place the five control discs for the standard curve and two discs from each batch to be tested. The control discs for the standard curve and the sample discs are placed on the plates in a random arrangement, with no discs being closer than 24 millimeters (on centers) to any other disc. Discs are placed on the plates with the aid of forceps within as short a period of time as possible (not to exceed 3 minutes per plate) and tapped gently to ensure an even seal. Incubate the plates overnight at 32° C.–35° C., except if it is cephalothin colistin, erythromycin, lincomycin, novobiocin, nystatin, polymyxin, or viomycin, the incubation temperature is 37° C. After incubation, measure the diameter of each circle of inhibition, using calipers or a measuring device of comparable accuracy. Average the three zone sizes for each of the five standard-curve concentrations and plot the mean sizes on the arithmetic scale of semilogarithmic graph paper with the antibiotic concentrations on the logarithmic scale. Use the following equation to calculate the best straight line:

* * * * *

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

[F.R. Doc. 65-263; Filed, Jan. 8, 1965; 8:46 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 3520]

[Fairbanks 030632]

ALASKA

Power Site Classification No. 445 (Yukon River Near Rampart, Alaska)

By virtue of the authority contained in the Act of March 3, 1879 (20 Stat. 377, 394; 43 U.S.C. 31), as amended, subject to existing valid rights, the following-described lands under the jurisdiction of the Department of the Interior are hereby classified as powersites, so far as title to such lands and interests therein remain in the United States:

FAIRBANKS MERIDIAN (PROTRACTED SURVEY)

All lands described in the FEDERAL REGISTER of March 21, 1963 (28 F.R. 2826–2831), as amended in the issue of April 11, 1963 (28 F.R. 3558), and as further amended in the issue of April 24, 1963 (28 F.R. 4040), aggregating approximately 8,958,720 acres.

This classification shall be subject to the provisions of section 24 of the Act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818), as amended.

Oil and gas and other mineral leasing under the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181), as amended and supplemented, and the regulations thereunder, are not precluded by this order.

STEWART L. UDALL,
Secretary of the Interior.

JANUARY 5, 1965.

[F.R. Doc. 65-254; Filed, Jan. 8, 1965; 8:45 a.m.]

[Public Land Order 3521]

[Misc. 1941468]

ALASKA

Restrictions Upon Leasing for Oil and Gas (Northern Alaska)

By virtue of the authority vested in the President and pursuant to Executive Order 10355 and 43 U.S.C. 2, it is ordered as follows:

1. None of the public lands within the area described in paragraph 2 of this order that are subject to the noncompetitive leasing provisions of the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C., sec. 181, et seq.), shall be subject to oil and gas leasing until approved leasing maps for such lands, or portions thereof, are from time to time prepared, and notices of the time and place of filing thereof and of the availability of the lands for leasing have been published in the FEDERAL REGISTER by the Bureau of Land Management. These notices will describe the lands subject to noncompetitive lease and will provide for a simultaneous filing period of offers to lease. The leasing maps will not describe any lands within two miles of Naval Petroleum Reserve No. 4. Leases will be issued pursuant to the provisions of the 1920 Mineral Leasing Act in accordance with the regulations in 43 CFR, Part 3120, and the provisions of this order and of the published notices of the availability of the lands for leasing. Notwithstanding the provisions of 43 CFR 3123–8, all offers to lease must describe the lands applied for according to the leasing blocks in the specified township as shown on the approved leasing maps. Each of such leasing blocks will be deemed to be a legal subdivision, subject to the restriction on assignments of part of a legal subdivision as set forth in 43 CFR, 3128–1.

2. The areas referred to in paragraph 1 of this order are described as follows:

NORTHERN ALASKA

All that part of Alaska lying North of a line extending West from a point at 68° North latitude on the United States-Canadian boundary to 153° West longitude; thence North to 68°22′ North latitude; and thence West to the Arctic Ocean.

3. All of the public lands described in paragraph 1 of Public Land Order 1621 to which the provisions of paragraph 4 of that order applied and which are not included within the area described in paragraph 2 of this order are hereby made subject to the general provisions of 43 CFR Part 3120 relating to oil and gas leasing, beginning at 10 a.m. of February 1, 1965.

4. This order shall not affect the lands which are contained within Naval Petroleum Reserve No. 4 and which are described in paragraph 2 of Public Land Order 1621 of April 18, 1958.

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

JANUARY 5, 1965.

[F.R. Doc. 65-255; Filed, Jan. 8, 1965; 8:46 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

Carolina Sandhills National Wildlife Refuge, South Carolina

The following special regulation is issued and is 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, McBee, South Carolina, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 64 acres, are 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, Ga., 30323. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from February 15, 1965, through November 30, 1965, on Lakes Sixteen and Seventeen and from March 15, 1965, through October 15, 1965, on Martins Pond.

(2) Fishing permitted during daylight hours only.

(3) Fishing on Sunday prohibited.

(4) Boats with electric motors permitted; gasoline powered engines prohibited.

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.

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

DECEMBER 30, 1964.

[F.R. Doc. 65-258; Filed, Jan. 8, 1965; 8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 907]

NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Proposed Expenses and Rate of Assessment for 1964–65 Fiscal Year

Consideration is being given to the following proposals submitted by the Navel Orange Administrative Committee, established under Marketing Agreement No. 117, as amended, and Order No. 907, as amended (7 CFR Part 907), 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), as the agency to administer the terms and provisions thereof: (1) That the expenses that are reasonable and likely to be incurred by the Navel Orange Administrative Committee during the period from November 1, 1964, through October 31, 1965, will amount to $240,000 and (2) that there be fixed, at $0.012 per carton of oranges, the rate of assessment payable by each handler in accordance with § 907.41 of the aforesaid marketing agreement and order.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals should file same in quadruplicate with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, D.C., 20250, not later than the 10th day after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: January 6, 1965.

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

[F.R. Doc. 65-278; Filed, Jan. 8, 1965; 8:49 a.m.]

[7 CFR Part 1099]

[Docket No. AO-183-A11]

MILK IN PADUCAH, KY., MARKETING AREA

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

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Paducah, Kentucky, marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C., 20250, not later than the close of business the 15th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The material issues on the record of the hearing related to:

(1) Expansion of the marketing area;

(2) Qualifications for pooling a distributing plant;

(3) Definitions of "handler", "producer", "producer milk", "pool milk", "route disposition", "fluid milk product", and "Chicago butter price";

(4) Class I price;

(5) Class II price;

(6) Location adjustments; and

(7) Plants subject to other Federal orders.

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

1. *Expansion of the marketing area.* The marketing area should be expanded to include the four Missouri counties of New Madrid, Pemiscot, Scott and Mississippi, and in Kentucky, Todd County.

The Missouri counties proposed to be added to the marketing area comprise a territory to the west and south of the present marketing area and contiguous therewith. A bridge at Cairo, Illinois, provides access for handlers in the Paducah area. Population of the Missouri counties ranges from 21,000 in Mississippi to 38,000 in Pemiscot.

Health regulations applicable to milk and dairy products in the proposed area are patterned after the USPH Code. Milk moves into the region from plants in Kentucky, Tennessee, and Arkansas. Although at present no milk moves from the four-county area in Missouri into the existing Paducah marketing area, there are no known health restrictions to such movements.

More than half of the total fluid milk distributed in each of the four Missouri counties is sold by handlers who are fully regulated by either the Paducah order or by one of the other Federal orders in the area. The remainder of the distribution in each of the counties is made by one relatively large unregulated handler from a plant at Sikeston, Missouri, in Scott County.

About 80 percent of the total fluid sales in Pemiscot County are by handlers regulated under Federal orders. Of such sales about 54 percent are made by a Paducah regulated handler from a plant in Paducah, Kentucky. A Central Arkansas (Order No. 108) regulated handler with a plant at Paragould, Arkansas, accounts for 20 percent of the total, and the unregulated handler at Sikeston, Missouri, likewise accounts for about 20 percent of the total. A Memphis (Order No. 97) regulated handler accounts for the remaining 6 percent of the county sales.

Regulated handlers account for about 65 percent of the total fluid milk sales in New Madrid County. The Paducah regulated handler previously mentioned accounts for about 45 percent of the total. The unregulated Sikeston handler accounts for 35 percent of the total and the remaining 20 percent is split evenly between the above mentioned Arkansas handler and a fully regulated handler under the St. Louis, Missouri, Federal order.

In Scott County regulated handlers account for nearly 60 percent of total fluid distribution of which the Paducah handler accounts for 15 percent, the Arkansas handler for 13 percent, a Memphis regulated handler with a plant at Cape Girardeau, Missouri, for 2 percent, and 29 percent is sold by three St. Louis handlers. The unregulated Sikeston handler accounts for 40 percent of the total sales.

In Mississippi County regulated handlers accounts for about 76 percent of total fluid distribution. A St. Louis handler accounts for 68 percent of the total milk sold while the Paducah and Arkansas regulated handlers each account for about 4 percent. The Sikeston handler accounts for 24 percent.

A major handler under the order supported regulation for the Missouri area because of the substantial part of his plant's sales presently made in this unregulated territory. This handler's plant is located at Paducah, but the regular sales territory of the plant has outgrown the limits of the present marketing area. Currently, only about 36 percent of the plant's sales are made within the Paducah marketing area. A sizeable proportion of the remaining sales are made within the four Missouri counties proposed for coverage. Without extending the marketing area to encompass this territory, which has become a natural extension of the sales area of this Paducah plant, there is the potentiality that the Paducah plant could become subject to other order regulation because of a greater proportion of its Class I sales made in another regulated area. If portions of the unregulated territory, such as the four Missouri counties, in which the plant now sells were

incorporated under another order, such as St. Louis, the possibility of a shift in regulation would be even greater.

For example, the Paducah handler indicated on the record that present operations at his plant at Centralia, Illinois, under the Suburban St. Louis order, may be transferred to his Paducah plant. In this case the Paducah plant is likely to have a majority of its Class I disposition in the Suburban St. Louis market which would cause the plant to become subject to that regulation. Such a shift in regulation would involve sizeable quantities of milk relative to the total volume of the Paducah market and thus be highly disturbing to marketing conditions in the Paducah area.

The milk supply of the Paducah handler is procured in competition with other Paducah handlers. Unless the price his producers receive is comparable with that of other handlers, this handler could encounter difficulty in procuring an adequate supply of milk. Moreover, as pointed out by producer representatives who supported the area extension, the shifting of this plant to another regulation could significantly lower, through the marketwide pool, the average returns to all producers regularly associated with this market.

It is in the interest of orderly marketing and price stability for Paducah producers, therefore, that the marketing area be appropriately drawn to include areas proximate to the present marketing area which are substantially served by Paducah order regulated plants. Thus, sales in such nearby areas which have been customarily associated with Paducah-based plants will be given full weight in determining the degree of association of such plants with the Paducah market.

As previously indicated, disposition of Paducah order milk is most important in Pemiscot and New Madrid Counties. However, extension of Paducah order regulation to any of the four Missouri counties would result in regulation of the only known unregulated handler serving these counties whose plant is located at Sikeston. This handler has substantial disposition in each of the counties, but half or more of his fluid sales are in Scott and Mississippi Counties.

In view of the importance of his distribution in each of these counties to the county total, it is appropriate that the latter counties also be included in the marketing area if he is to be regulated because of his distribution in Pemiscot and New Madrid Counties.

Presently, the unregulated handler at Sikeston pays his dairy farmers on a base and excess pricing system in some flush months; and on a flat price basis in other months. In neither instance is the pricing on a classified use basis. The percentage of milk in base and excess for each farmer is established by the handler. One producer testified that his percentage of base had remained the same during a three year period. The handler has a high percentage of fluid use, and for base milk pays a price which exceeds the St. Louis order Class I price at St. Louis. This price includes a premium of 20 cents for low bacteria count. During the period of greatest seasonal production, the price for excess milk paid by this handler averaged about $2.75 per hundredweight for milk delivered.

Twenty-four dairy farmers selling to the handler are organized in a cooperative association called the Southeast Missouri Milk Producers Association. The president of the association stated that the association does not bargain for prices, but that pricing is on the basis of bargaining between the individual producer and the handler. There is no program for checking weights and tests, or of verifying payments to dairy farmers at this plant.

Under the circumstances, extension of regulation to the four Missouri counties will be conducive to orderly marketing conditions for all producers who market their milk there, including those who are now associated with regulated plants as well as those delivering to the Sikeston plant. Dairy farmers now selling their milk to the unregulated handler will benefit by assurance of payment for their milk under such a classified use system and a program of checking weights and tests. Extension of the regulation thus will assure that all milk sold by handlers in the four-county area will be priced according to classified use pricing and paid for under a supervised system of accounting and auditing. This will remove any price disadvantage to the marketing of regulated milk which comprises the majority of milk sold there.

The Sikeston handler was represented by counsel at the hearing, but no testimony was presented by him regarding the proposed regulation of his plant under the Paducah order.

Official notice is taken of the decision issued by the Assistant Secretary on November 5, 1964 (29 F.R. 15130) in which the Missouri counties of Scott and Mississippi were considered for inclusion in the St. Louis marketing area. In that decision it was decided such counties should not be added to the St. Louis marketing area.

The considerations on this record with respect to the regulation of Scott and Mississippi Counties in Missouri are not similar to those involved in the St. Louis hearing. In the St. Louis hearing, consideration extended only to two of these counties, Scott and Mississippi, and there was no concern with the effect upon the Paducah market of milk marketed in the four-county area. The present record demonstrates the close association of these counties with the present Paducah marketing area. On this record the scope of the problem of establishing stable marketing conditions for Paducah producers involves all four counties for the reasons previously described.

In view of the foregoing, it is concluded that the Missouri counties of Scott, Mississippi, New Madrid and Pemiscot should be added to the marketing area.

In Todd County, Kentucky, the majority of sales are made by two Paducah regulated handlers from their plants at Hopkinsville, Kentucky (Christian County). These handlers account for an estimated 65 to 70 percent of the total county sales, and the remainder of the sales are made by handlers regulated under the Nashville, Tennessee, and Louisville-Lexington-Evansville Federal orders. Todd County adjoins the present Paducah marketing area on the east and is bordered by the Louisville-Lexington-Evansville market on the north and the Nashville market on the south. Inclusion of this county in the Paducah marketing area will assure maintenance of stable marketing conditions for Paducah producers and for handlers disposing of milk in this county. Without regulation in this county there exists an opportunity for unregulated plants to dispose of milk in competition with regulated milk which now comprises the fluid supply for the county. Inclusion of the county also reduces uncertainty for handlers marketing there as to the order under which they will be regulated based on the proportion of sales they have in each regulated area.

The handling of milk in the proposed expanded marketing area is in the current of interstate commerce and directly burdens, obstructs, or affects interstate commerce in milk and its products. Fluid milk products packaged and processed in Arkansas and Kentucky are distributed on a regular basis in each of the four Missouri counties. In addition, some fluid milk products sold in Pemiscot County are processed and packaged at a plant in Memphis, Tennessee. Fluid milk products are sold in Todd County, Kentucky, from plants at Evansville, Indiana and Nashville, Tennessee.

It is necessary that all producer milk be fully regulated under the order regardless of whether it is disposed of within or without the marketing area. Otherwise, the effect of the order would be nullified and the orderly marketing process would be jeopardized.

If only a pool handler's "in-area" milk were subject to classification, pricing and pooling, a handler with sales outside the marketing area could assign any value he chose to such sales and thereby reduce the average cost of his Class I milk below that of other regulated handlers having all, or substantially all, of their Class I sales within the marketing area. In short, unless all milk of such a handler were fully regulated, he would not in fact be subject to effective price regulation at all. The absence of effective classification, pricing and pooling of such milk would disrupt orderly marketing conditions within the regulated marketing area and lead to a complete breakdown of the order. In other words, were a pool handler free to value a portion of his milk at any price he chose, it would be impossible to enforce uniform prices to all fully regulated handlers or a uniform basis of payments to the producers who supply the market.

It is essential, therefore, that the order price all the producer milk received at a pool plant regardless of the point of disposition.

Small quantities of Class I milk may be sold within the regulated marketing area from plants not under any Federal order. There is, of course, no way to treat such unregulated milk uniformly with regulated milk other than to regulate it fully. Nevertheless, it has been concluded that the application of

"partial" regulation to plants having a very small association with the market (less than required for market pooling) would not jeopardize marketing conditions within the regulated marketing area. Official notice is taken of the June 19, 1964, decision (29 F.R. 9109) supporting amendments to several orders, including the Paducah, Kentucky order.

This partial regulation consists mainly of requiring a payment equal to the difference between the Class I price and the weighted average value of producer milk with respect to all Class I sales made in the marketing area. This payment is not assessed, however, if the partially regulated handler has purchased at the Class I price under any Federal order sufficient Class I milk to cover his limited disposition within the marketing area, or, in the alternative, has paid his dairy farmers an amount not less than the value of all their milk computed on the basis of the classification and pricing provisions of the order (the latter representing an amount equal to the order obligation for milk which is imposed on fully regulated handlers).

While all fluid milk sales of the partially regulated plant are not necessarily priced on the same basis as fully regulated milk, the provisions described together with the defined scope of the marketing area give assurance of a high degree of comparability in pricing in those areas where regulated handlers have the bulk of their fluid sales.

The inclusion of the additional area will likely involve additional administrative functions under the order. However, it is likely that the cost of extending administrative functions to the additional milk will be in proportion to the quantity of unregulated milk involved. Thus, no change in the maximum rate of administrative assessment is required at this time.

2. *Qualifications for pooling a distributing plant.* The order should be amended to provide for pooling a distributing plant from which (1) 45 percent or more of the plant's receipts of producer milk and pool milk from supply plants are disposed of as fluid milk products on route disposition, and (2) 10 percent or more of such receipts or 2,000 pounds or more per day is disposed of as fluid milk products on route disposition in the marketing area. This would modify the present order provision by providing a specific poundage figure for distribution in the marketing area.

Producer association representatives testified that the 10 percent provision could result in failure to regulate a distributing plant with sizeable receipts of milk from dairy farmers even though it was significantly associated with the Paducah market. As a remedy, they proposed that the percentage requirement be retained and that in addition a minimum quantity of in-area sales be specified in the order as a basis for pooling. It was suggested that 500 pounds per day of fluid milk products disposition in the marketing area would provide a sufficient criterion for measuring the association of a distributing plant with the pool. The association also proposed that packaged fluid milk products disposed of to a pool distributing plant be considered as in-area route distribution for purposes of qualifying as a pool plant.

In support of their proposals, producers cited the recent change in the method of treating milk from an unregulated distributing plant pursuant to the amended order effective August 1, 1964, and expressed concern that such change could encourage distribution of considerable quantities of unregulated milk in the marketing area. They contended that because of the new method, the Paducah order should have a much lower in-area distribution requirement for pooling a distributing plant. The 500-pound-per-day average was seen as an adequate measure of association with the market since it would involve the minimum quantity of milk usually disposed of to a large wholesale account.

It is concluded that a specific quantity requirement for distribution in the marketing area will serve as an additional safeguard to assure effective regulation. For instance, with only the 10 percent requirement presently provided, a plant handling a large volume of milk could distribute in the marketing area a large quantity which is, however, less than 10 percent of its receipts, and thus not be subject to full regulation. On the other hand, regulated plants which provide the majority of fluid products for the market may individually dispose of a quantity in the area no greater than the in-area distribution of the large plant.

It is concluded, however, that the present method of treating sales of unregulated packaged fluid milk products in the marketing area is appropriate in relation to requirements upon regulated milk in the Paducah market with respect to quantities as small as 500 pounds per day. Thus, it is unnecessary to impose full regulation on a plant distributing as small a quantity of fluid milk products as 500 pounds per day in the area. It is appropriate, however, to provide a basis other than the 10 percent of producer receipts on routes in the area for regulating a distributing plant. The order should be amended to provide for regulating a distributing plant with route sales in the area of not less than an average of 2,000 pounds per day during the month. Adoption of such a quantity factor for the Paducah market will assure producers that an unregulated distributing plant with the equivalent of approximately four wholesale accounts in the area will become fully regulated. Such a provision is similar to pooling qualifications adopted in the St. Louis and Suburban St. Louis orders in the decision on the St. Louis order of which notice has been taken. At the same time, the order will continue to recognize that a small quantity of packaged fluid milk products distributed on routes in the area will be properly accounted for to the pool at the difference between the Class I and blend prices of the order unless the handler shows that prices equivalent to order prices were paid to dairy farmers.

The proposal to modify the pooling requirements so as to count disposition of packaged products to a pool plant as if such disposition were on routes in the marketing area should not be adopted. At the time of the hearing, no significant quantities, if any, of packaged fluid milk products were being received at pool plants from unregulated supply plants. The proposal apparently was intended primarily to restrict the purchase of packaged milk by pool plants from plants not regulated under the order. The treatment under the order of plant receipts from unregulated plants has been dealt with in the amendment effective August 1, 1964, in this and other orders in a manner to assure appropriate treatment of regulated and unregulated milk. The present record does not provide a basis for changing this particular feature of the order. Further, disposition by one plant to another plant is appropriately treated as a part of the pooling requirements of a supply plant.

3. *Definitions.* Some of the definitions provided in the order should be changed to reflect current marketing practices in the area and to conform more nearly with language generally used in Federal orders.

The definition of "producer milk" should be modified to permit milk which is received by diversion from a plant regulated under another order to be excluded from producer milk under this order and remain subject to the pooling provisions of the other order. This modification will recognize that in some instances handlers fully regulated under adjoining Federal order markets might need to temporarily divert milk to a Paducah pool plant for manufacturing use. A handler at Murray, Kentucky, presently operates a regulated and an unregulated plant at that location. Other pool plants with manufacturing facilities are located at Fulton, Hopkinsville and Paducah. When occasionally a handler under another order diverts milk to these facilities for manufacture, it is desirable that such milk be permitted to continue as producer milk subject to the terms and provisions of the order with which it is regularly associated. This will accommodate the movement of milk for most efficient handling of reserve milk of neighboring markets without burdening the market pool of the Paducah market. The classification of such milk would be handled pursuant to the rules which apply to interorder transfers of bulk milk.

The producer association requested, however, that milk should not be diverted as producer milk from a Paducah pool plant to a pool plant under another order. No need for such diversion exists in this market.

The definition of "producer milk" should be modified to include that milk received by a cooperative as a handler on bulk tank milk. This conforms with the treatment of the cooperative as a handler on such milk, responsible for reporting the quantities, butterfat tests and being obligated to the producer-settlement fund for the classified value of such milk. To avoid confusion, such milk, when received from a cooperative association at the plant of another handler, should not be considered to be producer milk, and such a transfer would be treated as an inter-handler transaction.

In § 1099.80(d) the order specifies that the handler shall pay a cooperative association the classified use value of milk received from the cooperative for which the cooperative is a handler. As to a classification of such milk received from a cooperative association, the order has provided in the handler definition (§ 1099.10(e) pursuant to amendment issued effective August 1, 1964 (29 F.R. 9109) and prior to such amendment similarly in § 1099.10(d)) that such milk should be allocated pro rata to each class in the same proportion as producer milk and the associated shrinkage. In view of the clear intent that the order treat the classification of milk received from a cooperative association for which it is the bulk tank handler the same as producer milk, the shrinkage provision should be changed to specify that the same shrinkage allowance applies to such plant receipts as to producer milk.

The expense of administration section should also be modified to make clear that the handler receiving the milk from the cooperative association as the bulk tank handler is obligated to pay such expense of administration.

The definition of "pool milk" should be modified by substituting the term "fluid milk products" for the same items now covered by the reference to the Class I definition.

The definition of "fluid milk products" should be modified to provide a more inclusive and up-to-date definition of the various fluid products now disposed of in the marketing area. The definition which was inserted pursuant to the decision on integrating unregulated milk into the regulatory scheme was an adaptation of the prior order definition of Class I milk, and included as fluid milk products the following: Milk, buttermilk, milk drinks (whether plain or flavored) and cream. A new definition proposed by producers would include milk, skim milk, buttermilk, flavored milk and flavored milk drinks, modified or fortified, including dietary milk products and reconstituted milk or skim milk; concentrated milk not sterilized in hermetically sealed containers; cream, sweet and sour; and mixtures of cream and milk and skim milk, but not including the following: Frozen cream, aerated cream products, cultured sour cream mixtures other than sour cream, eggnog and boiled custard, ice cream and ice milk mixes, and cream or mixtures of cream with milk or skim milk sterilized in hermetically sealed containers.

The modified definition is necessary to cover the various fluid milk products now regularly sold in the marketing area which require milk with health department approval on the same standards as fluid milk. In large part the definition will be similar to like provisions in adjoining order markets.

The order should be amended to provide a definition of the term "route disposition". Route disposition should be defined as a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk products to a retail or wholesale outlet other than a milk plant. A delivery through a distribution point should be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets. This term is used in the order provision which specifies the qualification requirements of pool plants, and thus a definition of route disposition is needed to clarify the intent with respect to fluid milk distribution by pool plants, both in and out of the marketing area.

Producers proposed that the "handler" definition of the order be amended to include any sales agency which controls the disposition of a handler's milk products. This proposal was intended to assure that the market administrator would have access to all the records necessary to complete verification of the distribution of all milk products handled by regulated handlers. Apparently the concern of producers is based on the presumption that a handler might contend that the sale of his milk to a separate corporation would end his responsibility to report the final disposition on routes and maintain records thereof. Producers' proposal was intended to clarify the authority of the market administrator's access to the books and records of a sales agency which operates as a corporation separate from the handler receiving and processing the milk.

A handler is required under the order to make available to the market administrator all necessary books and records to verify the utilization of milk handled by him. The responsibility of the handler is further defined to specify that all receipts by a handler shall be Class I milk unless the handler proves to the market administrator that such milk should be classified in another class. This would apply with respect to transfers to a corporation which is a separate and distinct entity from the handler who first receives the milk and processes it, and such transfers would be in the highest class unless the market administrator is permitted to inspect all the necessary books and records and such records show that under the rules of classification a lower class would apply. In these circumstances, there is no specific instance shown by proponents where the language proposed by producers would be necessary to make available to the market administrator any records which are not now available to him. The proposal is denied.

4. *The Class I price.* No change should be made in the basic level of Class I pricing in the Paducah market but the seasonal differentials should be modified.

The proposals with respect to the Class I price were concerned with the level of price in the existing marketing area, including consideration of a different level of prices for plants located at Fulton and Murray, Kentucky, and for plants in Missouri which might become regulated under the order.

Several handlers regulated by the Memphis, Tennessee, order and the major cooperative association serving the Memphis market proposed that the Paducah Class I price be either the Memphis price less 24 cents or that the Memphis supply-demand adjustor be applied to the Paducah Class I price. In addition, they proposed that the Class I price at Fulton and Murray, Kentucky, be increased an additional eight cents. Memphis handlers and producers also urged that the seasonal pricing under Paducah order be modified to raise the level in the lowest priced spring and summer months. Producers in the Paducah market, however, did not support these proposals or any other change in the Class I price formula.

The Memphis handlers took the view that the difference in prices between the two markets represented a misalignment which gives Paducah handlers competitive advantage in some areas where Memphis handlers distribute milk. They pointed out that during some of the 12-month period preceding the hearing a Paducah handler distributed large quantities of milk in the Memphis marketing area. It was argued that because the amount of price difference between the two markets exceeds the location differential under the Memphis order at the Paducah location a misalignment exists.

The Paducah handler who had been making substantial sales into the Memphis market testified that his operations have changed during the past year. He is now operating a plant in Memphis under the Memphis order from which virtually all his route distribution in the Memphis marketing area is made. He stated that the Memphis distribution from the Paducah plant amounts to only a minor percentage of its supply, in the form of speciality products. Proponents for tying the Paducah Class I price to the Memphis price were concerned, nevertheless, that a Paducah plant might again market substantial volumes of milk in the Memphis area and also about competition from Paducah plants in other areas where Memphis handlers have sales.

Under the statutory criteria for establishing order prices, the primary consideration for the level of Class I price in the Paducah market is the adequacy of the producer milk supply. There was no indication on the part of Paducah producers or handlers that the supply of milk for the Paducah market is less than adequate. Proponents did not establish that the supply and demand situation for the Paducah market requires any increase in the price level, nor did they indicate the results which such a sizeable price increase could have on the supply situation in the Paducah market. Their case was rather that a price increase was necessary to bring the cost of milk to Paducah handlers in line with the cost of milk under the Memphis order.

The proposals to raise the Paducah Class I price would result currently in a substantial price increase for the Paducah market without proper regard to the supply-demand situation in Paducah. Producers for the Paducah market on the other hand pointed out the need to maintain reasonable alignment of their Class I price with price levels to the north. They maintained that the Paducah Class I price could not be any higher in relation to the Suburban St. Louis Class I price than the present relationship.

In 1963 the Memphis Class I price averaged $4.98, which was 56 cents higher than the average Paducah Class I price at $4.42. The Memphis location adjustment applicable at a plant in Paducah is minus 27 cents for the approximately 170 miles between the two cities. The Memphis Class I price applicable at Paducah, therefore, averaged $4.71 or 29 cents higher than the Paducah Class I price.

In the months preceding the hearing, part of the difference in prices between the Memphis and Paducah markets was due to the Memphis supply-demand adjustment. The supply-demand adjustment reflects the relationship between the quantity of producer milk and Class I sales of handlers regulated under the Central Arkansas, Fort Smith and Memphis orders. This pricing factor added an average of 23 cents to the Memphis Class I price during the months of January through July 1964. Producer representatives for the Memphis and Central Arkansas markets testified that these markets had experienced a generally short supply situation during the year preceding the hearing and that during most months supplemental shipments of milk from other areas were needed.

A relatively short supply and relatively high prices in a particular market should induce handlers to augment their supplies from other sources. Also, where the supply responsibility for a market is largely carried by the cooperative association, the same incentive should exist for the cooperative. Further, a substantial price difference between markets would tend to induce dairy farmers to move from lower priced markets to the higher priced market. These kinds of adjustments in supplies would tend to reduce the intermarket price difference complained of by proponents. There was no indication in the record, however, that such a shifting of producers' supplies was tending to occur to any significant extent.

The failure of producer milk supplies to shift between markets and so bring about a more even apportionment of supplies is not a reason, however, for adopting proponents' method of price adjustment. The method advocated by proponents for narrowing price differences between the two markets by raising the lower of the two prices overlooks the need for regional alignment, which necessarily involves the markets to the north of Paducah. The latter, in terms of volume of supplies, carry greater weight of influence on the Paducah pricing structure. Such markets include Chicago, and markets with Class I pricing directly related to Chicago, as for example, St. Louis and Suburban St. Louis.

The price proposals of Memphis handlers would have raised the Paducah price level during the first seven months of 1964 an average of 45 cents, or 61 cents over Suburban St. Louis, 51 cents over St. Louis, and 31 cents over Nashville. The resulting price relationships with St. Louis and Suburban St. Louis could be detrimental to Paducah producers and handlers. For example, the cooperative association in the Paducah market has for some time furnished part of the supply for a Suburban St. Louis handler at Harrisburg, Illinois. At the price level proposed by Memphis handlers, this outlet would likely be lost to Paducah producers.

A similar proposal made by Memphis handlers to increase significantly the Paducah price for handlers at Murray and Fulton, Kentucky, should be denied. This proposal would have added an additional eight cents to the elevated Paducah Class I price structure (not less than Memphis minus 24 cents). Such a price structure was not requested or supported by the Paducah regulated handlers at these locations or was it shown that higher prices are needed to maintain an adequate supply of milk at these plants.

Within the entire region encompassing the markets which are necessarily part of price alignment considerations for the Paducah market, normal economic influences, as previously described herein, should tend to bring about a reduction of intermarket price differences through shifting of milk supplies. It is not apparent from the record why such shifting of milk supplies is not taking place to a greater extent than at present. Provisions of the Federal milk orders do not restrict the shifting of milk supplies to meet the needs of markets with short supplies, nor do they hinder the intermarket movement of milk. It is possible that institutional factors other than Federal order price relationships are an important influence on the ease with which milk supplies may shift in response to price influences.

A proposal by the Memphis handlers to apply the Memphis supply-demand adjustment to the Paducah Class I price is denied for the same reasons that apply to the proposal to establish the Paducah Class I price at 24 cents less than the Memphis Class I price.

The seasonal variation in the Paducah Class I price differential, however, should be reduced from the present 60-cent spread to a maximum 40-cent variation. The rather wide range of seasonal price changes in the Paducah order compared to the more moderate seasonal price changes in neighboring markets creates a problem of intermarket price relationships. The Class I price differentials during the months of August through February are 60 cents higher than in the months of April, May and June. In the St. Louis and Suburban St. Louis markets, the range in differentials is limited to 40 cents. In the Memphis and Central Arkansas markets the range is 41 cents. The Louisville market has a level Class I differential throughout the year. The Nashville order has a seasonal range in the differential of only 30 cents.

As a result, although the annual average of the Paducah Class I differential is 44 cents less than the Memphis and Central Arkansas differentials, the difference during April, May and June is 60 cents. Similarly, compared to Louisville while the difference in annual Class I differentials is only one cent, in April, May and June the difference is 39 cents. Compared to Nashville the annual difference in Class I differentials is eight cents but the difference in April through June is 33 cents. Producer groups, as well as handler representatives from these other markets testified that these wide differences in the spring months were important competitive factors between handlers regulated under the Paducah order and those regulated under other orders tending to create unstable marketing conditions.

Although Paducah producers prefer the wide seasonal range of prices, it is not evident that this market needs this great a seasonal price change to encourage more even seasonal production of milk. In the interest of achieving better price relationships with other markets it is reasonable that some modification of the seasonal pricing be made.

It is concluded that the seasonal price differentials in the Paducah order should be set at $1.45 for the period from August through February, $1.05 for the period April through June and $1.15 during the months of March and July. This compares with the present $1.50 for August through February, 90 cents for the period April through June and $1.20 for the months of March and July. Although the amendment herein recommended revises the seasonal pattern of the Class I differential, it nevertheless retains the same annual average Class I differential of $1.30.

5. *Class II price.* The Paducah order should be amended to provide that the price for Class II milk shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the United States Department of Agriculture adjusted to a 3.5 percent butterfat test.

Presently the Class II price under the Paducah order is the higher of three pricing formulas: One is based on a butter-powder computation, a second on the average price paid by a specified group of midwestern condenseries, and the third represents the average price paid by certain local manufacturing plants.

In this market a cooperative association controls most of the movement of producer milk supplies to handlers, and arranges for the disposal of reserve milk. In many months the quantity of reserve milk is only a small percentage of the total supply but in a few months, principally April, May and June, quantities approximating one to two million pounds must be disposed of for manufacturing uses.

The cooperative proposed that the Class II price formula be changed to the Minnesota - Wisconsin manufacturing milk price series. Official notice is taken of the Under Secretary's decision issued February 21, 1963 (27 F.R. 1802) to use the Minnesota-Wisconsin price series as the basic formula price in the determination of Class I prices in 36 Federal milk orders in the Midwest. The price for manufacturing grade milk in the two-state area of Minnesota and Wisconsin is issued by the State-Federal Crop Reporting Service on about the fifth day of each month for milk received at manufacturing plants in these States in the previous month. Plant operators report the total pounds of manufacturing grade milk received from farmers, the

butterfat content, and total money paid to farmers for the milk. The two-state area is one in which there is a heavy concentration of manufacturing grade milk and where many plants are competing for such supply. In Minnesota about 83 percent of the milk sold off farms is manufacturing grade and in Wisconsin about 58 percent. About 50 percent of the manufacturing grade milk sold off farms in the United States is produced in these two States.

The manufacturing milk price for the two-state area is reported by the Department as the price at actual butterfat test. The announced price is adjusted to the 3.5 percent butterfat test used in the orders by means of a butterfat differential equal to 0.12 times the average wholesale price for 92-score butter at Chicago.

The Minnesota-Wisconsin price series therefore provides a sound basis for determining the value of manufacturing milk. It is representative of prices paid to farmers for about half of the manufacturing grade milk produced in the country. It is a price level determined by competitive conditions which are affected by demand in all of the major uses of manufactured dairy products. The system of reporting this price has been developed so that a reliable average price is available promptly.

The proponent association indicated that it expects to be able to dispose of reserve milk to nearby manufacturing plants at prices at least equal to the Minnesota-Wisconsin price. During May and June 1964 the association disposed of milk to manufacturing plants for $3.17 and $3.21, respectively, compared to the Minnesota-Wisconsin price for the same months of $3.12 and $3.11. It is to be expected that the Minnesota-Wisconsin price will more adequately represent the value of reserve milk than the present Class II price formula. During the year 1963, the present Class II price formula averaged $3.01 compared to $3.11 for the Minnesota-Wisconsin price.

Adoption of the new price formula will assure producers that they will be returned the full value for reserve milk. The Minnesota-Wisconsin price formula has also been adopted as the Class II price in the nearby markets of St. Louis and Suburban St. Louis in the aforementioned decision issued by the Assistant Secretary on November 5, 1964 (29 F.R. 15130).

6. *Location adjustment.* The Class I price applicable at a pool plant in the four Missouri counties to be added to the marketing area should be 10 cents higher than the price at the City of Paducah. The returns from this differential should be included in the uniform price to producers at any pool plant in the higher differential area.

As previously stated, the only known fluid milk plant in the four Missouri counties is at Sikeston in Scott County. Sikeston is approximately 65 miles from Paducah and 155 miles from St. Louis. Utilization of milk by the Sikeston handler is largely in fluid milk products, or what would be Class I disposition under the order.

The Sikeston plant is supplied by a group of producers organized in a cooperative association. Farming conditions described by the president of the association indicate that the area around Sikeston is not predominantly a milk producing area. Cotton is the important cash crop and land values are accordingly relatively high. Milk production is limited and is an enterprise on relatively few farms.

Paducah producers proposed that the Class I price in the Missouri counties be set 10 cents per hundredweight higher than at Paducah and that the order also provide a blend price to producers delivering milk to the Sikeston plant which would include the additional monies paid by the handler for Class I milk. It was their position that the Paducah Class I price plus 10 cents would be necessary to result in a blend price at Sikeston which was high enough to be competitive with blend prices available under nearby orders, and to maintain a dependable supply of milk at this location.

The Southeast Missouri Milk Producers Association and the Central Arkansas Milk Producers Association both proposed that if regulation was extended to these four counties a plus location differential at Sikeston be set at 20 cents over the Paducah Class I price. They claimed that a minimum of 20 cents was necessary to insure blended returns at Sikeston high enough to maintain an adequate supply of milk. This position was also supported in a brief filed by a handler at Paragould, Arkansas, regulated under the Central Arkansas order.

The unregulated handler at Sikeston did not testify at the hearing. In his brief, however, he took the position that the Paducah price with no location adjustment should be made applicable at his plant in the event the four Missouri counties are added to the Paducah market. He claimed that with a plus adjustment he would be disadvantaged relative to Paducah handlers and the handler at Cape Girardeau, Missouri.

At the time of the hearing it was indicated that the handler at Cape Girardeau was currently regulated under the Memphis order, and subject to a location differential under that order of 27 cents per hundredweight. This would establish a price level at Cape Girardeau of $4.60 based on the average annual Class I differential under the Memphis order of $1.74. With the addition of the supply-demand adjustment the price would have been 11 cents higher. Under the Paducah order the average Class I price was $4.42. For reasons previously stated, however, this relationship is not considered to be sufficient basis for establishing the price level under the Paducah order.

Cape Girardeau County, however, which is just north of the four-county area is included in the marketing area extension for the St. Louis order in the decision issued November 5, 1964. Under the St. Louis order, the Class I price at this location is 15 cents per hundredweight higher than the St. Louis. During 1963 this would have produced an average annual level of $4.47 compared with the average annual price of $4.42 under the Paducah order.

The four counties in Missouri proposed to be added to the marketing area are generally southwest of Paducah, and production and marketing conditions are affected by the higher priced markets of Central Arkansas and Memphis as well as the lower priced markets to the north. Dairy farmers in this area have the opportunity of seeking outlets in these higher priced markets. The president of the association at Sikeston stated that if he did not receive a satisfactory price for his milk locally that the alternative market would be at Paragould, Arkansas, under the Central Arkansas Federal order. A representative of the producer association serving the Central Arkansas market pointed out farms of member producers on that market are interspersed with the farms of membership of the association supplying the Sikeston plant.

Based on the annual average Class I price under the Central Arkansas order during 1963, the level at Paragould adjusted for location was $4.70 per hundredweight compared to $4.42 at Paducah. For producers delivering to Sikeston the hauling rate to Paragould is estimated to be about 10 cents greater than for delivery to the Sikeston plant. This would suggest that the price at Sikeston could be as much as 18 cents over the Paducah price to provide producer returns equal to that which dairy farmers in this location could get by shipping to Paragould.

The amount of additional price in the Missouri counties over the price at Paducah should be limited, however, in relation to the St. Louis order price. If the full 18 cents had been added to the Paducah price during 1963 the average price applicable at Sikeston would have been $4.60. Under the St. Louis order, including the 15 cents plus location adjustment applicable at Cape Girardeau, the average 1963 Class I price would have been $4.47. If the price at Sikeston were established at a level 10 cents over the price at Paducah, Kentucky, in 1963 this would have produced an annual average of $4.52. This slightly higher level than at Cape Girardeau is in line with the general upward alignment of prices from north to south.

7. *Plants subject to another order.* The proposal to provide a "hold provision" on the regulation of a Paducah pool distributing plant until the third consecutive month of greater sales in another marketing area should be adopted.

Producers proposed that the order be amended to continue under Paducah regulation for two months any pool distributing plant which also meets the pooling requirements of another Federal order and has a greater proportion of its sales in the marketing area of the other order. They proposed that such a plant continue to be Paducah regulated until the third consecutive month in which its sales in another marketing area exceed its sales in Paducah. Producers contended that this provision would aid considerably in stabilizing the locus of regulation for Paducah handlers. It would be particularly helpful, they felt, in cases where a minor quantity of additional sales in one or more other Fed-

eral order markets could result in shifting regulation from month to month.

In support of their position, producers cited the situation faced by one of the major Paducah handlers last year in which increased sales in the Memphis Federal order marketing area nearly resulted in shifting his regulation to Memphis.

This handler also testified in support of the "hold provision" and indicated the possibility that his Paducah plant might in the future become regulated by the Suburban St. Louis order without such a provision. He stated that such a shift could be very unstabilizing on the operations of the Paducah producers involved.

In general, a distributing plant meeting the pooling requirements of more than one order should be regulated under the order covering the area in which it has the greatest proportion of its distribution. Recognition should be given, however, to the confusion that would result if a plant, which had almost equal distribution in Paducah and in another market, were to shift back and forth from one to the other as a result of minor changes in its distribution. Allowing a handler operating a pool plant to remain subject to regulation under this order until the third consecutive month in which he disposes of a greater proportion of the plant's sales on routes in another marketing area will afford him the opportunity to make adjustments in his business if he desires to do so.

Specifically, the order should be amended to permit a distributing plant meeting the requirements for full regulation under this order as well as another order to remain pooled under this order until the third consecutive month in which a greater volume of Class I sales is made in the other marketing area. This would be permitted even though a greater proportion of this plant's sales are made in the marketing area of another order. It should be recognized, however, that the other order may require that such a plant be pooled under such other order. In these circumstances the plant should be exempt from regulation under the Paducah order except for the requirement to file reports and permit verification.

Provision should also be made for exempting from regulation under this order a plant which may, for one or two months, dispose of a greater proportion of milk in the Paducah marketing area than in the area of the order to which it has been subject if it remains regulated under the other order. This will provide compatibility of the Paducah order with other nearby Federal orders containing similar hold provisions.

Most of the objections to adopting the proposed "hold provision" involved the belief that handlers might seek regulation under the Paducah order for competitive reasons. It is concluded, that in view of the limited period of time involved, the "hold provision" may be adopted for the Paducah market without the danger of other order handlers seeking short-run gains through regulation under the Paducah order.

No change should be made in this provision (§ 1099.61) as it applies to supply plants. Producers proposed that a supply plant which also qualifies under another order be a nonpool plant unless it qualifies during the month by shipping 50 percent of its receipts to the Paducah market. At the time of the hearing, there were no pool supply plants under the order. Present provisions retain a supply plant under the Paducah order regulation if it has established qualifications in prior months of August through January unless the handler requests release. The record does not provide a sufficient basis for determining under what conditions the proposed modified provision might properly apply.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

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

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, five cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(1) Producer milk (including such handlers own production) and milk received from a cooperative association as a handler pursuant to § 1099.10(e);

(2) Other source milk allocated to Class I pursuant to § 1099.45(a) (3) and (7) and the corresponding steps of § 1099.45(b); and

(3) Packaged Class I milk disposed of from a partially regulated distributing plant on route disposition in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

Recommended marketing agreement and order amending the order. The following order amending the order as amended regulating the handling of milk in the Paducah, Kentucky, marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order as hereby proposed to be amended:

1. Section 1099.5 is revised to read as follows:

§ 1099.5 Paducah, Kentucky, marketing area.

The "Paducah, Kentucky, marketing area", hereinafter called the "marketing area", means all the territory within the counties listed below (except that portion of any of these counties contained in the Fort Campbell military reservation):

KENTUCKY COUNTIES

Ballard.	Livingston.
Caldwell.	Lyon.
Calloway.	Marshall.
Carlisle.	McCracken.
Christian.	Todd.
Graves.	Trigg.
Hickman.	

MISSOURI COUNTIES

Mississippi.	Pemiscot.
New Madrid.	Scott.

2. Section 1099.6 is revised to read as follows:

§ 1099.6 Distributing plant.

"Distributing plant" means a plant in which milk is processed and packaged and from which Class I milk is disposed of during the month as route disposition (including route disposition by vendors) or through plant stores to wholesale or retail outlets (except pool plants) located in the marketing area.

3. Section 1099.8 is revised to read as follows:

§ 1099.8 Pool plant.

"Pool plant" means:

(a) A distributing plant from which 45 percent or more of its receipts of producer milk and pool milk from plants qualified pursuant to paragraph (b) of this section is disposed of as Class I milk on route disposition during the month and from which a daily average of 2,000 pounds or more per day, or 10 percent

or more of the plant's receipts of producer milk and pool milk from plants qualified pursuant to paragraph (b) of this section, whichever is less, is disposed of as fluid milk products on route disposition in the marketing area: *Provided*, That a plant which qualifies as a pool plant by complying with the foregoing requirements during any month shall be a pool plant during the following month; or

(b) A distributing plant or supply plant from which the volume of milk, skim milk and cream shipped to pool plants qualified pursuant to paragraph (a) of this section, or disposed of as Class I milk on route distribution is equal to not less than 50 percent of the pool milk received at the plant: *Provided*, That if a supply plant ships to pool plants qualified pursuant to paragraph (a) of this section, milk, skim milk and cream equal to at least 75 percent of its producer milk in October and November and 35 percent of such milk in three additional months during the period from August through January, such plant shall, upon written application to the market administrator on or before the end of such period, be designated as a pool plant until the end of any month during the succeeding August through January period in which the milk of such plant is disposed of in such a way that it becomes impossible for the plant to reestablish its qualification under the terms of this proviso.

§ 1099.9 [Amended]

4. In § 1099.9(c) "routes" is revised to read "route disposition".

5. In § 1099.10, paragraph (e)(1) is revised to read as follows:

§ 1099.10 Handler.

* * * * *

(e)(1) A cooperative association which chooses to report as a handler with respect to milk which is delivered to a pool plant(s) of another handler in a tank truck owned or operated by, or under contract to, such cooperative association for the account of such cooperative association.

* * * * *

6. Section 1099.11 is revised to read as follows:

§ 1099.11 Producer.

"Producer" means any person, other than a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority, which milk is received at a pool plant or by a cooperative association in its capacity as a handler pursuant to § 1099.10(e).

7. Section 1099.13 is revised to read as follows:

§ 1099.13 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk which is:

(a) Received during the month at a pool plant directly from producers or received by a cooperative association pursuant to § 1099.10(e): *Provided*, That milk received at a pool plant by diversion from a plant at which such milk would be fully subject to the pricing and pooling under the terms or provisions of another order issued pursuant to the Act shall not be producer milk;

(b) Diverted by the operator of a pool plant or by a cooperative association to a nonpool plant at which the handling of milk is not subject to pricing and pooling under the terms of provisions of another order issued pursuant to the Act, subject to the following conditions:

(1) Any number of days during the months of February through August;

(2) To the extent of not more than 10 days' production during the months of September through January: *Provided*, That no milk so diverted shall be considered to have been received at a pool plant from a producer if production of more than 10 days is diverted in any month during such September through January period; and

(3) Milk diverted for the account of a handler in his capacity as an operator of a pool plant shall be deemed to have been received at the pool plant from which diverted and milk diverted for an account of a cooperative association shall be deemed to have been received by a cooperative association at a pool plant at a location identical with that of the pool plant from which diverted.

8. Section 1099.14 is revised to read as follows:

§ 1099.14 Pool milk.

"Pool milk" means skim milk or butterfat contained in producer milk or in fluid milk products received from a pool plant (except the plant of a producer-handler) which are approved by the appropriate health authority for distribution as Class I milk in the marketing area.

9. Section 1099.16 is revised to read as follows:

§ 1099.16 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk and flavored milk drinks (modified or fortified, including dietary products) and reconstituted milk or skim milk; concentrated milk not sterilized in hermetically sealed containers; cream, sweet and sour; and mixtures of cream and milk or skim milk but not including the following: Frozen cream, aerated cream products, cultured sour cream mixtures other than sour cream, eggnog and boiled custard, ice cream, and ice cream and ice milk mixes, and cream or mixtures of cream with milk or skim milk sterilized in hermetically sealed containers.

10. A new § 1099.17 is added to read as follows:

§ 1099.17 Route disposition.

"Route disposition" means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk products to a retail or wholesale outlet other than a milk plant. A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets.

11. A new § 1099.18 is added to read as follows:

§ 1099.18 Chicago butter price.

"Chicago butter price" means the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of 92-scole bulk creamery butter at Chicago as reported during the month by the Department.

§ 1099.30 [Amended]

12. In § 1099.30 in the introductory paragraph "on routes" is revised to read "as route disposition".

§ 1099.41 [Amended]

12a. Section 1099.41(b)(4)(i) is revised to read as follows: "(i) producer milk (except milk diverted pursuant to § 1099.11) and milk for which a cooperative association chooses to report as a handler pursuant to § 1099.10(e),".

§ 1099.43 [Amended]

13. In § 1099.43(c)(3) (i) and (ii) "on routes" is revised to read "route disposition".

13a. In § 1099.45, paragraph (a)(9) is revised to read as follows:

§ 1099.45 Allocation of skim milk and butterfat classified.

* * * * *

(a) * * *

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received:

(i) In fluid milk products from pool plants of other handlers according to the classification assigned pursuant to § 1099.43(a); and

(ii) In milk from a cooperative association which chooses to report as a handler pursuant to § 1099.10(e) pro rata from each class in the same proportion as all producer milk after the subtraction pursuant to subdivision (i) of this subparagraph; and

* * * * *

14. Section 1099.50 is revised to read as follows:

§ 1099.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the Chicago butter price for the month. The basic formula price shall be rounded to the nearest full cent.

15. Section 1099.51 is revised to read as follows:

§ 1099.51 Class prices.

Subject to the provisions of §§ 1099.52 and 1099.53 the class prices per hundredweight shall be as follows:

(a) *Class I milk price.* The price of Class I milk for the month shall be the basic formula price for the preceding month plus $1.05 in April, May and June, $1.15 in July and March and $1.45 in the other months: *Provided,* That 10 cents shall be added to the price for Class I milk at pool plants located within that portion of the marketing area in the State of Missouri: *And provided further,* That the price so determined shall be increased 15 cents per hundredweight from the effective date of this amended order through March 31, 1965.

(b) *Class II milk price.* The Class II price shall be the basic formula price computed pursuant to § 1099.50.

16. Section 1099.61 is revised to read as follows:

§ 1099.61 Plants subject to other Federal orders.

In the case of a handler in his capacity as operator of a plant specified in paragraphs (a), (b) and (c) of this section, the provisions of this part shall not apply except that such handler shall with respect to his total receipts and disposition of skim milk and butterfat, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator:

(a) A distributing plant from which the Secretary determines a greater proportion of fluid milk products is disposed of as route disposition in another marketing area regulated by another order issued pursuant to the Act and which is fully subject to such other order: *Provided,* That a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its Class I route disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is fully regulated by such other order;

(b) A distributing plant meeting the requirements of § 1099.8 which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which the Secretary determines a greater quantity of Class I milk is so disposed of during the month in this marketing area than is so disposed of in such other marketing area but which plant is nevertheless fully regulated under such other marketing order; and

(c) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to the proviso of § 1099.8(b) during the preceding August through January period.

§ 1099.62 [Amended]

17. In § 1099.62(b)(1) "route" is revised to read "route disposition".

18. Section 1099.71(b) is revised to read as follows:

§ 1099.71 Computation of uniform prices.

* * * * *

(b) Add an amount equal to the total value of the location differentials computed pursuant to § 1099.86 (a) and (c) and subtract an amount equal to the total payments to be made pursuant to § 1099.86(b);

* * * * *

19. Section 1099.86 is revised to read as follows:

§ 1099.86 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant, and the uniform price for producer milk diverted to a nonpool plant shall be reduced according to the location of the pool plant from which it is diverted at the rates set forth in § 1099.53;

(b) In making payments pursuant to § 1099.80, the uniform price per hundredweight for producer milk received at pool plants located in that portion of the marketing area in the State of Missouri shall be increased by an amount obtained by dividing the total hundredweight of producer milk received at such pool plants during the month into the sum obtained by multiplying the total hundredweight of Class I milk at such plants during the month by 10 cents; and

(c) For purposes of computations pursuant to §§ 1099.82 and 1099.83 the uniform price shall be adjusted at the rates set forth in § 1099.53 applicable at the location of the nonpool plant from which the milk was received.

20. Section 1099.88 is revised to read as follows:

§ 1099.88 Expense of administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month five cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to (a) producer milk (including such handler's own production) and milk received from a cooperative association as a handler pursuant to § 1099.10(e), (b) other source milk allocated to Class I pursuant to § 1099.45(a) (3) and (7) and the corresponding steps of § 1099.45(b), and (c) packaged Class I milk disposed of from a partially regulated distributing plant as route disposition in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

Signed at Washington, D.C., on January 6, 1965.

CLARENCE H. GIRARD,
Deputy Administrator.

[F.R. Doc. 65-260; Filed, Jan. 8, 1965; 8:46 a.m.]

CIVIL AERONAUTICS BOARD

[14 CFR Part 378]

[Docket No. 15777]

ALL-EXPENSE TOURS BY SUPPLEMENTAL AIR CARRIERS AND TOUR OPERATORS

Notice of Proposed Rule Making

JANUARY 5, 1965.

Notice is hereby given that the Civil Aeronautics Board has under consideration (1) the amendment of the interim certificates and interim operating authorizations of supplemental air carriers whom the Board finds qualified to perform all-expense-paid tours in interstate and overseas air transportation, and (2) the promulgation of a new Part 378 of the Board's Special Regulations to authorize, subject to the conditions provided therein, all-expense tours by tour operators with the air transportation portion thereof provided by the supplemental air carriers.

The principal features of the proposed rule are set forth in the explanatory statement and proposed rule below. This action is taken under authority of sections 101(3), 204(a), 401, 409 and 414 of the Federal Aviation Act of 1958, as amended (72 Stat. 737; 49 U.S.C. 1301; 72 Stat. 743; 49 U.S.C. 1324; 72 Stat. 754 as amended by 76 Stat. 143; 49 U.S.C. 1371; 72 Stat. 768; 49 U.S.C. 1379; 72 Stat. 770; 49 U.S.C. 1384) and section 7 of Public Law 87-528 (76 Stat. 146; 49 U.S.C. 1371).

Supplemental air carriers seeking authority to provide charter transportation for all-expense tours shall file applications therefor within 20 days from the date of publication of this notice in the FEDERAL REGISTER. Such applications should show the carrier's resources, plan of operations, equipment, points between which service would be provided, extent of the market and such other economic and financial data as are available which would assist the Board in processing the application. Applications for amendment of certificates or operating authorizations shall be served on all certificated route carriers and on all other supplemental air carriers.

Interested persons may participate in this rule making proceeding through submission of ten (10) copies addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C., 20428, of written data, views, or arguments pertaining both to (1) the qualifications of supplemental air carriers who have filed applications as provided for herein and (2) the Board's proposed rule. Interested persons are particularly requested to include in their submissions views and suggested provisions relative to the matters enumerated in § 378.15 of the proposed rule. All relevant matter in communications received on or before February 19, 1965, will be considered by the Board. In addition, all interested persons are invited to submit ten (10) copies of written data, views, or arguments pertaining solely to the communications filed by other persons pursuant to the invitation set forth above. All relevant communi-

cations of this nature received on or before March 8, 1965, will be considered by the Board before taking final action.

Copies of all such communications will be available for examination by interested persons in the Docket Section of the Board, Room 710 Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., upon receipt thereof.

[SEAL] HAROLD R. SANDERSON,
Secretary.

Explanatory statement. By this Notice, the Board is proposing to authorize supplemental air carriers to operate charters for travel agents for the purpose of providing all-expense tours to members of the general public. This action is premised on the Board's tentative finding that all-expense tour charters should open up to the public new opportunities for low cost travel, and is therefore in the public interest. We also believe that this action will provide needed additional revenues to the supplemental carriers, pending determination of the permanent certification issues in the Supplemental Air Service Proceeding, Docket 13795 et al.

On July 10, 1962, the Congress enacted P.L. 87-528 which, in part, provides that the future role of supplemental air carriers shall be limited to charter operations. Congress also provided for a two-year phasing-out period by these carriers of their individually ticketed operations. This period expired on July 10, 1964 and, consequently, except for limited situations under section 417 of the Act, the class of supplemental air carriers is now limited to charter activities.

Pursuant to our statutory responsibilities, we have maintained a continuing surveillance of the operations of the various supplemental air carriers. From our official records it is apparent that while the combination carriers, as a class, are experiencing substantial growth and prosperity, the supplemental carriers, in the aggregate, are marginally profitable at best. Furthermore, these carriers face a difficult period ahead. Their sole permissible area of civilian activity is now the relatively undeveloped field of charters. And the Department of Defense has announced a policy of not awarding contracts to carriers for fiscal year 1966 unless at least 30 percent of a carrier's revenue will be derived from commercial sources. Consequently, the supplemental air carriers must increase their revenues from civilian charter operations or face a possible reduction in military contracts.

We propose, therefore, to initiate a controlled experiment by authorizing qualified supplemental air carriers in conjunction with qualified travel agents (referred to in the regulation as "tour operators") to perform all-expense paid tours in interstate and overseas air transportation. From available information, all-expense paid tours have proved popular on the European continent and we believe that whatever benefits this form of vacation travel produces should be made available to the American public.

The details of this experiment are contained in the attached proposed regulation. We, of course, fully anticipate receiving and considering suggestions with respect to possible modification in the terms and conditions of carriage as well as data with respect to the qualifications of the supplemental air carriers who would provide the air transportation portion of the tours. We do not believe that this program should result in any significant harmful diversion of revenues from scheduled route carriers. Indeed, we believe that over the long run, by introducing the advantages of air transportation to segments of the public which have never flown, new passenger traffic for route carriers should be generated. Moreover, supplemental carriers should be substantially benefited, a result we believe to be in furtherance of Congressional policy to develop a viable class of supplemental air carriers.

We recognize that the issue of all-expense paid tour authority is present in both the Supplemental Air Service Proceeding, Docket 13795 et al., and the Transatlantic Charter Investigation, Docket 11908 et al., which proceedings are pending. Therefore, we wish to emphasize that our proposed regulation herein should not be deemed a prejudgement of the policy issues in the above proceedings. Needless to say, the decision in these cases will be based upon the evidentiary records developed therein. As far as Docket 11908 et al. is concerned, problems and considerations inherent in foreign air transportation are not present herein. Furthermore, the characteristics of vacation travel in the transatlantic charter market may be different from those in the interstate and overseas markets. Moreover, the impact, if any, which the authorization of all-expense tours in transatlantic air transportation by supplemental carriers would have upon U.S. flag carriers operating over the Atlantic routes may be different from that which may be experienced by the route carriers engaged in interstate and overseas air transportation as a result of any authorization of all-expense tours proposed herein.

The basic scheme of the regulation is twofold. First, it sets forth the terms and conditions under which supplemental air carriers may furnish charters to travel agents and other persons acting as tour operators for the purpose of providing all-expense tours to members of the general public. Secondly, the regulation contains blanket relief from various provisions of Title IV of the Act so as to enable tour operators to engage in indirect air transportation for the purpose of organizing tour groups from members of the general public and conducting all-expense tours by means of chartered aircraft. The exemption to tour operators is subject to various conditions, including the filing of a Tour Prospectus with the Board setting forth all the details of each proposed tour or series of tours, the filing of a postflight report, and the taking out of a bond to insure the financial responsibility of the tour operator to the traveling public. The bonding requirements are patterned upon those of the Interstate Commerce Commission. Tour operators will be forbidden to advertise or sell all-expense tours unless they have a firm commitment from a supplemental air carrier to provide the necessary air transportation.

The purpose of the Tour Prospectus is to provide the Board with current information as to all pertinent facts with regard to the all-expense tour experiment and to provide the traveling public with an official source of information with respect to particular tours. The Board will not undertake to make a full screening of all Tour Prospectuses prior to the conduct of the flights, and failure of the Board to take any action with respect to particular Tour Prospectuses should not be regarded as approval of the flights. Carriers and tour operators who desire advice with respect to the legality of particular tours may seek a staff advisory opinion under the regulation.

Various terms and conditions are attached to the authority granted the tour operators and supplementals, designed to insure that all-expense tours will not be used as a device to provide what amounts to mere individually ticketed transportation between pairs of points, and to minimize diversion from scheduled services. In drafting these restrictions, we have also sought to provide sufficient flexibility for the carriers to enable them to conduct economically feasible operations. Thus, the all-expense tour must involve a minimum of 10 days between departure and arrival; it must be a round trip; the land portion must provide overnight hotel accommodations at a minimum of three cities (other than point of origin) and such cities must be at least 50 miles apart (the three cities need not be served by air transportation, however); the land portion of the tour must include all hotel accommodations and necessary surface transportation; and the charge for the tour must be at least 120 percent of the lowest basic fare which would be charged by the scheduled carriers for the air transportation provided on the tour.

Two additional matters warrant comment:

1. With regard to the legal issue whether the Board can authorize supplemental air carriers to charter aircraft to tour operators for the purpose of transporting all-expense tour groups whose members are gathered from the general public rather than from pre-formed groups having some affinity, we have reached the tentative conclusion that the Board has such power. In this connection, section 101(33) of the Federal Aviation Act defines supplemental air transportation as "charter trips in air transportation * * *" but the term "charter" is not otherwise defined in the Act. In reaching our tentative conclusion, we have relied in part upon the *Tauck Tours Case*[1] which held that an all-expense tour group is sufficiently cohesive to be eligible for a charter under the Motor Carrier Act. The general concept of charter, as reinforced by the Tauck

[1] Tauck Tours, Inc. Extension—New York, N.Y., 52 M.C.C. 373 (1951), 54 M.C.C. 221 (1952), affirmed sub nom. National Bus Traffic Ass'n v. United States, 143 F. Supp. 689 (D.C.N.J. 1956), aff'd per curiam 352 U.S. 1020 (1957).

Tours Case precedent, is, we believe, broad enough to include all-expense tour groups formed from members of the general public. The common purpose of the individual members of such groups which would travel together as a unit sufficiently sets the group apart from individual members of the general public so that the required group identity is achieved.[2]

2. The proposed rule provides that only one all-expense tour group may be carried on one aircraft. (§ 378.2(b)(5).) In view of the anticipated use by the supplemental air carriers of the larger type of aircraft and the possibility that required overnight stops may take place at smaller communities with limited hotel accommodations, it may not be economically feasible to adhere to the one group per aircraft limitation. Accordingly, the Board would consider permitting up to three different all-expense tour groups to be carried in one aircraft, where operationally required, although the entire aircraft would be covered by one charter to one tour operator, and therefore invites interested parties to address themselves to this matter. Those who maintain that the one group per aircraft term is not practical should submit such data as are available, as well as illustrative plans of operation to warrant liberalization of the proposed requirement.

Proposed rule. It is proposed to issue a new Part 378 of the Board's Special Regulations (14 CFR Part 378) as follows:

PART 378—ALL-EXPENSE TOURS BY SUPPLEMENTAL AIR CARRIERS AND TOUR OPERATORS

Subpart A—General Provisions

Sec.
378.1 Applicability.
378.2 Definitions.
378.3 Exemption.
378.4 Approval of certain interlocking relationships.
378.5 Effect of exemption on antitrust laws.
378.6 Duration of exemption.

Subpart B—Conditions and Limitations

378.10 Requirement of binding charter commitment.
378.11 Filing of Tour Prospectus.
378.12 Adherence to Tour Prospectus.
378.13 Tariffs to be filed for charter trips.
378.14 Surety bond.
378.15 Contract between tour operators and tour participants.

Subpart C—Post Flight Reporting Requirements

378.20 Post flight reporting.

Subpart D—Miscellaneous

378.30 Waiver.
378.31 Enforcement.
378.32 Advisory opinions.

APPENDIX: Tour Operator's Surety Bond.

Subpart A—General Provisions

§ 378.1 Applicability.

This part establishes the terms and conditions governing the furnishing of all-expense tours in interstate and overseas air transportation by supplemental air carriers and tour operators. This part also relieves tour operators from various provisions of the Act and the Board's regulations for the purpose of enabling them to provide all-expense tours to members of the general public utilizing aircraft chartered from supplemental air carriers. The provisions of this part shall not be construed as limiting any other authority to engage in air transportation issued by the Board. Nothing contained in this part shall be construed as repealing or amending any provision of any of the Board's regulations, unless the context so requires.

§ 378.2 Definitions.

As used in this part, unless the context otherwise requires—

(a) "All-expense tour charter" means the charter of an entire aircraft by a tour operator for the carriage by a supplemental air carrier of persons traveling in interstate or overseas air transportation on all-expense tours.

(b) "All-expense tour" means a round-trip tour which combines air transportation pursuant to an all-expense tour charter and land services, and which meets all of the following requirements:

(1) A minimum of ten (10) days must elapse between departure and return and, in computing the time period, the day of departure shall be excluded and the day of return shall be included;

(2) The land portion of the tour must provide overnight hotel accommodations at a minimum of three cities other than the point of origin, such cities to be no less than 50 air miles from each other;

(3) The land portion of the tour shall include all hotel accommodations and necessary surface transportation, and may include supervised sightseeing and other activities;

(4) The charge to the passenger for the tour shall be not less than 120 percent of the lowest basic fare or fares charged by any route carrier or combination of carriers (including charges for stopovers) for individually ticketed service between the point of origin and the point of destination via such points where stopovers are made. For purposes of this provision, the term "basic fare" refers to fares applicable to a class of service, e.g., first-class service, coach service, economy or third-class service, etc.; the term "basic fare" does not include promotional or discount fares, such as family fares, children's fares, excursion fares, fares applicable to special classes of persons, group fares, nonreservation fares, etc. Where regularly scheduled jet service is provided by certificated route carriers between the points involved, the lowest basic fare shall be considered to be such fare for jet services. Where no regularly scheduled service is provided between the points involved, the lowest basic fare shall be based upon the fares to the nearest point served by a certificated route carrier; and

(5) No more than one all-expense tour group shall be carried on one aircraft.

(c) An "all-expense tour group" means an aggregate of persons who are assembled by a tour operator for purpose of participation as a single unit in an all-expense tour.

(d) "Tour operator" means any person (other than a supplemental air carrier) engaged in the formation of groups for transportation on all-expense tours.

(e) "Tour participant" means a member of the all-expense tour group.

(f) "Supplemental air carrier" means a supplemental air carrier as defined in § 200.8 of this chapter, who is authorized under section 7 of Public Law 87-528 or section 401(d)(3) of the Act to perform all-expense tour charters.

(g) "State" means any state, territory, or possession of the United States, or the District of Columbia.

(h) "Tour price" means the total amount of money paid by the tour participant to the tour operator for the all-expense tour.

§ 378.3 Exemption.

Subject to the provisions of this part and the conditions imposed, tour operators are hereby relieved from the following provisions of Title IV of the Federal Aviation Act of 1958, as amended, to the extent necessary to permit them to provide all-expense tours:

Section 401
Section 403
Section 404(a)
Section 405(b)
Section 407(b) and (c)
Section 408(a)
Section 409
Section 412

§ 378.4 Approval of certain interlocking relationships.

To the extent that any officer or director of a tour operator would be in violation of any of the provisions of section 409(a) (3) and (6) by participating in interlocking relationships covered by the exemption granted in § 378.3, such participation is hereby approved by the Board.

§ 378.5 Effect of exemption on antitrust laws.

The relief granted in §§ 378.3 and 378.4 from sections 408, 409 and 412 of the Act shall not constitute an order under such sections within the meaning of section 414 of the Act, and shall not confer any immunity or relief from operation of the "antitrust laws" or any other statute (except the Act) with respect to any transaction, interlocking relationship, or agreement otherwise within the purview of such sections.

§ 378.6 Duration of exemption.

(a) The relief from any provisions of Title IV of the Act provided by §§ 378.3 and 378.4 shall terminate—

(1) Two years from the effective date of this part;

(2) Sixty (60) days following the effective date of the Board's final decision in the Supplemental Air Service Proceeding, Docket 13795 et al.; or

(3) At such time as the Board shall find, with or without hearing, that enforcement of such provision as to all tour operators or any class of or individual tour operator, would be in the public

[2] The Board has also fully considered the legislative history of the Supplemental Air Carrier Act, P.L. 87-528, and finds no basis therein for altering the above conclusions. Cf. Transatlantic Charter Investigation, Order E-20530, E-20531, opinion, pp. 35-40 (mimeo.).

interest or would no longer be a burden upon such operator or operators,

whichever shall first occur.

(b) The Board reserves the power to suspend the exemption authority of any tour operator, without notice or hearing, if it finds that such action is necessary in order to protect the rights of the travelling public.

Subpart B—Conditions and Limitations

§ 378.10 Requirement of binding charter commitment.

No tour operator shall sell or offer to sell, solicit, or advertise an all-expense tour unless he shall first have received a binding commitment from a supplemental air carrier to furnish the air transportation required for such tour. All sales advertising and solicitation materials employed by the tour operator shall state the name of the supplemental air carrier to be utilized.

§ 378.11 Filing of Tour Prospectus.

(a) No tour operator shall, within 120 days of the date of commencement of any all-expense tour, sell or offer to sell, solicit, or advertise an all-expense tour unless there is on file with the Board a Tour Prospectus containing the information required in this section. Such Prospectus shall be submitted jointly by the tour operator and the supplemental air carrier. If a series of flights is to be operated for one tour operator pursuant to one contract, the Prospectus may cover the entire series of flights, provided that the elapsed time between the first flight and the last flight shall not be more than 180 days. In any event, the Prospectus shall be filed at least 60 days before the charter's scheduled departure from its point of origination, provided that in the event that a series of charters is to be performed pursuant to one contract, the Prospectus shall be filed at least 60 days before the departure of the first such flight. Late filing of the Prospectus will not be permitted except for good cause shown.

(b) The Prospectus shall be verified by a duly authorized officer of both the supplemental air carrier and the tour operator and shall include, in addition to copies of the charter contract and the form of contract between the tour operator and participants in the tour, the following information:

(1) Name and address of the tour operator;

(2) The proposed date and time of each flight;

(3) Equipment to be used, including the aggregate number of each type of aircraft and capacity;

(4) The tour itinerary, including hotels (name and length of stay at each), and sightseeing or other arrangements, if any;

(5) The tour price per passenger, including an allocation of cost as between air transportation and other aspects of the tour;

(6) The number of persons participating in the tour;

(7) Charter price of the aircraft;

(8) The individually ticketed air fare, computed as provided in § 378.2(b)(4);

(9) Samples of solicitation material in use or proposed by the tour operator;

(10) A copy of a surety bond as required by § 378.14.

(c) In the event of any change in the facts as reflected in the Tour Prospectus, an amended prospectus shall be filed no later than five (5) days following such change.

(d) Notice of the filing with the Board of each Tour Prospectus shall be published by the Board in the Weekly List of Applications Filed.

§ 378.12 Adherence to Tour Prospectus.

No supplemental air carrier or tour operator shall provide all-expense tours, or air transportation therefor, except in accordance with the Tour Prospectus filed with respect to such tour. Deviations from the Tour Prospectus, or the amended prospectus, may not be made except where they are compelled by circumstances beyond the control of the carrier or tour operator and there is insufficient time to file an amended prospectus.

§ 378.13 Tariffs to be filed for charter trips.

No supplemental air carrier shall perform any charter trips for all-expense tours unless such air carrier shall have on file with the Board a currently effective tariff showing all rates, fares, and charges for such charter trips and showing the rules, regulations, practices, and services in connection with such transportation.

§ 378.14 Surety bond.

No tour operator shall sell or offer to sell, solicit, or advertise an all-expense tour unless such tour operator shall have furnished a bond in an amount of not less than twice the amount of the charter price for the air transportation to be furnished in connection with such tour: *Provided, however*, That the liability of the surety to any tour participant shall not exceed the tour price. Such bond shall insure the financial responsibility of the tour operator and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the tour operator and the tour participants, and shall be in the form appearing in the Appendix to this part. Such bond shall be issued by a reputable and financially responsible bonding or surety company which is legally authorized to issue bonds of that type in the state in which the tour originates. The Board will consider that a bonding or surety company is prima facie qualified under this section if such company's surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 174.8, and if such company is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. The Board will review the bond for compliance with the requirements of this section; if the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the supplemental air carrier and the tour operator, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the relief provided in §§ 378.3 and 378.4 shall terminate with respect to the subject flights.

§ 378.15 Contract between tour operators and tour participants.

Where each participant in a tour receives the same accommodations, land tours, etc., the contract between the tour operator and the tour participants shall be the same. Contracts between tour operators and tour participants shall include provisions concerning the following matters:

(a) Method of payment, e.g., installment payments;

(b) Refunds in the event of the tour's cancellation or the passenger's change in plans;

(c) Carrier's liability limitations for passenger's baggage;

(d) Aircraft equipment substitutions;

(e) Seating accommodations; and

(f) Non-performance of tour because of insufficient number of participants.

Subpart C—Post Flight Reporting Requirements

§ 378.20 Post flight reporting.

(a) Within 30 days after completion of the flight or in the case of a series of flights, the last of the series, the supplemental air carrier and tour operator shall jointly file with the Board (Carrier Services Section, Routes and Agreements Division, Bureau of Economic Regulation) a post flight report. This report shall be verified by both the supplemental air carrier and the tour operator and shall indicate whether or not the flights set forth in the Tour Prospectus were, in fact, performed. To the extent that the operations differed from those described in the Prospectus, such differences shall be fully detailed including the reasons for such deviation. However, the making of such explanation shall not of itself operate as authority for or excuse of any deviation from the Prospectus.

(b) The supplemental air carrier shall promptly notify the Board regarding any tours covered by a filed Tour Prospectus that are later canceled.

Subpart D—Miscellaneous

§ 378.30 Waiver.

A waiver of any of the provisions of this regulation may be granted by the Board upon its own initiative, or upon the submission by a supplemental air carrier of a written request therefor, provided that such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

§ 378.31 Enforcement.

In case of any violation of the provisions of the Act, or this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding pursuant to sections

1002 and 1007 of the Act before the Board or a United States District Court, as the case may be, to compel compliance therewith, to civil penalties pursuant to the provisions of section 901(a) of the Act, or, in the case of a willful violation, to criminal penalties pursuant to the provisions of section 902(a) of the Act; or other lawful sanctions.

§ 378.32 Advisory opinions.

Although the Board may spot-check a Tour Prospectus, it does not intend to commit itself to a full review of each Prospectus prior to the commencement of a tour. Thus, failure of the Board to take action prior to the commencement of a tour is not tantamount to a finding by the Board that a proposed tour will be in compliance with the Board's regulations. However, prior to the commencement of a tour, any interested person may seek an advisory opinion from the Board as to whether any proposed tour or part thereof is in conformity with the Board's regulations. Requests for such advisory opinions shall be addressed to the Bureau of Economic Regulation, Civil Aeronautics Board, Washington, D.C., 20428.

APPENDIX—TOUR OPERATOR'S SURETY BOND

(Executed in triplicate)

Know all men by these presents, That we

(Name of tour operator)

of _____, _____ as
(City) (State)

principal (hereinafter called principal), and _____ a corporation created and
(Name of surety)

existing under the laws of the State of _____ as surety (hereinafter called
(State)

surety) are held and firmly bound unto the United States of America in the sum of _____, for which payment
(see § 378.14 of Part 378)

well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal is or intends to become a tour operator pursuant to the provisions of Part 378 of the Board's Special Regulations and other rules and regulations of the Board relating to insurance or other security for the protection of tour participants, and has elected to file with the Civil Aeronautics Board such a bond as will insure financial responsibility and the supplying of transportation and other services subject to Part 378 of the Board's Special Regulations in accordance with contracts, agreements, or arrangements therefor, and

Whereas, this bond is written to assure compliance by the Principal as an authorized tour operator with Part 378 of the Board's Special Regulations, and other rules and regulations of the Board relating to insurance or other security for the protection of tour participants, and shall inure to the benefit of any and all tour participants to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to tour participants any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Principal while this bond is in effect for the supplying of transportation and other services pursuant to and in accordance with the provisions of Part 378 of the Board's Special Regulations, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of the Surety with respect to any tour participant shall not exceed the tour price (as defined in Part 378 of the Board's Special Regulations) paid by or on behalf of such participant.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Civil Aeronautics Board forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the _____ day of _____, 19__, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the Civil Aeronautics Board at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Board. The Surety shall not be liable hereunder for the payment of any of the damages hereinbefore described which arise as the result of any contracts, agreements, undertakings, or arrangements made by the Principal for the supplying of transportation and other services after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such damages arising as the result of contracts, agreements, or arrangements made by the Principal for the supplying of transportation and other services prior to the date such termination becomes effective.

In witness whereof, the said Principal and Surety have executed this instrument on the _____ day of _____, 19__.

PRINCIPAL

Name _____
By _____
(Signature and title)

Witness _____

SURETY

Name _____ (Seal)
By _____
(Signature and title)

Witness _____

Only corporations may qualify to act as surety and they must establish to the satisfaction of the Civil Aeronautics Board legal authority to assume the obligations of surety and financial ability to discharge them.

[F.R. Doc. 65-270; Filed, Jan. 8, 1965; 8:47 a.m.]

FEDERAL MARITIME COMMISSION

[46 CFR Part 527]

[Docket No. 1156]

SHIPPERS' REQUESTS AND COMPLAINTS

Notice of Oral Argument

On November 1, 1963, the Federal Maritime Commission published in the FEDERAL REGISTER (28 F.R. 11698) a notice of proposed rule making with respect to conference disposition of shippers' requests and complaints.

Numerous comments thereon, including those in which requests were made for oral argument have been received and considered by the Commission.

Notice is hereby given that oral argument will be heard by the Commission on January 27, 1965, beginning at 9:30 a.m., in Room 114, 1321 H Street NW., Washington, D.C., with respect to questions germane to such rule and/or the issuance thereof, on which interested parties may desire to be heard.

All respondents and other interested persons in this proceeding are requested to notify the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before January 21, 1965, whether they will participate in the oral argument and, if so, the amount of time desired for argument.

By the Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 65-289; Filed, Jan. 8, 1965; 8:51 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. Sub-B-15]

BOAT PAT-SAN-MARIE, INC.

Amendment to Notice of Hearing

Boat Pat-San-Marie, Inc., New Bedford, Mass., has applied for a fishing vessel construction differential subsidy to aid in the construction of a 100-foot overall steel vessel to engage in the fishery for scallops, groundfish, and flounders.

Notice was published in the FEDERAL REGISTER on December 18, 1964, pursuant to the provisions of the United States Fishing Fleet Improvement Act (P.L. 88-498) and Notice and Hearing on Subsidies (50 CFR Part 257) that a hearing in the above-entitled proceedings would be held an January 20, 1965, at 9:00 a.m., e.s.t., in Room 3356, Interior Building, 18th and C Streets NW., Washington, D.C.

The notice of December 18, 1964, is hereby amended to change the date of hearing from January 20, 1965, to January 25, 1965. Any person desiring to intervene must file a petition of intervention with the Director, Bureau of Commercial Fisheries, as prescribed in 50 CFR 257 at least 10 days prior to the date set for the hearing. If such petition of intervention is granted, the place of the hearing may be changed to a field location. Telegraphic notice will be given to the parties in the event of such a change along with the new location.

DONALD L. MCKERNAN,
Director,
Bureau of Commercial Fisheries.

[F.R. Doc. 65-311; Filed, Jan. 8, 1965; 8:51 a.m.]

Office of the Secretary

CLARENCE WILBER MAYOTT

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) None.
(2) None.
(3) None.
(4) None.

This statement is made as of December 15, 1964.

Dated: December 15, 1964.

CLARENCE WILBER MAYOTT.

[F.R. Doc. 65-256; Filed, Jan. 8, 1965; 8:46 a.m.]

ALEXANDER H. WADE, JR.

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of December 14, 1964.

Dated: December 14, 1964.

ALEXANDER H. WADE, JR.

[F.R. Doc. 65-257; Filed, Jan. 8, 1965; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

ORGANIZATION, FUNCTIONS AND AUTHORITIES

Assignment of Additional Functions

The Statement of Organization, Functions and Authorities of the Agricultural Research Service, published in 28 F.R. 12134, as amended, is hereby further amended by changing section II, A, 3 to read as follows:

3. The research, investigations, inspections, experimentations, demonstrations, development work, service and regulatory work, and control and eradication of insects, plant and animal pests and diseases provided under the heading "Agricultural Research Administration" in the Department of Agriculture Appropriation Act of 1954 (except forest pests and diseases); and the following services conducted under sections 203 and 205 of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1622 and 1624): Inspection and certification, and standardization incidental therto of reindeer, reindeer meat and reindeer products, of food for dogs, cats and other carnivora, of animal byproducts not capable of use as human food, and of human food articles derived wholly or in part from meat, meat byproducts or meat food products and not subject to the Federal meat inspection laws but for which the mark of Federal meat inspection is requested, identification service for federally inspected meat, meat byproducts and meat food products, contract specification work in processing departments of federally inspected meat plants, and certification service for livestock products for export for human food purposes.

This document shall become effective upon issuance.

Done at Washington, D.C., this 6th day of January 1965.

GEORGE W. IRVING, Jr.,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc 65-280; Filed, Jan. 8, 1965; 8:50 a.m.]

Commodity Credit Corporation

DIRECTORS ET AL.

Amendment of Delegation of Authority With Respect to Certain Activities

The delegation of authority published in 29 F.R. 11854, with respect to certain Commodity Credit Corporation activities is hereby amended to provide for execution of export commodity certificates by adding a new paragraph 5 under "Delegations", as follows:

5. *Export Commodity Certificates.* The Directors or Acting Directors of the Agricultural Stabilization and Conservation Service Commodity Offices at Evanston, Ill., Kansas City, Mo., Minneapolis, Minn., and New Orleans, La., and the Agricultural Stabilization and Conservation Service Data Processing Center at Kansas City, Mo., may sign Commodity Credit Corporation Export Commodity Certificates (Form CCC-341) issued pursuant to any Commodity Credit Corporation regulation, announcement, or contract providing for issuance of such certificates. This authority may not be redelegated.

(Sec. 4, Stat. 1070, as amended, 15 U.S.C. 714b)

Effective date: Date of publication.

Signed at Washington, D.C., on January 6, 1965.

H. D. GODFREY,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 65-281; Filed, Jan. 8, 1965; 8:50 a.m.]

Office of the Secretary

AGRICULTURAL RESEARCH SERVICE

Assignment of Additional Functions

Pursuant to the authority vested in the Secretary of Agriculture by Section 161, Revised Statutes (5 U.S.C. 22) and Reorganization Plan No. 2 of 1953, section 115 of the statement of delegations of authority and assignment of functions of the Department of Agriculture (29 F.R. 16210), is amended by changing paragraph "b" to read as follows:

b. The research, investigations, inspections, experimentations, demonstrations, development work, service and regulatory work, and control and eradication of insects, plant and animal pests and diseases provided under the heading "Agricultural Research Administration" in the Department of Agriculture

Appropriation Act of 1954 (except forest pests and diseases); and the following services conducted under sections 203 and 205 of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1622 and 1624): inspection and certification, and standardization incidental thereto of reindeer, reindeer meat and reindeer products, of food for dogs, cats and other carnivora, of animal byproducts not capable of use as human food, and of human food articles derived wholly or in part from meat, meat byproducts or meat food products and not subject to the Federal meat inspection laws but for which the mark of Federal meat inspection is requested, identification service for federally inspected meat, meat byproducts and meat food products contract specification work in processing departments of federally inspected meat plants, and certification service for livestock products for export for human food purposes.

Purposes of this amendment are to assign the Agricultural Research Service authority for the wholesomeness inspection and certification upon request of reindeer, reindeer meat and reindeer products, pursuant to section 203 of the Agricultural Marketing Act of 1946 as amended.

This amendmen shall be effective upon issuance.

Done at Washington, D.C., this 6th day of January 1965.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 65-282; Filed, Jan. 8, 1965; 8:50 a.m.]

DEPARTMENT OF COMMERCE

Bureau of the Census

RETAILERS' INVENTORIES, SALES AND NUMBER OF ESTABLISHMENTS

Notice of Determination To Continue Survey

Pursuant to the Act of Congress approved August 31, 1954, 13 U.S.C. 181, 224, and 225, and due notice of consideration having been published November 26, 1964 (29 F.R. 15877), I have determined that certain 1964 annual data for retail trade establishments are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and are also applicable to a variety of public and business needs. This annual survey is a continuation of similar surveys conducted in previous years for collecting data covering year-end inventories, annual sales, and number of retail stores operated as of the end of the year. The data are not publicly available from non-governmental or other governmental sources.

Reports will be required only from a selected sample of retail establishments in the United States. The sample will provide, with measurable reliability, estimates of inventories and sales-inventory ratios. Reports will be requested from sampled stores on the basis of their sales size and/or location in Census Sample Areas. A group of the largest firms, in terms of number of retail stores, will be requested to report their sales and number of stores by county; but those firms which are participating monthly in the Bureau's geographic area survey will be asked to report in total only.

Report forms will be furnished to the firms covered by the survey and will be due 15 days after receipt. Additional copies of the forms are available on request to the Director, Bureau of the Census, Washington, D.C., 20233.

I have therefore directed that an annual survey be conducted for the purpose of collecting these data.

RICHARD M. SCAMMON,
Director, Bureau of the Census.

[F.R. Doc. 65-248; Filed, Jan. 8, 1965; 8:45 a.m.]

SURVEY OF DISTRIBUTORS STOCKS OF CANNED FOODS

Notice of Determination

In conformity with the Act of Congress approved August 31, 1954, 13 U.S.C. 181, 224, and 225, and due Notice of Consideration having been published November 25, 1964 (29 F.R. 15823), pursuant to said act, I have determined that year-end data on stocks of 29 canned and bottled products, including vegetables, fruits, juices, and fish, are needed to aid the efficient performance of essential governmental functions, and have significant application to the needs of the public and industry and are not publicly available from nongovernmental or other governmental sources. This is a continuation of the survey conducted in previous years.

All respondents will be required to submit information covering their December 31, 1964 inventories of 29 canned and bottled vegetables, fruits, juices, and fish. Reports will not be required from all firms but will be limited to a scientifically selected sample of wholesalers and retail multiunit organizations handling canned foods, in order to provide year-end inventories of the specified canned food items with measured reliability. These stocks will be measured in terms of actual cases with separate data requested for "all sizes smaller than No. 10" and for "sizes No. 10 or larger." In addition, a number of selected multiunit firms will be requested to provide information on the location of establishments maintaining canned food stocks that are not currently reporting in the Canned Food Survey.

Report forms will be furnished to firms covered by the survey. Additional copies of the forms are available on request to the Director, Bureau of the Census, Washington, D.C., 20233.

Reports are due 8 days after receipt of the report forms.

I have therefore directed that this annual survey be conducted for the purpose of collecting these data.

RICHARD M. SCAMMON,
Director, Bureau of the Census.

[F.R. Doc. 65-249; Filed, Jan. 8, 1965; 8:45 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

E. I. DU PONT DE NEMOURS & CO.

Notice of Filing of Petition for Food Additives

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition (FAP 5B1534) has been filed by E. I. du Pont de Nemours & Co., Wilmington, Del., 19898, proposing the issuance of a regulation to provide for the safe use of ethylene-methacrylic acid copolymers and their ammonium, calcium, magnesium, sodium, and zinc partial salts as articles or components of articles that contact food.

Dated: January 4, 1965.

MALCOLM R. STEPHENS,
Assistant Commissioner for Regulations.

[F.R. Doc. 65-264; Filed, Jan. 8, 1965; 8:47 a.m.]

HUMBLE OIL & REFINING CO.

Notice of Filing of Petition for Food Additives Release Agents

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 5B1556) has been filed by Humble Oil & Refining Co., Houston 1, Tex., proposing that the introduction to § 121.2509 *Release agents* be amended to read: "Substances listed in paragraph (b) of this section may be safely used as release agents in petroleum wax complying with § 121.2586 and in polymeric resins that contact food, subject to the provisions of this section."

Dated: January 4, 1965.

MALCOLM R. STEPHENS,
Assistant Commissioner for Regulations.

[F.R. Doc. 65-265; Filed, Jan. 8, 1965; 8:47 a.m.]

JOHNSON & JOHNSON

Notice of Filing of Petition for Food Additives Resin-Bonded Filters

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 4B1291) has been filed by Johnson & Johnson, 4949 West 65th Street, Chicago 38, Ill., proposing that § 121.2536 *Filters, resin-bonded* be amended in the following respects:

1. By amending subparagraph (2) of paragraph (h) to read as follows:

(2) *Conditions of use.* It is used to filter milk, coffee, tea, and potable water at temperatures not to exceed 212° F.

2. By adding thereto new paragraphs (i), (j), (k), and (l) as follows:

(i) Resin-bonded filters conforming with the specifications of subparagraph (1) of this paragraph are used as provided in subparagraph (2) of this paragraph:

(1) *Total extractives.* The finished filter, when exposed to distilled water for 2 hours at a temperature equivalent to, or higher than, the filtration temperature of the aqueous food, yields total extractives not to exceed 4.0 percent by weight of the filter.

(2) *Conditions of use.* It is used in commercial filtration of bulk quantities to filter nonalcoholic, aqueous foods that have a pH above 5.0.

(j) Resin-bonded filters conforming with the specifications of subparagraph (1) of this paragraph are used as provided in subparagraph (2) of this paragraph:

(1) *Total extractives.* The finished filter, when exposed to 5 percent (by weight) acetic acid for 2 hours at a temperature equivalent to, or higher than, the filtration temperature of the aqueous food, yields total extractives not to exceed 4.0 percent by weight of the filter.

(2) *Conditions of use.* It is used in commercial filtration of bulk quantities to filter nonalcoholic, aqueous foods that have a pH of 5.0 or below.

(k) Resin-bonded filters conforming with the specifications of subparagraph (1) of this paragraph are used as provided in subparagraph (2) of this paragraph:

(1) *Total extractives.* The finished filter, when exposed to 8 percent (by volume) ethyl alcohol in distilled water for 2 hours at a temperature equivalent to, or higher than, the filtration temperature of the aqueous food, yields total extractives not to exceed 4.0 percent by weight of the filter.

(2) *Conditions of use.* It is used in commercial filtrations of bulk quantities to filter alcoholic beverages containing not more than 8 percent alcohol.

(l) Resin-bonded filters conforming with the specifications of subparagraph (1) of this paragraph are used as provided in subparagraph (2) of this paragraph:

(1) *Total extractives.* The finished filter, when exposed to 50 percent (by volume) ethyl alcohol in distilled water for 2 hours at a temperature equivalent to, or higher than, the filtration temperature of the aqueous food, yields total extractives not to exceed 4.0 percent by weight of the filter.

(2) *Conditions of use.* It is used in commercial filtration of bulk quantities to filter alcoholic beverages containing more than 8 percent alcohol.

Dated: January 4, 1965.

MALCOLM R. STEPHENS,
Assistant Commissioner for Regulations.

[F.R. Doc. 65-266; Filed, Jan. 8, 1965; 8:47 a.m.]

REICHHOLD CHEMICALS, INC., AND CUNO ENGINEERING CORP.

Notice of Filing of Petition for Food Additives Resin-Bonded Filters

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 3B1094) has been jointly filed by Reichhold Chemicals, Inc., 525 North Broadway, White Plains, N.Y., and Cuno Engineering Corp., Meriden, Conn., proposing that paragraph (d)(3) of § 121.2536 *Filters, resin-bonded* be amended by inserting alphabetically in the list of resins the following item: "Phenol-formaldehyde resins."

Dated: January 4, 1965.

MALCOLM R. STEPHENS,
Assistant Commissioner for Regulations.

[F.R. Doc. 65-267; Filed, Jan. 8, 1965; 8:47 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-171]

PHILADELPHIA ELECTRIC CO.

Notice of Extension of Completion Date

Please take notice that the Atomic Energy Commission has issued an order extending to June 30, 1965, the latest completion date specified in Construction Permit No. CPPR-12 for construction of the high temperature, gas cooled power demonstration reactor being constructed near Peach Bottom, Pa.

Copies of the order and of the application by Philadelphia Electric Co. are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md., this 29th day of December 1964.

For the Atomic Energy Commission.

R. L. DOAN,
Director,
Division of Reactor Licensing.

[F.R. Doc. 65-247; Filed, Jan. 8, 1965; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 15002; Order E-21643]

NORTHWEST AIRLINES, INC.

Order Denying Petition for Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 6th day of January 1965.

On October 15, 1964, Northwest Airlines, Inc. (Northwest) filed a petition for reconsideration of Regulation ER-417 "insofar as the regulation requires filing of a new Schedule B-47 'Lease Obligations—Flight Equipment' in routine Form 41 reports available for and subject to public inspection and use." Northwest requests that Schedule B-47 be withdrawn from Form 41 or, in the alternative, be classified in the regulation as a confidential document not available to the public. On November 10, 1964 United Air Lines, Inc. filed a statement concurring in Northwest's petition for reconsideration, but presented no arguments or facts in support thereof.

The Board adopted Regulation ER-417 on September 18, 1964, effective October 1, 1964, pursuant to Notices of Proposed Rule Making EDR-65 and EDR-66, dated January 29 and 30, 1964, respectively. The issue of disclosure of "confidential" information relating to indebtedness and leases was thoroughly explored at a public meeting attended by the Board's staff and industry representatives on March 10, 1964 and in subsequent written comments. The chief objection to proposed Schedule B-47 was the reporting of major real estate leases for office buildings, maintenance facilities, and such uses. An industry spokesman stated without challenge at the conference that the terms of real estate leases were highly "competitive," whereas the details of flight equipment leases were rather generally known in the industry. This argument was repeated by a trunkline carrier in written comments. In an attempt to meet some of these objections to disclosure of "competitive" information, the Board greatly modified proposed Schedule B-47 by limiting the adopted schedule to flight equipment only, and by eliminating the disclosure of purchase option provisions, cost of leased property to lessor, and rate of interest reflected in payments. Thus, new Schedule B-47 merely became a separate schedule on which to report the flight equipment lease information formerly reported on Schedule B-2 "Notes to Balance Sheet." The fact that a separate and itemized presentation of lease data might facilitate comparative analyses by trade journals is irrelevant to the issue whether such information should be disclosed. The Board does not control the uses to which its public records are put.

Northwest has presented no arguments or facts that were not fully considered by the Board in rule making proceedings to add Schedule B-47 to CAB Form 41 and to delete reporting of lease information from Schedule B-2. The Board adheres to its finding that the basic terms of flight equipment leases with annual rentals of $500,000 or 1 percent of total debt and equity capital (but excluding leases with annual rentals of less than $100,000) should be reported in Form 41 reports, and schedules containing such information should be open for public inspection. In view of the foregoing, the Board finds that no modification of its action in ER-417 with respect to Schedule B-47 is warranted or required.

Accordingly, it is ordered, That the petition of Northwest Airlines, Inc., for

reconsideration of the Board's decision in this proceeding be, and it hereby is, denied.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON, *Secretary.*

[F.R. Doc. 65-272; Filed, Jan. 8, 1965; 8:48 a.m.]

[Docket No. 11022]

CALIFORNIA FLORAL TRAFFIC CONFERENCE ET AL.

Notice of Postponement of Prehearing Conference

Reopened California Traffic Conference et al., tariff liability rules complaint; Airborne Freight Corporation tariff rules, etc.:

Pursuant to the request of California Floral Traffic Conference by telegram dated January 4, 1965, the prehearing conference herein is postponed until 10 a.m., January 28, 1965, in Room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C.

By letter dated January 5, 1965, Bureau Counsel indicates that the Bureau does not object to the requested postponement but opposes assignment of Bureau Counsel to moderate a meeting between the complainant and respondent in San Francisco and indicates inability to moderate or participate in such a meeting. Accordingly, California Floral Traffic Conference's request is denied except to the extent granted by the above postponement.

Dated at Washington, D.C., January 5, 1965.

[SEAL] RALPH L. WISER, *Hearing Examiner.*

[F.R. Doc. 65-273; Filed, Jan. 8, 1965; 8:48 a.m.]

[Order E-21636]

FALCON AIR FREIGHT, INC.

Order Revoking Operating Authorization

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 4th day of January 1965.

By Order E-21559, December 4, 1964, the Board directed Falcon Air Freight, Inc. (Falcon) and other interested persons to show cause within fifteen days why the Board should not revoke Falcon's Air Freight Forwarder Operating Authorization No. 75.

No objections have been filed.

As provided in the show cause order, all further procedural steps are deemed to be waived and the matter now stands submitted to the Board. In the absence of objections we will make final the findings and conclusions expressed in Order E-21559.

Accordingly, it is ordered,

1. That Operating Authorization No. 75 issued to Falcon be, and it hereby is, revoked without prejudice, and is canceled; and

2. That a copy of this order be served upon Falcon and the Receiver in Bankruptcy of Falcon and be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON, *Secretary.*

[F.R. Doc. 65-271; Filed, Jan. 8, 1965; 8:48 a.m.]

FEDERAL MARITIME COMMISSION

[Docket No. 1187 (Sub 1)]

AMERICAN UNION TRANSPORT, INC.

Further Reduction in Rates on Machinery and Tractors From United States Atlantic Ports to Puerto Rico; Notice of Investigation and Suspension

It appearing, that there has been filed by American Union Transport, Inc. (AUT) to become effective December 31, 1964, 11th Revised Page No. 43 and 12th Revised Page No. 31 to Tariff FMC-F No. 6 naming reduced rates of 41 cents per cubic foot or 125 cents per hundred pounds on certain types of machinery and machines, and tractors, from North Atlantic ports to Puerto Rico;

It further appearing, that upon consideration of the said reduced rates there is reason to believe that the said rates, if permitted to become effective, would result in rates, charges, and/or practices which would be unjust, unreasonable, or otherwise unlawful in violation of the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933;

It further appearing, that the Commission is of the opinion that the proposed tariff provisions should be made the subject of a public investigation and hearing to determine whether they are unjust, unreasonable, or otherwise unlawful under the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933;

It further appearing, that the effective date of the said provisions should be suspended pending such investigation;

Now therefore it is ordered, That, an investigation be, and it is hereby instituted into and concerning the lawfulness of the aforementioned reduced rates with a view to making such findings and orders in the premises as the facts and circumstances shall warrant;

It is further ordered, That the rates of 41 cents per cubic foot and 125 cents per hundred pounds published on 12th Revised Page No. 31 and 11th Revised Page No. 43 of American Union Transport, Inc., Southbound Freight Tariff No. 6 FMC-F No. 6 and prefixed with a "teardrop" symbol be, and they are hereby suspended and that the use thereof be deferred to and including January 31, 1965, unless otherwise authorized by the Commission, and that the rates, fares, charges, rules, regulations, and/or practices heretofore in effect, and which were to be changed by the suspended matter shall remain in effect during the period of suspension;

It is further ordered, That no change shall be made in the matter hereby suspended, nor the matter which is continued in effect as a result of such suspension, until the period of suspension or any extension thereof has expired, or until this investigation and suspension proceeding has been disposed of, whichever first occurs unless otherwise authorized by the Commission;

It is further ordered, That there shall be filed immediately with the Commission by American Union Transport Inc., a consecutively numbered supplement to the aforesaid tariff, which supplement shall bear no effective date, shall reproduce the portion of this order wherein the suspended matter is described, and shall state that the aforesaid rates are suspended and may not be used until the 1st day of February 1965, unless otherwise authorized by the Commission; and that the rates otherwise in effect and which were to be changed by the suspended rates, shall remain in effect during the period of suspension, and neither matter suspended nor the matter which is continued in effect as a result of such suspension, may be changed until the period of suspension or any extension thereof has expired, or until this investigation and suspension proceeding has been disposed of, whichever first occurs, unless otherwise authorized by the Commission;

It is further ordered, That copies of this order shall be filed with the tariff containing the suspended matter in the Bureau of Domestic Regulation of the Federal Maritime Commission;

It is further ordered, That (I) the investigation herein ordered be assigned for public hearing by the Chief Examiner; (II) American Union Transport, Inc. be, and it is hereby made respondent in this proceeding; (III) a copy of this order shall forthwith be served upon the said respondent; (IV) the said respondent be duly notified of the time and place of the hearing herein ordered; and (V) this order and notice of the said hearing be published in the FEDERAL REGISTER.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies) having an interest in this proceeding and desiring to intervene therein, should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rule 5(n) (46 CFR 502.-73), with copy to respondent.

By the Commission, December 29, 1964.

[SEAL] THOMAS LISI, *Secretary.*

[F.R. Doc. 65-268; Filed, Jan. 8, 1965; 8:47 a.m.]

[Fact Finding Investigation No. 6]

STEAMSHIP CONFERENCE

Effects on Foreign Commerce of United States; Notice of Hearing

JANUARY 6, 1965.

A further hearing in this proceeding will commence at 10:00 a.m. on January 19, 1965, in Room 1329, 630 Sansome Street, San Francisco, Calif. The hearing will be open to the public.

RALPH P. DICKSON, *Investigative Officer.*

[F.R. Doc. 65-269; Filed, Jan. 8, 1965; 8:47 a.m.]

FEDERAL POWER COMMISSION

[Docket Nos. RI65-419 etc.]

RODMAN PETROLEUM CORP. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

DECEMBER 31, 1964.

The Respondents named herein have filed proposed increased rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention 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 and 1.37(f)) on or before March 11, 1965.

By the Commission.

[SEAL] GORDON M. GRANT, *Acting Secretary.*

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective Date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI65-419	Rodman Petroleum Corp., Post Office Box 3826, Odessa, Tex. Attn: Mr. Thomas E. Rodman.	[2] 2	2	Transwestern Pipeline Co., (Crewar Field, Ward County, Tex.) (R.R. District No. 8) (Permian Basin Area).	$1,200	12- 7-64	[3] 1- 7-65	6- 7-65	[8] 16.0	[4] [5] 17.0	
RI65-420	Socony Mobil Oil Co., Inc., 150 East 42d Street, New York, N.Y., 10017. Attn: Mr. H. H. Beeson.	48	17	El Paso Natural Gas Co. (Pegasus Plant, Midland and Upton Counties, Tex.) (R.R. District Nos. 7-C and 8) (Permian Basin Area).	5	12- 8-64	[7] 1- 8-65	6- 8-65	[9] 17.2295	[4] 18.2430	
RI65-421	Stanton A. Hall, Post Office Box 135, Hattiesburg, Miss.	1	3	United Gas Pipe Line Co. (Maxie-Pistol Ridge Area, Forrest, Lamar, and Pearl River Counties, Miss.)	[10] 32	12- 2-64	[7] 1- 2-65	6- 2-65	[14] 21.0	[11] [13] 22.8	
RI65-422	Paul V. Draughn, Sr., Post Office Box 1529, Hattiesburg, Miss.	1	3	....do....	[10] 316	12- 2-64	[7] 1- 2-65	6- 2-65	[14] 21.0	[11] [13] 22.8	
RI65-423	Midhurst Oil Corp. (Operator), et al., 1030 Bank of the Southwest Building, Houston, Tex., 77002. Attn: Mr. L. R. Metcalf.	9	4	Trunkline Gas Co. (Southeast Alice Field, Jim Wells County, Tex.) (R.R. District No. 4).	727	12- 2-64	[7] 1- 2-65	6- 2-65	[12] [13] 13.3748	[4] [13] [16] 14.3844	
RI65-424	Paul V. Draughn, Jr., Post Office Box 1529, Hattiesburg, Miss.	1	2	United Gas Pipe Line Co. (Maxie-Pistol Ridge Area, Forrest, Lamar and Pearl River Counties, Miss.	[10] 31	12- 7-64	[7] 1- 7-65	6- 7-65	20.0	[11] [13] 22.8	
RI65-425	Barron Kidd and C. R. Smith, 405 Oak Plaza Building, 3707 Rawlins Street, Dallas 19, Tex.	1	10	Natural Gas Pipeline Co. of America (Amargosa Field, Jim Wells County, Tex.) (R.R. District No. 4).	10,950	12-11-64	[3] 2- 1-65	7- 1-65	[12] [17] 14.5	[4] [13] [17] 15.5	
RI65-426	Northern Pump Co., Columbia Heights Post Office, Minneapolis, Minn., 55421. Attn: Mr. G. S. Davidson.	30	1	Coastal States Gas Producing Co. and Southern Coast Corp. (Fitzsimmons Field, Duval County, Tex.) (R.R. District No. 4).	1,204	12- 9-64	[3] 1-29-65	6-29-65	[12] [13] 12.2384	[4] [15] 13.2480	
RI65-427	Graham-Michaelis Drilling Co. (Operator), et al., 211 North Broadway Wichita, Kans., 67202.	1	3	Cities Service Gas Co. (Hugoton Field, Kearny County Kans.).	476	12-10-64	[7] 1-10-65	6-10-65	[12] 10.72	[4] [12] [13] [19] 14.5	
.....do.....		1	4	.....do.....	278	12-10-64	[7] 1-10-65	6-10-65	[12] 10.72	[4] [12] [13] [19] 14.5	
.....do.....		11	12	.....do.....	4,158	12-10-64	[7] 1-10-65	6-10-65	[12] 10.72	[4] [12] [13] [19] 14.5	
.....do.....		38	2	Cities Service Gas Co. (Hugoton Field, Haskell County, Kans.).	159	12-10-64	[7] 1-10-65	6-10-65	[12] 10.72	[4] [12] [13] [19] 14.5	
RI65-428	Graham-Michaelis Drilling Co.	19	3	Cities Service Gas Co. (Hugoton Field, Morton County, Kans.).	340	12-10-64	[7] 1-10-65	6-10-65	[12] 10.72	[4] [12] [13] [19] 14.5	
RI65-429	Graham-Michaelis Drilling Co. (Operator).	64	3	Cities Service Gas Co. (Farley B Field, Barber County, Kans.).	1,001	12-11-64	[3] 1-11-65	6-11-65	[12] 13.0	[4] [13] [18] 14.0	RI62-174.
.....do.....		63	4	Cities Service Gas Co. (Farley Pool, Barber County, Kans.).	1,830	12-11-64	[3] 1-11-65	6-11-65	[12] 13.0	[4] [13] [18] 14.0	RI62-174.
RI65-430	William Graham Oil Co. (Operator), et al., 211 North Broadway, Wichita, Kans., 67202.	4	4	Cities Service Gas Co. (Hugoton Field, Stanton County, Kans.).	200	12-10-64	[7] 1-10-65	6-10-65	[12] 10.72	[11] [13] [19] 14.5	
RI65-431	The Hefner Co., 720 NW 50th Street, Oklahoma City, Okla.	3	4	Cities Service Gas Co. (NE Florence Field, Grant County, Okla.) (Oklahoma "Other" Area).	2,000	12- 8-64	[3] 1- 8-65	6- 8-65	[12] [20] 13.0	[4] [13] [20] 14.0	RI62-19.

See footnotes at end of table.

[1] Does not consolidate for hearing or dispose of the several matters herein.

APPENDIX A—Continued

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective Date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI65-427	Oklahoma Natural Gas Co., Post Office Box 871, Tulsa, Okla.	3	3	Cities Service Gas Co. (Eureka Field, Grant County, Okla.) (Oklahoma "Other" Area).	$2,194	12- 9-64	[2] 1- 9-65	6- 9-65	[12 19] 13.0	[4 13 21] 14.0	G-20548.
RI65-433	Murphy Oil Co. of Oklahoma, Inc. (Operator), et al., 1003 South Boulder Avenue, Tulsa, Okla., 74119.	6	[22] 2	Cities Service Gas Co. (Rhodes Field, Barber County, Kans.).	5,380	12-11-64	[7] 1-11-65	6-11-65	[13] 12.0	[11 13] 14.0	
		6	3			12-11-64	[7] 1-11-65	6-11-65			
RI65-434	Westhoma Oil Co., 1620 Denver Club Building, Denver, Colo., 80202.	2	10	Panhandle Eastern Pipe Line Co. (Camrick Field, Texas County, Okla.) (R.R. District No. 10).	8,000	12-11-64	[2] 1-12-64	6-12-65	[20] 16.6	[4 17] 17.6	G-20279.

[1] Formerly Rodman-Noel Oil Corp.'s FPC Gas Rate Schedule No. 2 (name change only—filing submitted to reflect this change).
[2] The stated effective date is the effective date requested by Respondent.
[3] Periodic rate increase.
[4] Pressure base is 14.65 p.s.i.a.
[5] Initial rate (area initial ceiling).
[7] The stated effective date is the first day after expiration of the required statutory notice.
[8] Includes applicable tax reimbursement.
[9] Rate in effect subject to refund in Docket Nos. RI64-752 and RI64-797 as to acreage covered by Supplement Nos. 8 and 10, respectively.
[11] Volume not stated. Revenue based on 1963 volumes furnished by buyer.
[12] Redetermined rate increase.
[13] Pressure base is 15.025 p.s.i.a.
[14] Inclusive of 1.1 cents per Mcf tax reimbursement.
[16] Initial rate inclusive of 1.0 cent per Mcf tax reimbursement.
[19] Rate is subject to a downward B.t.u. adjustment.
[20] Inclusive of 0.25 cent per Mcf reimbursement by buyer for dehydration.
[21] Includes reimbursement by buyer for gathering, treating, dehydrating and compression service performed by Seller.
[22] Initial rate.
[23] Contract rate as determined by District Court of Shawnee County, Kans.
[26] Includes 0.75 cent per Mcf dehydration charge deducted by buyer.
[31] Includes 0.75 cent per Mcf dehydration charge deducted by buyer (Melka, Thomas and Smetana Units) and 1.5 cents per Mcf compression charge deducted by buyer (Melka and Thomas Units only).
[32] Amendment dated October 30, 1964, provides 14.0 cents per Mcf increased rate.
[33] Rates of 17.0 cents and 17.4 cents per Mcf suspended in Docket Nos. RI62-249 RI63-306 and RI64-639, respectively, but not made effective.

Socony Mobil Oil Co., Inc., requests an effective date of January 7, 1965, for its proposed rate increase. Stanton A. Hall, Paul V. Draughn, Sr., and Paul V. Draughn, Jr., request that their proposed rate increases be permitted to become effective as of November 24, 1964; Midhurst Oil Corp. (Operator), et al., requests an effective date of January 1, 1965; Graham-Michaelis Drilling Co. (Operator), et al., Graham-Michaelis Drilling Co. and William Graham Oil Co. (Operator), et al., request a retroactive effective date of June 23, 1961, for their proposed rate filings, and Murphy Oil Co. of Oklahoma, Inc. (Operator), et al., request that their proposed rate increases be permitted to become effective as of December 23, 1964. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit an earlier effective date for the aforementioned producers' rate filings and such requests are denied.

Northern Pump Co. (Northern Pump) proposes a periodic increase from an initial rate of 12.2384 cents to 13.2480 cents per Mcf for sales of gas to Coastal States Gas Producing Co. (Coastal) in Texas Railroad District No. 4. Coastal gathers the subject gas and resells it to South Texas Natural Gas Gathering Co., a wholly owned subsidiary of Coastal, at a permanently certificated initial rate of 15.0 cents per Mcf under Coastal's FPC Gas Rate Schedule No. 27. A periodic increase to 16.0 cents per Mcf was contractually due under Coastal's rate schedule on November 1, 1964, but Coastal has not, as yet, filed for such increase. The area increased rate ceiling is applicable to the sale of gas by Coastal after gathering. Accordingly, although Northern Pump's proposed rate is below the area ceiling, it is suspended because Northern Pump's sale is considered to be the sale of non-pipeline quality gas within the meaning of the policy statement, as amended.

With the exception of the increased rate filed by Northern Pump, referred to above, all of the producers' proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's Statement of General Policy No. 61-1, as amended (18 CFR Ch. I, Part 2, § 2.56).

[F.R. Doc. 65-315; Filed, Jan. 8, 1965; 8:45 a.m.]

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN PORTUGAL

Certain Designated Levels

DECEMBER 28, 1964.

On March 12, 1964 the United States Government, in furtherance of the objectives of, and under the terms of, the Long Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, concluded a bilateral agreement with the Government of Portugal concerning exports of cotton textiles from Portugal to the United States over a three-year period. Under this agreement the Government of Portugal has undertaken to limit its exports to the United States of certain cotton textiles and cotton textile products to specified annual amounts. The second year of the agreement will commence on January 1, 1965, and extend through December 31, 1965. The categories which are subject to specific export limitation under the agreement are as follows: 1, 2, 3, 4, 5, 6, 9, 19, 24, 25, 26, 28, 41, 42, 43, 45, 46, 47, 50, 51, 52, 53, 55, 60, parts of 62, parts of 63, and parts of 64.

There is published below a letter of December 28, 1964, from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs directing that the amounts of cotton textiles and cotton textile products in all the aforementioned categories except for certain parts of Category 62 and 63, produced or manufactured in Portugal which may be entered, or withdrawn from warehouse, for consumption in the United States from January 1, 1965, through December 31, 1965, be limited to certain designated levels. The levels set forth in this letter have been adjusted to take account of deductions in category 46 as provided for in subsequent arrangements between the United States and Portugal.

THOMAS JEFF DAVIS,
Acting Chairman, Interagency Textile Administrative Committee and Acting Deputy to the Secretary of Commerce for Textile Programs.

PRESIDENT'S CABINET TEXTILE ADVISORY COMMITTEE

DECEMBER 28, 1964.

COMMISSIONER OF CUSTOMS
DEPARTMENT OF THE TREASURY
Washington, D.C.

DEAR MR. COMMISSIONER: Under the terms of the Long Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, and in accordance with the procedures outlined in Executive Order 11052 of September 28, 1962, you are directed to prohibit, effective January 1, 1965, and for the twelve-month period extending through December 31, 1965, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1, 2, 3, 4, 5, 6, 9, 19, 24, 25, 26, 28, 41, 42, 43, 45, 46, 47, 50, 51, 52, 53, 55, 60, parts of 62 and parts of 64, produced or manufactured in Portugal, in excess of the following levels of restraint:

Category	*12-month level of restraint*
1	9,836,500 pounds.
2	772,500 pounds.
3	2,266,000 pounds.
4	154,500 pounds.
5-6	7,725,000 square yards.
6	4,326,000 square yards.[1]
9	6,695,000 square yards.
19	824,000 square yards.
24-25	4,532,000 square yards.
25	1,648,000 square yards.[1]
26	2,060,000 square yards.
28	309,000 pieces.

[1] This level is a sub-level within the combined level provided for the two categories immediately preceding.

Category	12-month level of restraint
41–42–43	72,100 dozen.
45	20,600 dozen.
46	22,993 dozen.[1]
47	30,900 dozen.
50	20,600 dozen.
51	20,600 dozen.
52	30,900 dozen.
53—parts of 62 (T.S.U.S.A. Nos. 382.0306; 382.0307; 382.0635; and 382.0640).	30,900 dozen.
55	20,600 dozen.
60	15,450 dozen.
Parts of 62 (T.S.U.S.A. Nos. 380.0309; 380.0645; 382.0312; and 382.0665).	51,500 pounds.
Parts of 64 (T.S.U.S.A. No. 363.6025).	103,000 pounds.

[1] This level has been adjusted to offset earlier releases from embargo pursuant to arrangements between the Governments of the United States and Portugal.

In carrying out this directive, entries of cotton textiles and cotton textile products in Categories 1, 2, 3, 4, 5, 6, 9, 19, 24, 25, 26, 28, 41, 42, 43, 45, 46, 47, 50, 51, 52, 53, parts of 62 (T.S.U.S.A. Nos. 382.0306; 382.0307; 382.0635; and 382.0640), 55, 60, parts of 62 (T.S.U.S.A. 380.0309; 380.0645; 382.0312; and 382.0665), and parts of 64 (T.S.U.S.A. 363.6025), produced or manufactured in Portugal, which have been exported to the United States from Portugal prior to January 1, 1965, shall, to the extent of any unfilled balances be charged against the levels of restraint established for such goods during the period January 1, 1964 through December 31, 1964. In the event that the level of restraint established for the period January 1, 1964 through December 31, 1964, has been exhausted by previous entries, such goods shall be subject to the directives set forth in this letter.

In carrying out this directive, entries of two or three piece ladies suits produced or manufactured in Portugal from woven or knit cotton fabrics should not be charged against any of the levels of restraint designated herein, including the level of restraint for blouses in Category 52.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on October 1, 1963 (28 F.R. 10551), and amendments thereto on March 24, 1964 (29 F.R. 3679).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Portugal and with respect to imports of cotton textiles and cotton textile products from Portugal have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of section 4 of the Administrative Procedure Act. This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

C. D. MARTIN, Jr.,
Acting Secretary of Commerce, and Chairman, President's Cabinet Textile Advisory Committee.

[F.R. Doc. 65–253; Filed, Jan. 8, 1965; 8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 54–236]

AMERICAN ELECTRIC POWER CO., INC.

Order Approving Plan for Elimination of Common Stock Scrip

DECEMBER 31, 1964.

American Electric Power Company, Inc. ("American"), New York, N.Y., a registered holding company, has filed a plan and amendments thereto with this Commission pursuant to section 11(e) of the Public Utility Holding Company Act of 1935 ("Act"), providing for the elimination of American's outstanding common stock scrip.

During the years 1914–1934, American (then American Gas and Electric Company) issued, in connection with the payment of stock dividends, four different kinds of common stock scrip entitling the holders to fractional shares of American's common stock. After giving effect to several splits of American's common stock (the most recent of which was authorized by the Commission on August 31, 1962 (Holding Company Act Release No. 14692)), the scrip still outstanding at September 30, 1964, entitled the 1,076 registered holders thereof to an aggregate of approximately 1,590 full shares of American's common stock. American states that such 1,590 full shares are held by Morgan Guaranty Trust Company of New York, as Scrip Agent and Depositary, for issuance upon surrender of scrip; that such shares do not have voting power and are not entitled to dividends; and that the outstanding scrip represents an inequity in voting power and an unnecessary complexity in the capital structure of American which the proposed plan is designed to eliminate.

The plan provides the following:

(1) A letter would be sent to all registered scrip holders under which each would be offered the number of full shares represented by the scrip surrendered plus cash for any fractional interest or, alternatively, cash for both full shares and fractional interests. In either case, the amount of cash would be computed on the basis of the closing market price on the New York Stock Exchange of the underlying stock on the date such scrip is surrendered.

(2) A "redemption date" would be fixed which would be some time after twelve months from the date of the letter referred to in (1) above. After the redemption date, (a) all full shares of American common stock remaining unclaimed by scrip holders will be canceled and restored to the status of authorized but unissued shares, and (b) an amount of cash equal to the closing price on the New York Stock Exchange of the underlying shares on the redemption date will be placed in a segregated account. For a period of five years thereafter, holders of scrip will be entitled only to receive their aliquot portion of such cash upon surrender of their scrip. At the expiration of such five-year period, all rights of the holders of scrip will terminate and the remaining cash, if any, will revert to American.

The plan makes provision for interim notices to be given during such five-year period by American to holders of unsurrendered scrip advising them of their rights under the plan; and further provides that the carrying out of the plan be subject to its approval and enforcement by a court of competent jurisdiction as fair and equitable and as appropriate to effectuate the provisions of section 11 of the Act.

No State commission and no Federal commission, other than this Commission, has jurisdiction over the transactions proposed in the plan.

Due notice and opportunity to be heard having been given (Holding Company Act Release No. 15153) and no hearing having been requested of or ordered by the Commission;

American having, pursuant to section 11(e) of the Act, requested that the Commission apply to an appropriate United States District Court to enforce and carry out the terms and provisions of the plan; and

The Commission having considered the record and having found such plan, as amended, necessary to effectuate the provisions of section 11(b)(2) of the Act, and fair and equitable to the persons affected thereby and that the other applicable provisions of the Act are satisfied:

It is ordered, Pursuant to section 11(e) of the Act, that the plan filed by American be, and hereby is, approved, subject to the terms and conditions contained in Rule 24 promulgated under the Act and to the following additional terms and conditions:

(1) This order shall not be operative to authorize any transaction proposed in the plan until an appropriate United States District Court shall, upon application thereto, enter an order approving and enforcing the plan.

(2) Jurisdiction is specifically reserved with respect to the entering of such further orders and the taking of such further action as the Commission may deem necessary or appropriate to effectuate the requirements of section 11(b) of the Act.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 65–250; Filed, Jan. 8, 1965; 8:45 a.m.]

[File No. 812–1749]

CHRISTIANA SECURITIES CO.

Notice of Filing of Application for Order Exempting Transactions Between Affiliated Persons

JANUARY 5, 1965.

Notice is hereby given that Christiana Securities Co. ("Christiana"), DuPont

Building, Wilmington, Delaware, registered under the Investment Company Act of 1940 ("Act") as a closed-end, nondiversified investment company, has filed an application pursuant to section 17(b) of the Act for an order exempting from section 17(a) the transaction wherein Christiana will extend to its shareholders, some of whom may be affiliated persons of Christiana, an offer to exchange Christiana common stock for common stock of General Motors Corporation ("GM"). Wilmington Trust Company is the only stockholder known to Christiana to hold 5 percent or more of the outstanding common stock of Christiana. Other affiliated persons include E. I. DuPont de Nemours and Company ("DuPont"), The News-Journal Company, Longwood Foundation, and the trustees, officers, directors and employees of the foregoing and of Christiana. Section 17(a) makes it unlawful for an affiliated person of a registered investment company to sell to or buy from such company any security or property, with certain exceptions, unless the Commission finds upon application that the terms of the proposed transaction are reasonable and fair and do not involve overreaching and that the proposed transaction is consistent with the policy of the company and the Act. All interested persons are referred to the application on file with the Commission for a complete statement of Christiana's representations which are summarized below.

Christiana owns 8,900,363 shares of GM common stock. Pursuant to the order of divestiture contained in the final judgment of the United States District Court for the Northern District of Illinois in United States v. E. I. DuPont de Nemours and Company et al., Christiana must divest all GM stock before May 1, 1965. Christiana will extend to the owners of its common stock as of January 4, 1965 an offer to exchange up to 8,400,000 shares of GM for shares of its common stock in the ratio of 3¼ shares of GM common stock for one share of Christiana common stock. The market value of the shares of GM stock offered will be approximately equal to the net asset value of one Christiana share. Christiana also proposes to sell approximately 500,000 shares of GM stock to raise funds to pay Federal income taxes and expenses incident to sale of all the GM shares. Any of such 8,400,000 shares of GM stock not so exchanged will be distributed pro rata to holders of common stock of Christiana before May 1, 1965 except that some GM shares may be sold to pay taxes or expenses.

All tenders of shares of Christiana stock under the exchange offer will be irrevocable. The exchange offer will expire on February 8, 1965. If more than 2,584,615 shares of Christiana stock are tendered for exchange, the 8,400,000 shares of GM stock will be allotted to Christiana stockholders pro rata according to the number of shares of Christiana stock tendered by each stockholder.

Christiana has been advised by counsel that for Federal income tax purposes, gain realized by a Christiana stockholder who exchanges shares of Christiana stock for GM stock (other than a corporation entitled to a dividend received deduction) will be treated as gain from a sale or exchange of Christiana's stock and will not be treated as dividend income. Generally, a stockholder will realize gain or loss on the exchange measured by the difference between the market value of the GM stock received and the stockholder's tax basis for the shares of Christiana's stock exchanged.

Christiana and GM have entered into a registration, expense and indemnity agreement under which GM has agreed to take all steps necessary to register under the Securities Act of 1933 the shares of GM common stock offered pursuant to the exchange offer and to qualify such shares under the securities or blue sky laws of such states as Christiana shall request, and Christiana has agreed to reimburse GM for costs and expenses and to indemnify GM, its directors and officers against certain liabilities which may arise out of the exchange offer. Similarly, Christiana and DuPont have entered into an expense and indemnity agreement pursuant to which Christiana will pay or reimburse DuPont for its costs or expenses incurred in connection with the exchange offer and to indemnify DuPont, its directors and officers against certain liabilities which may arise out of the exchange offer. Total expenses to be incurred by Christiana are not expected to exceed $850,000, including stock transfer taxes.

Notice is further given, that any interested person may, not later than January 25, 1965 at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after such date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

For the Commission (pursuant to delegated authority).

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

[F.R. Doc. 65-251; Filed, Jan. 8, 1965; 8:45 a.m.]

TARIFF COMMISSION

[AA1921-44]

BICYCLES FROM HUNGARY

Notice of Investigation

Having received advice from the Treasury Department on December 31, 1964, that bicycles from Hungary, manufactured by Pannonia, Budapest, Hungary, are being, or are likely to be, sold in the United States at less than fair value, the United States Tariff Commission has instituted an investigation under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

No hearing in connection with this investigation has been ordered. If a hearing is ordered, due notice of the time and place thereof will be given. In this connection, interested parties are referred to § 208.4 of the Commission's rules of practice and procedure (19 CFR 208.4) which provides that interested parties may, within 15 days after the date of publication of this notice in the FEDERAL REGISTER, request that a public hearing be held, stating reasons for the request.

Interested parties are also referred to § 208.5 of the Commission's rules regarding the submission of written statements of pertinent information. Written statements must be filed not later than February 8, 1965.

Issued: January 5, 1965.

By order of the Commission.

[SEAL] DONN N. BENT, *Secretary.*

[F.R. Doc. 65-252; Filed, Jan. 8, 1965; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 1106]

MOTOR CARRIER TRANSFER PROCEEDINGS

JANUARY 6, 1965.

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 67425. By order of December 21, 1964, the Transfer Board approved the transfer to Southwest Coach Lines, Incorporated, Post Office Box 826, Bristol, Va., of the operating rights in Certificate No. MC 124836 Sub 2, issued January 9, 1964, to Ralph Ownbey, doing business as Virginia & Kentucky Coach Lines, Post Office Box 826, Bristol, Va., authorizing the transportation, over regular routes, of: Passengers and their baggage, between Pennington Gap, Va., and Harlan, Ky., serving all intermediate points on U.S. Highway 421.

No. MC–FC 67443. By order of December 22, 1964, the Transfer Board has approved the transfer to Fuller Bus Line, Inc., Bristol, Va., of the operating rights in Certificate No. MC 108963, issued March 22, 1956, to G. A. Fuller and Robert M. Parrott, a partnership, doing business as Fuller Bus Line, Bristol, Va., authorizing the transportation, over regular routes, of: Passengers and their baggage, and express, newspapers, and mail in the same vehicle, between specified points in Virginia, and Tennessee, serving certain intermediate points, on the highways utilized. Jno. C. Goddin, 10 South 10th Street, Richmond, Va., attorney for applicants.

No. MC–FC 67444. By order of December 22, 1964, the Transfer Board approved the transfer to Gordon D. Nelson, doing business as Nelson Trucking, Rice Lake, Wis., of the Certificate in No. MC 29834, issued July 24, 1964, to Dewey Tangwall, doing business as Tangwall Trucking, Sarona, Wis., authorizing the transportation of: Livestock, from points in the Towns of Cedar Lake, Doyle, Oak Grove, Bear Lake, Stanfold, Stanley, Summer, and Rice Lake, Barron County, Wis., to South St. Paul and Newport, Minn.; and general commodities, excluding household goods, commodities in bulk and other specified commodities, from Minneapolis, St. Paul, South St. Paul, and Newport, Minn., to the above-specified Wisconsin points. A. R. Fowler, 2288 University Avenue, St. Paul, Minn., 55114, representative for applicants.

No. MC–FC 67446. By order of December 22, 1964, the Transfer Board approved the transfer to Glenn-Dor Products Corp., South Fallsburg, N.Y., of the Certificate in No. MC 56967 Sub 1, issued April 6, 1955, to Goodman Refrigerated Trucking Co., Inc., New York, N.Y., authorizing the transportation of: Live poultry, over regular routes, from Watkins Glen, N.Y., to New York, N.Y., serving specified intermediate and off-route points; empty egg and poultry crates, from New York, N.Y., to Watkins Glen, N.Y., serving specified intermediate and off-route points; groceries, from New York, N.Y., to Elmira, N.Y.; honey, in seasonal operations, from Watkins Glen, N.Y., to New York, N.Y., serving Odessa, N.Y., and Dundee, N.Y. for pick-up only; grapes, in seasonal operations, from Hector, N.Y., to New York, N.Y., serving specified intermediate points; butter, cheese and eggs, between New York, N.Y., and points in New York and New Jersey within 25 miles of New York, N.Y., on the one hand, and, on the other, points in New York; and dressed poultry, from New York, N.Y., and points within 25 miles thereof, to points in New York. Alvin Altman, 1776 Broadway, New York 19, N.Y., attorney for applicants.

No. MC–FC 67450. By order of December 22, 1964, the Transfer Board approved the transfer to J. C. Bowman Trucking Company, a corporation, Natchez, Mississippi, of the operating rights in Certificate No. MC 50242 Sub 1, issued March 16, 1961, to John C. Bowman, doing business as J. C. Bowman Trucking Co., Natchez, Mississippi, authorizing the transportation, over irregular routes, of structural steel, tanks, heavy machinery, and oilfield equipment, materials, and supplies, in truck loads, between points in Louisiana and Mississippi, trees, between points in Mississippi, on the one hand, and, on the other, New Orleans, La., and points in Louisiana within 10 miles of New Orleans, and boats, between points in Louisiana and Mississippi. Joseph S. Zuccaro, 133 South Commerce Street, Natchez, Miss., attorney for applicants.

No. MC–FC 67452. By order of December 22, 1964, the Transfer Board approved the transfer to Joe R. Brasier, doing business as Joe R. Brasier Trucking Contractor, Tulsa, Oklahoma, of the operating rights in Permit No. MC 102300, issued September 15, 1941, to R. C. Brasier, Claremore, Oklahoma, authorizing the transportation, over irregular routes, of such materials, as are used in or are incidental to the construction, operation, and maintenance of telephone lines, between points in Oklahoma. Wilburn L. Williamson, 450 American National Building, Oklahoma City, Okla., attorney for applicants.

[SEAL] BERTHA F. ARMES,
Acting Secretary.

[F.R. Doc. 65–261; Filed, Jan. 8, 1965; 8:46 a.m.]

CUMULATIVE LIST OF PARTS AFFECTED—JANUARY

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during January.

3 CFR

EXECUTIVE ORDERS:
5447 (revoked by PLO 3519) ... 7
11191 ... 29

5 CFR

213 ... 5, 31, 81, 205, 251

7 CFR

16 ... 251
52 ... 205
401 ... 81
730 ... 206
814 ... 207
815 ... 31, 209
868 ... 251
878 ... 253
900 ... 254
905 ... 254–256
907 ... 5, 257
910 ... 5
912 ... 6
944 ... 257
970 ... 257
1044 ... 212
1601 ... 258
PROPOSED RULES:
51 ... 155
729 ... 224
907 ... 273
910 ... 156
1004 ... 91
1072 ... 38
1076 ... 38
1099 ... 273
1104 ... 53

9 CFR

40 ... 258

10 CFR

30 ... 129

12 CFR

13 ... 130
545 ... 31, 130, 213, 214
570 ... 15
PROPOSED RULES:
11 ... 222

13 CFR

112 ... 298

14 CFR

23 ... 258
39 ... 81, 82
71 ... 82–84, 200–204
73 ... 84, 205
95 ... 197
97 ... 189
121 ... 130, 258
1250 ... 301

14 CFR—Continued

PROPOSED RULES:
39 ... 93
61 ... 94
71 ... 94–98, 224–234
294 ... 59
295 ... 92
378 ... 281

15 CFR

8 ... 305
204 ... 215

16 CFR

406 ... 32

17 CFR

PROPOSED RULES:
249 ... 157

18 CFR

302 ... 311

20 CFR

237 ... 270

21 CFR

15 ... 6, 131
51 ... 131
120 ... 218
121 ... 6, 32, 85
147 ... 270
191 ... 32

22 CFR

141 ... 314
209 ... 317

24 CFR

220 ... 218
221 ... 218
233 ... 219
1500 ... 132

25 CFR

PROPOSED RULES:
41 ... 222
42 ... 223

26 CFR

1 ... 85
301 ... 33
PROPOSED RULES:
1 ... 37, 91, 143

28 CFR

2 ... 219

29 CFR

610 ... 219
612 ... 33, 133
614 ... 220

31 CFR

PROPOSED RULES:
270 ... 16

32 CFR

300 ... 133

32A CFR

OEP (Ch. I):
OEP Reg. 5 ... 321

33 CFR

19 ... 88
203 ... 220
204 ... 220
207 ... 220

38 CFR

Ch. I ... 221
3 ... 133
17 ... 221

39 CFR

22 ... 88
27 ... 88
PROPOSED RULES:
22 ... 38
111 ... 92

41 CFR

8–1 ... 34
18–54 ... 133

43 CFR

1810 ... 34
PUBLIC LAND ORDERS:
1044 (revoked in part by PLO 3519) ... 7
1621 (see PLO 3521) ... 271
3518 ... 7
3519 ... 7
3520 ... 271
3521 ... 271

45 CFR

80 ... 35
141 ... 7
143 ... 134
170 ... 35
401 ... 140
1010 ... 325

46 CFR

154 ... 89
506 ... 35
PROPOSED RULES:
527 ... 285

47 CFR

73 ... 12
PROPOSED RULES:
21 ... 155
73 ... 98

49 CFR

121 ... 140
PROPOSED RULES:
170 ... 16

50 CFR

33 ... 272

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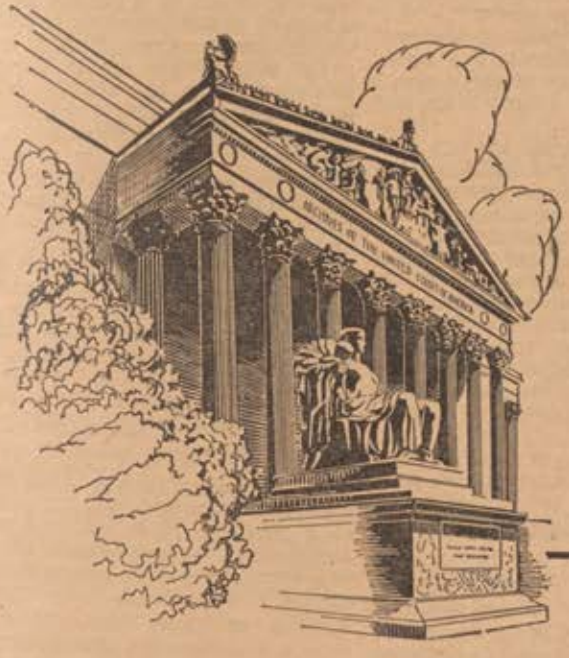
PART II

Effectuation of Title VI of the Civil Rights Act of 1964

Nondiscrimination in Federally-Assisted Programs of—



Department of State
Department of Commerce
Agency for International Development
National Aeronautics and Space Administration
Office of Economic Opportunity
Office of Emergency Planning
Small Business Administration
Tennessee Valley Authority

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration

PART 112—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF SBA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Chapter I of Title 13 CFR is hereby amended by adding the following new Part 112:

Sec.

AUTHORITY: The provisions of this Part 112 are issued under section 602, 78 Stat. 252.

§ 112.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any financial assistance activities of the Small Business Administration to which the Act applies.

§ 112.2 Application of this part.

(a) *Financial assistance included.* Except as hereinafter noted, this part applies to business activities or other activities receiving financial assistance of the following description:

(1) Loans to small business concerns under Title IV of the Economic Opportunity Act of 1964;

(2) Loans to State development companies and local development companies, under Title V of the Small Business Investment Act of 1958, for the benefit of identifiable small business concerns;

(3) Loans to, and purchases of debentures from, small business investment companies under section 302(a) and section 303(b) of the Small Business Investment Act of 1958;

(4) Loans to small business concerns, under section 7(a) of the Small Business Act, which qualify for the 4 percent interest rate prescribed in § 120.2(b)(2) of this chapter;

(5) Loans under section 7(b)(1) of the Small Business Act to individuals or organizations, whether or not operated for profit, which provide medical care or education or which conduct other activities of special significance to health, safety or welfare; and

(6) Any other financial assistance program which, though not specifically referred to herein, is covered by Title VI of the Civil Rights Act of 1964. Other programs under statutes now in force or hereafter enacted may be covered by this part after notice is published in the FEDERAL REGISTER.

(b) *Payments and insurance contracts.* This part applies to monies paid after its effective date under any of the assistance described in paragraph (a) of this section, even where paid pursuant to an application approved prior to such date. It does not apply, however, to monies paid prior to such date, and in no case does it apply to financial assistance extended by way of insurance or guarantee contracts.

(c) *"Applicant" and "recipient" defined.* As used in this part the terms "applicant" and "recipient" mean, respectively, one who applies for and one who receives any of the financial assistance described in paragraph (a) of this section.

§ 112.3 Discrimination prohibited.

(a) *General.* To the extent that this part applies, no person in the United States shall, on the ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination by any business or other activity.

(b) *Specific discriminatory actions prohibited.* (1) To the extent that this part applies, a business or other activity may not, directly or through contractual or other arrangements, on ground of race, color or national origin:

(i) Deny an individual any services, financial aid or other benefit provided by the business or other activity;

(ii) Provide any service, financial aid or other benefit to an individual which is different or is provided in a different manner, from that provided to others by the business or other activity;

(iii) Subject an individual to segregation or separate treatment in any manner related to his receipt of any service, financial aid or other benefit from the business or other activity;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid or other benefit from the business or other activity;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid or other benefit provided by the business or other activity.

(2) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

§ 112.4 Discrimination in employment.

Small business concerns and development companies which apply for or receive any financial assistance of the kind described in subparagraphs (1), (2), and (4) of § 112.2(a), including concerns which are identifiable beneficiaries of loans made under subparagraph (2), may not discriminate on the ground of race, color or national origin in their employment practices. Such assistance is deemed to have as a primary objective the providing of employment.

§ 112.5 Discrimination in providing financial assistance.

Development companies and small business investment companies which apply for or receive any of the financial assistance described in § 112.2(a) may not discriminate, on the ground of race, color or national origin, in providing financial assistance to small business concerns.

§ 112.6 Discrimination in accommodations or services.

Physicians, hospitals, schools, libraries and other individuals or organizations which apply for or receive financial assistance of the kind described in subparagraph (5) of § 112.2(a) may not discriminate in the treatment, accommodations or services they provide to their patients, students, visitors or others.

§ 112.7 Illustrative applications.

(a) *Employment.* The discrimination prohibited by § 112.4 includes but is not limited to any action (taken directly or through contractual or other arrangements) which subjects an individual to discrimination on the ground of race, color or national origin in any employment practice, including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities.

(b) *Financial assistance.* The discrimination prohibited by § 112.5 includes but is not limited to the failure or refusal, because of the race, color, or national origin of a person, to extend a loan or equity financing to him or to any business concern of which he is an owner or employee; or, in the case of financing which has actually been extended, the failure or refusal, because of the race, color, or national origin of the borrower or of an owner or employee of the borrower, to accord the borrower fair treatment and the customary courtesies regarding such matters as default, grace periods and the like.

(c) *Accommodations or services.* The discrimination prohibited by § 112.6 includes but is not limited to the failure or refusal, because of the race, color, or national origin of a person, to accept him on a nonsegregated basis as a patient, student, visitor, guest, member, customer, passenger or patron.

§ 112.8 Assurances required.

An application for any of the financial assistance described in § 112.2(a) shall, as a condition to its approval and the extension of such assistance, contain or be accompanied by an assurance that the recipient will comply with this part. Such an assurance shall contain provisions authorizing the acceleration of the maturity of the recipient's financial ob-

ligations to the SBA in the event of a failure to comply, and provisions which give the United States a right to seek judicial enforcement of the terms of the assurance. SBA shall specify the form of the foregoing assurance for each program, and the extent to which like assurances will be required of contractors and subcontractors, transferees, successors in interest, and other participants in the program.

§ 112.9 Compliance information.

(a) *Cooperation and assistance.* SBA shall to the fullest extent practicable seek the cooperation of applicants and recipients in obtaining compliance with this part and shall provide assistance and guidance to applicants and recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each applicant or recipient shall keep such records and submit to SBA timely, complete and accurate compliance reports at such times, and in such form and containing such information, as SBA may determine to be necessary to enable SBA to ascertain whether the applicant or recipient has complied or is complying with this part. In the case of a small business concern which receives financial assistance from a development company or from a small business investment company, such concern shall submit to the company such information as may be necessary to enable the company to meet its reporting requirements under this part.

(c) *Access to sources of information.* Each applicant or recipient shall permit access by SBA during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of an applicant or recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the applicant or recipient shall so certify in its report and shall set forth what efforts it has made to obtain this information.

(d) Each applicant or recipient shall make available to persons entitled under the Act and under this part to protection against discrimination by the applicant or recipient such information as SBA may find necessary to apprise them of their rights to such protection.

§ 112.10 Conduct of investigations.

(a) *Periodic compliance reviews.* SBA shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may, by himself or by a representative, file with SBA a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by SBA.

(c) *Investigations.* SBA will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the applicant or recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the applicant or recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, SBA will so inform the applicant or recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 112.11.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, SBA will so inform the applicant or recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No applicant or recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or by this part or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 112.11 Procedure for effecting compliance.

(a) *General.* (1) If there appears to be a failure or threatened failure to comply with this part and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by suspending, terminating, or refusing any financial assistance approved but not yet disbursed to an applicant or, in the case of a loan which has been partially disbursed, by refusing to make further disbursements. In addition, compliance may be effected by any other means authorized by law.

(2) Such other means may include but are not limited to (i) legal action by SBA to enforce its right, embodied in the assurances described in § 112.8, to accelerate the maturity of the recipient's obligation; (ii) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, including other titles of the Act; and (iii) any applicable proceedings under State or local law.

(b) *Noncompliance with § 112.8.* If an applicant fails or refuses to furnish an assurance required under § 112.8 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. SBA shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that SBA shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Conditions precedent.* No order suspending, terminating, or refusing financial assistance shall become effective until (1) SBA has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means; (2) there has been an express finding on the record after an opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part; (3) the action has been approved by the Administrator of SBA pursuant to § 112.13; and (4) the expiration of 30 days after SBA has filed with the committee of the House and the committee of the Senate having legislative jurisdiction of the form of financial assistance involved, a full written report of the circumstances and the grounds for such action.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) SBA has determined that compliance cannot be secured by voluntary means; (2) the action has been approved by the Administrator; (3) the applicant or recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and (4) the expiration of at least 10 days from the mailing of such notice to the applicant or recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the applicant or recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 112.12 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 112.11, reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of SBA that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a

hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing and as consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearing shall be held at the offices of SBA in Washington, D.C. at a time fixed by SBA unless SBA determines that the convenience of the applicant or recipient or of SBA requires that another place be selected. Hearings shall be held before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and SBA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decisions, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, request for findings, and other related matters. Both SBA and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance or threatened noncompliance with this part, with respect to two or more forms of financial assistance to which this part applies, or noncompliance with this part and the regulations of one or more other Federal agencies issued under Title VI of the Act, the Administrator may, by agreement with such other agencies, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules and procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 112.13.

§ 112.13 Decisions and notices.

(a) *Decision by a hearing examiner.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Administrator for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and the complainant. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the Administrator his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Administrator may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the Administrator shall review the initial decision and issue his own decision thereon including the reasons therefor. The decision of the Administrator shall be mailed promptly to the applicant or recipient and the complainant, if any. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the Administrator.

(b) *Decisions on record or review by the Administrator.* Whenever a record is certified to the Administrator for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Secretary conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the Administrator shall be given in writing to the applicant or recipient and the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 112.12 a decision shall be made by the Administrator on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or the Administrator shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Administrator that it will fully comply with this part.

§ 112.14 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 112.15 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by SBA which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin and which authorize the suspension or termination of or refusal to grant to or to continue financial assistance to any applicant for or recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925 and 11114 and regulations issued thereunder, (2) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions, insofar as such order, regulations, or instructions prohibit discriminaton on the ground of race, color, or national origin in any situation to which this part is inapplicable or prohibit discrimination on any other ground.

(b) *Forms and instructions.* SBA shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part.

(c) *Supervision and coordination.* The Administrator may from time to time assign to officials of SBA or to officials of other agencies of the Government with the consent of such agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 112.13), including the achievement of effective coordination and maximum uniformity within SBA and within the Executive Branch of the Government in the application of Title VI and this part to similar situations.

Effective date. This part shall become effective on the 30th day following the date of its publication in the FEDERAL REGISTER.

Dated: December 29, 1964.

EUGENE P. FOLEY,
Administrator,
Small Business Administration.

Approved: January 7, 1965.

LYNDON B. JOHNSON.

[F.R. Doc. 65-301; Filed, Jan. 8, 1965; 8:50 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter V—National Aeronautics and Space Administration

PART 1250—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF NASA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

New Part 1250 is added to Chapter V of Title 14, as follows:

Sec.
1250.100 Purpose.
1250.101 Applicability.
1250.102 Definitions.
1250.103 Discrimination prohibited.
1250.103–1 General.
1250.103–2 Specific discriminatory actions.
1250.103–3 Employment practices.
1250.103–4 Illustrations of discriminatory acts prohibited.
1250.103–5 Special programs.
1250.103–6 Medical emergencies.
1250.104 Assurances.
1250.105 Compliance information.
1250.106 Conduct of investigations.
1250.107 Procedure for effecting compliance.
1250.108 Hearings.
1250.109 Decisions and notices.
1250.110 Judicial review.
1250.111 Effect on other regulations: forms and instructions.
1250.112 Relationship with other officials.

AUTHORITY: The provisions of this Part 1250 issued under sec. 602 of the Civil Rights Act of 1964, P.L. 88–352, 78 Stat. 252, 42 U.S.C. 2000d–1; and the laws listed in Appendix A to this Part 1250.

§ 1250.100 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as "the Act") to the end that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the National Aeronautics and Space Administration, hereinafter referred to as NASA.

§ 1250.101 Applicability.

(a) *Covered programs.* (1) This part applies to any program for which Federal financial assistance is authorized under a law administered by NASA, including the Federally-assisted programs and activities listed in Appendix A to this part. The fact that a program or activity is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereafter enacted may be added to Appendix A by notice published in the FEDERAL REGISTER.

(2) This part applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved prior to such effective date.

(b) *Excluded activities.* This part does not apply to (1) any Federal financial assistance by way of insurance or guaranty contracts, (2) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, except as provided in paragraph (a) of this section, (3) any assistance to any individual who is the ultimate beneficiary under any such program, (4) any employment practice, under any such program, of any employer, employment agency, or labor organization, except as provided in § 1250.103–3, (5) contracts not covered in the programs listed in Appendix A, or (6) advances, V-loans, and other financial assistance made incident to NASA procurements not covered in the programs listed in Appendix A.

§ 1250.102 Definitions.

As used in this part—

(a) "Administrator" means the Administrator of the NASA.

(b) "Applicant" means one who submits an application, request, proposal, or plan required to be approved by a responsible NASA official, or by a primary recipient, as a condition to eligibility for Federal financial assistance; and the term "application" means such an application, request, proposal or plan.

(c) "Facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(d) "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(e) "NASA" means the National Aeronautics and Space Administration.

(f) "Primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(g) "Principal Compliance Officer" means the Director of Headquarters Operations in the Office of Administration, NASA Headquarters, or any successor officer to whom the Administrator shall delegate authority to perform the functions assigned to the Principal Compliance Officer by this part.

(h) "Program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training) whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals, or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(i) "Recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(j) "Responsible NASA official" means:

(1) The heads of Offices at NASA Headquarters responsible for making grants, and contracts of the kind listed in Appendix A; and (2) each Director of a field installation which makes or administers contracts of the kind listed in Appendix A, or any officer to whom he has delegated authority to act within the areas of responsibility assigned to him under this part.

(k) "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

§ 1250.103 Discrimination prohibited.

§ 1250.103–1 General.

No person in the United States shall, on the ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

§ 1250.103–2 Specific discriminatory acts prohibited.

(a) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(1) Deny an individual any service, financial aid, or other benefit provided under the program;

(2) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(5) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in § 1250.103–3).

(b) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(c) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(d) A recipient may not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly.

(e) The enumeration of specific forms of prohibited discrimination in this section does not limit the generality of the prohibition in § 1250.103–1.

§ 1250.103–3 Employment practices.

(a) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient may not directly or through contractual or other arrangements subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (1) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, or (2) to provide work experience which contributes to the education or training of such individuals.

(b) Employment opportunities provided in connection with any of the programs listed in Appendix A, which opportunities are limited, or for which preference is given, to students, fellows, or other persons in training for the same or related employments, are programs of the kind described in paragraph (a) (1) and (2) of this section.

(c) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Executive Order 11114, dated June 22, 1963 (28 F.R. 6485).

§ 1250.103–4 Illustrations of discriminatory acts prohibited.

(a) In training grant programs discrimination is forbidden in the selection or eligibility of individuals to be trained and in their treatment by the grantee during their training. In any case where selection is made from a predetermined group, such as the students in an institution, the group must have been selected without discrimination.

(b) In a research or training grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited and the prohibition extends to the entire university unless it satisfies the responsible NASA official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

(c) Discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

(d) In a research or training grant, discrimination is prohibited with respect to the availability of any educational activity and any provision of medical or other services and any financial aid to individuals incident to the grant.

(e) Upon transfers of real or personal property for research or educational uses, discrimination is forbidden to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

§ 1250.103–5 Special programs.

An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

§ 1250.103–6 Medical emergencies.

Notwithstanding the provisions of §§ 1250.103–1250.103–5, a recipient of Federal financial assistance shall not be deemed to have failed to comply with § 1250.103–1, if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with § 1250.103–1.

§ 1250.104 Assurances.

(a) *General requirement.* Every application for Federal financial assistance to carry out a program to which this part applies, and every application for Federal financial assistance to provide a facility, shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain, be accompanied by, or identify and make reference to, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. If the assurance is not made a part of the application, the application shall identify the assurance which is applicable to the application. One assurance shall suffice for all applications of an applicant if the assurance complies with the conditions made applicable by this part to each such application for Federal financial assistance. Every assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(b) *Duration of assurances.* The period of time to be covered by the assurances required under this § 1250.104 shall be as follows:

(1) *Real property.* In the case of an application for Federal financial assistance for providing real property or structures thereon, the assurance shall obligate the recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) *Personal property.* In the case of an application for Federal financial assistance for providing personal property, the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property.

(3) *Other kinds of Federal financial assistance.* In the case of an application for any other kind of Federal financial assistance, the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application.

(c) *Assurances for research, training, or educational programs.* (1) In the case of application by an institution of higher education or any other organization for Federal financial assistance for a program or activity which involves participation by students, fellows or trainees, including but not limited to assistance for research, training, or the provision of facilities, the assurance required by this § 1250.104 shall extend to admission practices and to all other practices relating to the treatment of students or other participants.

(2) The assurances from such an applicant shall be applicable to the entire organization of the applicant unless the applicant establishes, to the satisfaction

of the officer administering the program or activity involved, that its practices in designated parts or programs of the organization of the applicant will in no way affect its practices in the program of the applicant for which Federal financial assistance is sought, or the beneficiaries of or participants in such program.

(d) *Assurances for construction of facilities.* (1) In the case of assistance for the construction of a facility, or part thereof, the assurance shall extend to the entire facility and to facilities operated in connection therewith. In grants to assist in the construction of facilities for the provision of research, training, or educational services, assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be forbidden as a condition of grants for the support of such services. Thus, as a condition of grants for the construction of academic, research or other facilities at institutions of higher education, assurances will be required that there will be no discrimination in the admission or treatment of students. Also, see paragraph (c) of this section for the requirement as to the applicability of the assurance to the applicant's organization.

(2) In other construction grants the assurances required will similarly be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress.

(e) *Assurances for transfer of surplus real property.* Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR 101–6.2).

(f) *Form of assurances.* The responsible NASA officials shall specify the form of the assurances required by this § 1250.104 and the extent to which like assurances will be required by subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program.

(g) *Requests for proposals.* Any request for proposals issued by NASA which relates to a covered program listed in Appendix A shall have set forth therein or have attached thereto the assurance prescribed in accordance with paragraph (f) of this section, and shall require that the proposer either include the assurance as a part of his signed proposal or identify and refer to an assurance already signed and submitted by the proposer.

§ 1250.105 Compliance information.

(a) *Cooperation and assistance.* Each responsible NASA official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Principal Compliance Officer or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Principal Compliance Officer or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the Principal Compliance Officer or his designee during normal business hours to such of its books, records, accounts and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and that agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Principal Compliance Officer finds necessary to apprise such persons of the protection against discrimination assured them by the Act and this part.

§ 1250.106 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible NASA official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Compliants.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Principal Compliance Officer or his designee a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the Principal Compliance Officer or his designee.

(c) *Investigations.* The Principal Compliance Officer or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Principal Compliance Officer or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1250.107.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the responsible NASA official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judical proceeding arising thereunder.

§ 1250.107 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 1250.104.* If an applicant fails or refuses to furnish an assurance required under § 1250.104 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. NASA shall not be obligated to provide assistance in such as case during the pendency of the administrative proceedings under such subsection except that NASA shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible NASA official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by

or pursuant to this part, (3) the action has been approved by the Administrator pursuant to § 1250.109(e), and (4) the expiration of 30 days after the Administrator has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the Principal Compliance Officer has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Administrator, (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 1250.108 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1250.107(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Principal Compliance Officer that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 1250.107(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at NASA Headquarters in Washington, D.C., at a time fixed by the Principal Compliance Officer unless he determines that the convenience of the applicant or recipient or of NASA requires that another place be selected. Hearings shall be held before the Administrator, or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act (5 U.S.C. 1010).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and NASA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act (5 U.S.C. 1004–1007), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both NASA and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this part with respect to two or more programs to which this part applies, or non-compliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Administrator may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 1250.109.

§ 1250.109 Decisions and notices.

(a) *Decision by person other than the NASA Principal Compliance Officer.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Principal Compliance Officer for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days of the mailing of such notice of initial decision, file with the Principal Compliance Officer his exceptions to the initial decision with his reasons therefor. In the absence of exceptions, the Principal Compliance Officer may on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the Principal Compliance Officer shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the Principal Compliance Officer.

(b) *Decisions on record or review by the NASA Principal Compliance Officer.* Whenever a record is certified to the Principal Compliance Officer for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Administrator conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the Principal Compliance Officer shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1250.108, a decision shall be made by the Principal Compliance Officer on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or the Principal Compliance Officer shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by administrator.* Any final decision of the NASA Principal Compliance Officer which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Administrator, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no

Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its non-compliance and satisfies the Principal Compliance Officer that it will fully comply with this part.

§ 1250.110 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 1250.111 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of NASA which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this Instruction. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925 and 11114 and regulations or instructions issued thereunder, or (2) any other regulations or instructions, insofar as such other regulations or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible NASA official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Administrator may assign to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 1250.109), including the achievement of effective coordination and maximum uniformity within NASA and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations.

§ 1250.112 Relationship with other officials.

NASA officials, in performing the functions assigned to them by this part are responsible for recognizing the delegations of authority and responsibility of other NASA officials and for seeing that actions taken or instructions issued by them are properly coordinated with the offices and divisions having joint interests.

Effective date. This part is effective on the 30th day following the date of its publication in the FEDERAL REGISTER.

Dated: December 28, 1964.

JAMES E. WEBB,
Administrator, National Aeronautics and Space Administration.

Approved: January 7, 1965.

LYNDON B. JOHNSON.

APPENDIX A

PROGRAMS OF NASA TO WHICH THIS PART APPLIES

1. Grants made under the authority of Public Law 85-934, approved September 6, 1958 (42 U.S.C. 1891-1893).

2. Contracts with nonprofit institutions of higher education or with nonprofit organizations whose primary purpose is the conduct of scientific research, wherein title to equipment purchased with funds under such contracts may be vested in such institutions or organizations under the authority of section 2 of Public Law 85-934, approved September 6, 1938 (42 U.S.C. 1892).

3. Training grants made under the authority of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451-2460, 2472-2473).

4. Facilities grants made under authority in annual NASA authorization and appropriation acts.

[F.R. Doc. 65-302; Filed, Jan. 8, 1965; 8:50 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Subtitle A—Office of the Secretary of Commerce

PART 8—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF COMMERCE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Subtitle A of Title 15 CFR is hereby amended by adding the following new Part 8.

Subpart A—General Provisions; Prohibitions; Nondiscrimination Clause; Applicability to Programs

Sec.
8.1 Purpose.
8.2 Application of this part.
8.3 Definitions.
8.4 Discrimination prohibited.
8.5 Nondiscrimination clause.
8.6 Applicability of the regulations to Department programs.

Subpart B—General Enforcement

8.7 Cooperation; compliance reports and reviews; access to records.
8.8 Complaints.
8.9 Intimidatory or retaliatory acts prohibited.
8.10 Investigations.
8.11 Procedures for effecting compliance.
8.12 Hearings.
8.13 Decisions and notices.
8.14 Judicial review.
8.15 Effect on other laws; supplementary instructions; coordination.

AUTHORITY: The provisions of this Part 8 are issued under sec. 602, 78 Stat. 252 (Civil Rights Act of 1964).

Subpart A—General Provisions; Prohibitions; Nondiscrimination Clause; Applicability to Programs

§ 8.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance from the Department of Commerce.

§ 8.2 Application of this part.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the federally-assisted programs listed in Appendix A to this part and as said Appendix may be amended. They apply to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved prior to such effective date.

(b) This part does not apply to (1) any Federal financial assistance by way of insurance or guaranty contracts, (2) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, (3) any assistance to any individual who is the ultimate beneficiary under any such program, or (4) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 8.4(c). The fact that a program is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to the list by notice published in the FEDERAL REGISTER.

§ 8.3 Definitions.

(a) "Department" means the Department of Commerce, and includes each of its primary organization and equivalent other units.

(b) "Secretary" means the Secretary of Commerce.

(c) "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(d) "Person" means an individual in the United States who is or is eligible to be a participant in or a beneficiary of any program which receives Federal fi-

nancial assistance, and includes an individual who is an owner or member of a firm, corporation, or other business or organization which is or is eligible to be a participant in or a beneficiary of such a program. Where a primary objective of a statute authorizing Federal financial assistance to a program is to provide employment, "person" includes employees or applicants for employment of a recipient under such program.

(e) "Responsible Department official" with respect to any program receiving Federal financial assistance means the Secretary or other official of the Department who by law or by delegation has the principal authority within the Department for the administration of a law extending such assistance. It also means any officials so designated by due delegation of authority within the Department to act in such capacity with regard to any program under this part.

(f) "Federal financial assistance" includes (1) grants, loans, or agreements for participation in loans, of Federal funds, (2) the grant or donation of Federal property or interests in property, (3) the sale or lease of, or the permission to use (on other than a casual or transient basis), Federal property or any interest in such property or in property in which the Federal Government has an interest, without consideration, or at a nominal consideration, or at a consideration which is reduced, for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to or use by the recipient, (4) waiver of charges which would normally be made for the furnishing of Government services, (5) the detail of Federal personnel, (6) technical assistance, and (7) any Federal agreement, arrangement, contract, or other instrument which has as one of its purposes the provision of assistance.

(g) "Program" includes any program, project, or activity for the provision of services, financial aid, property or other benefits to persons, or for the provision of facilities for furnishing services, financial aid, property, or other benefits to persons, whether provided by the recipient of Federal financial assistance or by others through contracts or other arrangements with the recipient, or whether provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, facilities or other resources provided to meet the conditions under which Federal financial assistance will be received. It includes programs supported by: (1) Grants, loans or contracts to recipients which make further grants or loans to, or contracts with, participants in the program or to persons who are the ultimate beneficiaries, (2) grants, loans or contracts to recipients to help finance the provision of services to the ultimate beneficiaries, (3) grants, loans or contracts to help finance the construction or operation of public roads, public works, or other facilities, to provide benefits, aid or services to the ultimate beneficiaries, (4) Federal financial assistance where a primary objective of the assistance is to provide employment, (5) any other Federal financial assistance in which the immediate recipient of the assistance is not the sole or exclusive beneficiary of the Congressional purpose.

(h) "Facility" includes all or any portion of structures, equipment, vessels, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(i) "Recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, or any public or private business or other agency, institution, organization, or other entity, or any individual, in any State, who applies for Federal financial assistance, or to whom Federal financial assistance is extended directly or through another recipient for or in connection with any program. Recipient further includes any successors, assigns, or transferees of any kind of the recipient, and those parties so designated for each program in § 8.6, but does not include any ultimate beneficiary under any program.

(j) "Primary recipient" means any recipient which is authorized or required to extend or distribute Federal financial assistance to another recipient for the purpose of carrying out a program.

(k) "Applicant" means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

§ 8.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) *Specific discriminatory acts prohibited.* (1) A recipient of Federal financial assistance, or other party subject to these regulations under any program to which this part applies, shall not participate, directly or through contractual or other arrangements, in any act or course of conduct which, on the ground of race, color or national origin:

(i) Denies to a person any service, financial aid, or other benefit provided under the program;

(ii) Provides any service, financial aid, or other benefit, to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subjects a person to segregation or separate treatment in any matter related to his receipt of any such service, financial aid, property, or other benefit under the program;

(iv) Restricts the person in any way in the enjoyment of services, facilities, or any other advantage, privilege, property, or benefit provided to others under the program;

(v) Treats a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Denies a person an opportunity to participate in the program through the provision of property or services or otherwise, or affords him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in subdivision (iii) of this subparagraph);

(vii) Denies to the person the same opportunity or consideration given others to be selected or retained or otherwise to participate as a contractor or subcontractor when a program is applicable thereto.

(2) A recipient, or other party subject to this part under any program, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of persons to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program, shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect any persons of a particular race, color, or national origin.

(3) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided or connected with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(c) *Employment practices.* Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient shall take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Executive Order 11114. Federal financial assistance to programs under laws funded or administered by the Depart-

ment which have as a primary objective the providing of employment are set forth in Appendix A II of this part.

§ 8.5 Nondiscrimination clause.

(a) *Applicability.* Every application for, and every grant, loan or contract authorizing approval of, Federal financial assistance to carry out a program and to provide a facility subject to this part, and every modification or amendment thereof, shall, as a condition to its approval and to the extension of any Federal financial assistance pursuant thereto, contain or be accompanied by an assurance that the program will be conducted in compliance with all requirements imposed by or pursuant to this part. The assurances shall be set forth in a nondiscrimination clause. The responsible Department official shall specify the form and contents of the nondiscrimination clause for each program as appropriate.

(b) *Contents.* Without limiting its scope or language in any way, a nondiscrimination clause shall contain, where determined to be appropriate, and in an appropriate form, reference to the following assurances, undertakings, and other provisions:

(1) That the recipient or other party subject to this part will not participate directly or indirectly in the discrimination prohibited by § 8.4, including employment practices when a program covering such is involved.

(2) That when employment practices are covered, the recipient or other party subject to this part will (i) in all solicitations or advertisements for employees placed by or for the recipient, state that qualified applicants will receive consideration for employment without regard to race, color or national origin; (ii) notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, of the recipient's commitments under this section, (iii) post the nondiscrimination clause and the notice to labor unions in conspicuous places available to employees and applicants for employment; and (iv) otherwise comply with the requirements of § 8.4(c).

(3) That in a program involving continuing Federal financial assistance, the recipient thereunder (i) will state that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, or state the extent to which it is not, at the time the statement is made, so conducted, and (ii) will provide for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that all recipients of Federal financial assistance under such program and any other parties connected therewith subject to this part will comply with all requirements imposed by or pursuant to this part, including methods of administration which give reasonable assurance that any noncompliance indicated in the statement in subdivision (i) of tihs subparagraph will be corrected.

(4) That the recipient agrees to secure the compliance or to cooperate actively with the Department to secure the compliance by others with this part and the nondiscrimination clause as may be directed under an applicable program. For instance, the recipient may be requested by the responsible Department official to undertake and agree (i) to obtain or enforce, or to assist and cooperate actively with the responsible Department official in obtaining or enforcing, the compliance of contractors, subcontractors, lessees, and other parties subject to this part with the nondiscrimination required by this part and their respective contracts; (ii) to insert appropriate nondiscrimination clauses in the respective contracts with such parties; (iii) to obtain and to furnish to the responsible Department official such information as he may require for the supervision or securing of such compliance; (iv) to carry out sanctions for noncompliance with the objectives imposed upon contractors and other parties subject to this part; and (v) to comply with such additional provisions as the responsible Department official deems appropriate to establish and protect the interests of the United States in the enforcement of these obligations. In the event that the cooperating recipient becomes involved in litigation with a non-complying party as a result of such Departmental direction, the cooperating recipient may request the Department to enter into such litigation to protect the interests of the United States.

(5) That in the case of a transfer of real property, the instrument effecting the transfer shall contain (i) a condition coupled with a right to be reserved to the Department to revert title to the property in the event of breach of such nondiscrimination condition, and (ii) a covenant running with the land. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the responsible Department office may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(6) That a recipient shall not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly.

(7) Provisions specifying the extent to which like assurances will be required of subgrantees, contractors and subcontractors, lessees, transferees, successors in interest, and other participants in the program.

(8) Provisions which give the United States a right to seek judicial enforcement of the assurances.

(9) In the case where any assurance is required from a recipient institution of higher education or any other institution, insofar as the assurance relates to the institution's practices with respect to admission of students or other treatment of persons participating in the program or its services or other benefits, the assurance shall be applicable to the entire institution unless the recipient establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is or is sought to be provided, or the beneficiaries of or participants in such program. If in any such case the assistance is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(10) It shall be provided that, where the Federal financial assistance is to provide: (i) Real property or structures thereon, the assurances shall be in effect for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits; (ii) personal property, the assurances shall be in effect for as long as the recipient retains ownership or possession of the property; and (iii) any other type or form of assistance, the assurances shall be in effect for the duration of the period during which Federal financial assistance is extended to the program.

§ 8.6 Applicability of the regulations to Department programs.

The following examples illustrate the applicability of this part to programs which receive or may receive Federal financial assistance administered by the Department. The fact that a particular program is not listed does not indicate that it is not covered by this part. The discrimination referred to is that described in § 8.4 against persons on the ground of race, color, or national origin.

(a) *Assistance programs which support highway construction and related projects.* In programs receiving Federal financial assistance for highway construction, acquisition of right-of-way and related projects, discrimination is prohibited by recipients in the selection and retenton of contractors, by contractors in the selection and retention of first-tier subcontractors, and by first-tier subcontractors in the selection and retention of second-tier subcontractors, who participate in any such projects. Such contractors and subcontractors include, without limitation, those whose services are retained by contract for or incidental to planning, research, highway safety, engineering, acquisition of right-of-way, property management, and for any other commitments by recipients under which they are eligible for Federal-aid reimbursement, in addition to those contractors and subcontractors through the second-tier engaged in the actual highway construction work and those who supply the equipment and materials therefor. In addition, there shall be no discrimination against the traveling public and business users of the federally assisted highways in their ac-

cess to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed on, over, or under the space of the right-of-way of such highways in which the recipient has any interest, including a reversionary one.

(b) *Assistance programs to support area redevelopment projects.* (1) In loan and loan participation programs under which individuals and business entities receive Federal financial assistance to purchase or develop land, facilities, machinery or equipment for industrial or commercial usage, discrimination by recipients is prohibited (i) in the letting of contracts or other arrangements for the designing, engineering, acquisition, construction, rehabilitation, conversion, enlargement, installation, occupancy, use, maintenance, leasing, subleasing, sales, or other utilization or disposition of the property or facilities purchased or financed in whole or in part with the aid of the Federal financial assistance; (ii) in the acquisition of goods or services, or the production, preparation, manufacture, marketing, transportation, or distribution of goods or services in connection with the project or its operations; (iii) in the on-site operation of the project or facility; (iv) in all services or accommodations offered to the public in connection therewith; and (v) in their employment practices (as defined in § 8.4(c)). For these programs, a recipient by definition also includes the borrowers and all identifiable business entities which are intended to lease, use or otherwise operate the project or facility assisted by the loan.

(2) In loan or grant programs under which States, their subdivisions, or private or public organizations receive Federal financial assistance to finance the purchase or development of land for public facility usage, or the construction, rehabilitation, alteration, expansion or improvement of public facilities, discrimination by recipients is prohibited as set forth in subparagraph (1) of this paragraph, but includes the employment practices (as defined in § 8.4(c)) only of any business entity which is intended to use or otherwise receive the substantial and direct benefit of the public facility. For these programs, a recipient by definition also includes the borrower or grantee and all identifiable business entities intended to be substantial and direct beneficiaries of a public facility assisted or provided by the loan or grant.

(3) In programs providing any form of technical assistance deemed useful to alleviate or prevent conditions of excessive unemployment or underemployment in areas of any State, discrimination by recipients of such technical assistance is prohibited as described in subparagraph (1) of this paragraph in connection with any land, buildings, machinery, equipment, improvements, facilities, goods, services, or the other operations of any identifiable business entities which are intended to be the direct and substantial beneficiaries of such technical assistance. Such technical assistance includes the results of studies evaluating the needs of and developing potentials for economic growth of areas of any State. Further, any party which under the program disseminates any form of technical assistance shall not discriminate in such dissemination. For this program, a recipient of technical assistance by definition also includes the sponsoring applicant and all identifiable business entities intended to be substantial and direct beneficiaries of the technical assistance applied for.

(c) *Assistance programs to support the training of students.* A current example of such programs is the assistance received by State maritime academies or colleges, by contract, of facilities (vessels) related equipment, and funds to train merchant marine officers. In this and other student training programs, discrimination which is prohibited by recipients includes discrimination in the selection of persons to be trained and in their treatment by the recipients in any aspect of the educational process and discipline during their training, or in the availability or use of any academic, housing, eating, recreational, or other facilities and services, or in financial assistance to students furnished or controlled by the recipients or incidental to the program. In any case where selection of trainees is made from a predetermined group, such as the students in an institution or area, the group must be selected without discrimination.

(d) *Assistance program to support mobile trade fairs.* In programs under which operators of mobile trade fairs, using U.S. flag vessels and aircraft and designed to exhibit and sell U.S. products abroad, receive technical and financial assistance, discrimination by recipients is prohibited in the selection or retention of any actual or potential exhibitors, or in access to or use of the services or accommodations by, or otherwise with respect to treatment of, exhibitors or their owners, officers, employees, or agents.

(e) *Assistance programs to support business entities eligible for trade adjustment assistance.* In programs under which eligible business entities receive any measure or kind of technical, financial or tax adjustment assistance because of or in connection with the impact of United States international trade upon such business, discrimination is prohibited by recipients in their employment practices, as defined in § 8.4(c).

(f) *Assistance programs to support research and distribute its results.* In programs under which individuals, educational or other institutions, or business entities receive Federal financial assistance in order to encourage or foster research activities as such, or to obtain thereby technical or other information, products, or services which are to be made available to others, but where such program does not constitute Government procurement of property or services, discrimination is prohibited by recipients with respect to the choice, retention or treatment of any person, including the provision of services or financial aid to them, participating in the research activities, and, further, with respect to their dissemination to any person of the results of the research, whether in the form of information, products, services, or otherwise. If a research grant is made to an educational institution under which it is expected that students or others will participate in the research as a part of their experience or training, on a compensated or uncompensated basis, there shall be no discrimination in admission of students to, or in their treatment by, that part of the school from which such students are drawn or in the selection otherwise of trainees. The recipient educational institutions will be required to give the assurances provided in § 8.5(b)(9).

(g) *Assistance programs to aid in the operations of vessels engaged in United States foreign commerce.* In programs receiving Federal financial assistance in the form of operating differential subsidies to operators of American-flag vessels used to furnish shipping services in the foreign commerce of the United States, discrimination is prohibited by recipients in soliciting, accepting or serving in any way passengers or shippers of cargo entitled to protection in the United States under the Act. For these programs, a recipient by definition includes the operators of such vessels.

Subpart B—General Compliance

§ 8.7 Cooperation, compliance reports and reviews and access to records.

(a) *Cooperation and assistance.* Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official timely, complete and accurate compliance reports at such times and in such form and containing such information as the responsible Department official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, or under which a recipient is obligated to obtain or to cooperate in obtaining the compliance of other parties subject to this part, such other recipients or other parties shall also submit such compliance reports to the primary recipient or recipient as may be necessary to enable them to carry out their obligations under this part.

(c) *Access to sources of information.* Each recipient or other party subject to this part shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of another who fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

(e) *Compliance review.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

§ 8.8 Complaints.

(a) *Filing complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official a written complaint. A complaint shall be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official.

§ 8.9 Intimidatory or retaliatory acts prohibited.

(a) No recipient or other party shall intimidate, threaten, coerce, or discriminate against, any person for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because the person has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.

(b) The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial or other proceeding arising thereunder.

§ 8.10 Investigations.

(a) *Making the investigation.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation shall include, where appropriate, a review of the pertinent practices and policies of the recipient or other party subject to this part, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether there has been a failure to comply with this part.

(b) *Resolution of matters.* (1) If an investigation pursuant to paragraph (a) of this section indicates a failure to comply with this part, the responsible Department official will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 8.11.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the responsible Department official will so inform the recipient and the complainant, if any, in writing.

§ 8.11 Procedures for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 8.5.* If an applicant fails or refuses to furnish an assurance required under § 8.5 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under said paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application or contract therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Secretary pursuant to § 8.13(e), and (4) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Secretary, (3) the recipient or other party has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other party. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other party to comply with this part and to take such corrective action as may be appropriate.

§ 8.12 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 8.11(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date or such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing, or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph of this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 8.11(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official or hearing officer unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official, or at his discretion, before a hearing officer.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not incon-

sistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 8.13.

§ 8.13 Decisions and notices.

(a) *Decision by person other than the responsible Department official.* If the hearing is held by a hearing officer such hearing officer shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing officer the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

(b) *Decisions on record or review by the responsible Department official.* Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing officer pursuant to paragraph (a) of this section, or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 8.12(a) a decision shall be made by the responsible Departmental official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Secretary.* Any final decision of a responsible Department official (other than the Secretary) which provides for the suspension or termination of, or the refusal to grant or continue, Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act, and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this part.

§ 8.14 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 8.15 Effect on other laws; supplementary instructions; coordination.

(a) *Effect on other laws.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925 and 11114 and regulations issued thereunder, or (2) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions, insofar as such Order, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Department official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 8.13), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations.

Effective date. This part shall become effective on the thirtieth day following the date of their publication in the FEDERAL REGISTER.

Dated: December 29, 1964.

C. D. MARTIN, Jr.,
Acting Secretary of Commerce.

Approved: January 7, 1965.

LYNDON B. JOHNSON.

APPENDIX A

I. PROGRAMS TO WHICH THESE REGULATIONS APPLY

1. Programs assisting recipients in connection with Federal-aid highway systems (23 U.S.C. 101 et seq.).
2. Loans and other assistance to new or expanding businesses for projects in redevelopment areas (42 U.S.C. 2504).
3. Loans and grants to State or public or private organizations to construct or improve public facilities in redevelopment areas (42 U.S.C. 2506, 2507).
4. Technical assistance, including the results of studies obtained under contracts, under the Area Redevelopment Act (42 U.S.C. 2510).
5. Assistance to States in the operation of State Maritime Academies or colleges to train merchant marine officers (46 U.S.C. 1381–1388).
6. Assistance to mobile trade fair operators (46 U.S.C. 1122b).
7. Trade adjustment assistance to eligible U.S. businesses under the Trade Expansion Act of 1962 (19 U.S.C. 1901 et seq.).
8. Grants and contracts to non-profit institutions or organizations to further or obtain scientific research which is to be made available to the public or interested businesses or organizations (e.g., 42 U.S.C. 1891–1893).
9. Operating differential subsidy contracts with operators of U.S. flag vessels engaged in U.S. foreign commerce, to protect passengers and shippers thereon (46 U.S.C. 1171 et seq.).

NOTE: (a) Occupational training, retraining, and retraining subsistence assistance programs in redevelopment areas (42 U.S.C. 2513, 2514) are administered by the U.S. Department of Labor, and its regulations under section 602 of the Act are applicable.

(b) Grants-in-aid to States for the acceleration of public works in eligible areas (42 U.S.C. 2641 et seq.) are administered by the various participating Federal agencies, and their respective regulations apply.

II. PROGRAMS TO WHICH THESE REGULATIONS APPLY WHERE A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT

1. Redevelopment area business loan programs (42 U.S.C. 2505).
2. Redevelopment area public facility loan and grant programs (42 U.S.C. 2506, 2507).
3. Technical assistance under the Area Redevelopment Act (42 U.S.C. 2510).
4. Retraining and retraining assistance programs in redevelopment areas (42 U.S.C. 2513, 2514).
5. Accelerated public works programs (42 U.S.C. 2641 et seq.).
6. Trade adjustment assistance programs under the Trade Expansion Act of 1962 (19 U.S.C. 1901 et seq.).

[F.R. Doc. 65-303; Filed, Jan. 8, 1965; 8:50 a.m.]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter II—Tennessee Valley Authority

PART 302—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF TVA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Chapter II of Title 18 CFR is hereby amended by adding the following new Part 302:

Sec.
302.1 Purpose.
302.2 Application of this part.
302.3 Discrimination prohibited.
302.4 Assurances required.
302.5 Compliance information.
302.6 Conduct of investigations.
302.7 Procedure for effecting compliance.
302.8 Hearings.
302.9 Decisions.
302.10 Judicial review.
302.11 Effect on other regulations.

AUTHORITY: The provisions of this Part 302 are issued under the TVA Act, 48 Stat. 58 (1933), as amended, 16 U.S.C. secs 831–831dd (1958; Supp. V, 1959–63), and section 602 of the Civil Rights Act of 1964, 78 Stat. 252.

§ 302.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from TVA.

§ 302.2 Application of this part.

This part applies to any program in which financial assistance is provided by TVA. The programs to which this part applies are listed in Appendix A of this part. Financial assistance, as used in this part, includes the grant or loan of money; the donation of real or personal property; the sale, lease, or license of real or personal property for a consideration which is nominal or reduced for the purpose of assisting the recipient; the waiver of charges which would normally be made, in order to assist the recipient; the entry into a contract where a purpose is to give financial assistance to the contracting party; and similar transactions. This part does not apply to (a) any financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization. The fact that a program is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs may be added to this list by notice published in the FEDERAL REGISTER.

§ 302.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any manner related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) As used in this section the services, financial aid, or other benefits provided under a program receiving financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of the financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

§ 302.4 Assurances required.

(a) TVA contributes financial assistance only under agreements which contain a provision which specifically requires compliance with this part. If the financial assistance involves the furnishing of real property, the agreement shall obligate the recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property is used for a purpose for which the financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where the financial assistance involves the furnishing of personal property, the

agreement shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the agreement shall obligate the recipient for the period during which financial assistance is extended pursuant to the agreement. TVA shall specify the form of the foregoing agreements, and the extent to which an agreement shall be applicable to subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program.

(b) In the case of a transfer of real property there shall be inserted in the instrument effecting the transfer of such land: (1) A condition coupled with a right to be reserved to TVA to revert title to the property in the event of breach of such nondiscrimination condition, and (2) a covenant running with the land.

§ 302.5 Compliance information.

(a) *Cooperation and assistance.* TVA shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to TVA timely, complete and accurate compliance reports at such times, and in such form and containing such information, as TVA may determine to be necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by TVA during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives financial assistance, and make such information available to them in such manner as TVA finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 302.6 Conduct of investigations.

(a) *Periodic compliance reviews.* TVA shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with TVA a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by TVA.

(c) *Investigations.* TVA will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, TVA will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 302.7.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, TVA will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this regulation, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 302.7 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this regulation may be effected by the suspension or termination of or refusal to grant or to continue financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), (2) institution of appropriate proceedings by TVA to enforce the provisions of the agreement of financial assistance or of any deed or instrument relating thereto, and (3) any applicable proceeding under State or local law.

(b) *Noncompliance with § 302.4.* If anyone requesting financial assistance declines to furnish the assurance required under § 302.4, or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, financial assistance may be refused in accordance with the procedures of paragraph (c) of this section; and for such purposes, the term "recipient" shall be deemed to include one who has been denied financial assistance. TVA shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that TVA shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an agreement therefor entered into with TVA prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue financial assistance.* No order suspending, terminating or refusing to grant or continue financial assistance shall become effective until (1) TVA has advised the recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, or a failure by the recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the TVA Board pursuant to § 302.9, and (4) the expiration of 30 days after the TVA Board has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue financial assistance shall be limited to the particular political entity, or part thereof, or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) TVA has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the TVA Board, (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 302.8 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 302.7(b), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected recipient. This notice shall advise the recipient of the action proposed

to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the recipient may request of TVA that the matter be scheduled for hearing or (2) advise the recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. A recipient may waive a hearing and submit written information and argument for the record. The failure of a recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 302.7(b) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the time and place fixed by TVA unless it determines that the convenience of the recipient requires that another place be selected. Hearings shall be held before the TVA Board, or a member thereof, or, at the discretion of the Board, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the recipient and TVA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with the procedures contained in sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both TVA and the recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the TVA Board may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 302.9.

§ 302.9 Decisions and notices.

(a) *Decision by a member of the TVA Board or a hearing examiner.* If the hearing is held by a member of the TVA Board or a hearing examiner he shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the TVA Board for a final decision, and a copy of such initial decision or certification shall be mailed to the recipient. Where the initial decision is made by a member of the TVA Board or a hearing examiner, the recipient may within 30 days of the mailing of such notice of initial decision file with the TVA Board his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the TVA Board may on its own motion within 45 days after the initial decision serve on the recipient a notice that it will review the decision. Upon the filing of such exceptions or of such notice of review the TVA Board shall review the initial decision and issue its own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the TVA Board.

(b) *Decisions on record or review by the TVA Board.* Whenever a record is certified to the TVA Board for decision or it reviews the decision of a member of the TVA Board or a hearing examiner pursuant to paragraph (a) of this section, or whenever the TVA Board conducts the hearing, the recipient shall be given reasonable opportunity to file with the Board briefs or other written statements of its contentions, and a copy of the final decision of the Board shall be given in writing to the recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 302.8(a) a decision shall be made by the TVA Board on the record and a copy of such decision shall be given to the recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the recipient has failed to comply.

(e) *Approval by TVA Board.* Any final decision (other than a decision by the TVA Board) which provides for the suspension or termination of, or the refusal to grant or continue financial assistance, or the imposition of any other sanction available under this regulation or the Act, shall promptly be transmitted to the TVA Board, which may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no financial assistance will thereafter be extended under such program to the recipient determined by such decision to have failed to comply with this part, unless and until it corrects its noncompliance and satisfies TVA that it will fully comply with this part.

§ 302.10 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 302.11 Effect on other regulations.

All regulations, orders, or like directions heretofore issued by TVA which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color or national origin under any program to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue financial assistance to any recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (a) Executive Orders 10925 and 11114 and regulations issued thereunder, or (b) any other regulations or instructions, insofar as they prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground.

Effective date. This part shall become effective on the thirtieth day following the date of its publication in the FEDERAL REGISTER.

Dated: December 24, 1964.

TENNESSEE VALLEY AUTHORITY,
L. J. VAN MOL,
General Manager.

Approved: January 7, 1965.

LYNDON B. JOHNSON.

APPENDIX A—PROGRAMS TO WHICH THESE REGULATIONS APPLY

1. Transfers, leases and licenses of real property for nominal consideration to states, counties, municipalities, and other public agencies for development for public recreation.

2. Furnishing funds, property and services to state agencies, local governments and citizen organizations to advance economic growth in watersheds of Tennessee River tributaries through cooperative resource development programs.

3. Furnishing funds, property and services to land grant colleges for use in a cooperative program utilizing test-demonstration farms to test experimental fertilizers developed by TVA and to educate farmers and other interested persons concerning these new fertilizers. This program also includes the furnishing of fertilizers at reduced prices by TVA, through its fertilizer distributors, to such test-demonstration farms.

4. Furnishing space and utilities without charge under agreements with state agencies for use in accordance with the Vending Stands for Blind Act.

[F.R. Doc. 65-304; Filed, Jan. 8, 1965; 8:50 a.m.]

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

SUBCHAPTER 0—CIVIL RIGHTS

PART 141—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF STATE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Chapter I, Title 22, CFR is hereby amended by adding the following new Part 141:

Sec.
141.1 Purpose.
141.2 Application of this part.
141.3 Discrimination prohibited.
141.4 Assurances required.
141.5 Compliance information.
141.6 Conduct of investigations.
141.7 Procedure for effecting compliance.
141.8 Hearings.
141.9 Decisions and notices.
141.10 Judicial review.
141.11 Effect on other regulations; forms and instructions.
141.12 Definitions.

AUTHORITY: The provisions of this Part 141 issued under sec. 602 of the Civil Rights Act of 1964, 78 Stat. 252, sec. 4, 63 Stat. 111, as amended; 5 U.S.C. 151C.

§ 141.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of State.

§ 141.2 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department including the Federally-assisted programs and activities listed in Appendix A of this part. It applies to Federal financial assistance of any form extended under any such program after the effective date of this part, even if the application is approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this regulation, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, or (e) any assistance to an activity carried on outside the United States by a person, institution, or other entity not located in the United States. Transfers of surplus property in the United States are subject to regulations issued by the Administrator of General Services (41 CFR 101-6.2).

§ 141.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(c) *Special programs.* An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

§ 141.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, shall contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. The assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(b) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the appli-

cant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program.

§ 141.5 Compliance information.

(a) *Cooperation and assistance.* Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this regulation and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or his complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 141.6 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 141.7.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 141.7 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law.

(b) *Noncompliance with § 141.4.* If an applicant fails or refuses to furnish an assurance required under § 141.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Secretary pursuant to § 141.9(e), and (4) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such non-compliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Deputy Under Secretary for Administration, (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 141.8 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 141.7(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date or such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time.

The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 141.7(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall normally be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official. Hearings shall be held before an official designated by the Secretary other than the responsible Department official.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted with as much conformity as is practicable with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The officer presiding at the hearing may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. The Secretary may also transfer the hearing of any complaint to any other department or agency, with the consent of that department or agency, where Federal financial assistance to the applicant or recipient is substantially greater than that of the Department of State. Final decisions in all such cases, insofar as this part is concerned, shall be made in accordance with § 141.9.

§ 141.9 Decisions and notices.

(a) *Decisions on record or review by the responsible Department official.* The applicant or recipient shall be given reasonable opportunity to file with the officer presiding at the hearing briefs or other written statements of its contentions, and a copy of the final decision shall be given in writing to the applicant or recipient and to the complainant, if any. The officer presiding at the hearing shall render a decision on the matter.

(b) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 141.8(a) a decision shall be made by the responsible Departmental official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(c) *Rulings required.* Each decision of an officer presiding at the hearing shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(d) *Appeal.* Either party may appeal from a decision of the officer presiding at the hearing to the responsible Department official within 30 days of the mailing of the officer's decision. In the absence of such an appeal the decision of the officer presiding at the hearing shall constitute the final decision of the Department subject to paragraph (e) of this section.

(e) *Approval by Secretary.* Any final decision by an officer (other than the Secretary) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this part.

§ 141.10 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 141.11 Effect on other regulations; forms and instructions.

Nothing in this part shall be deemed to supersede: Executive Orders 10925 and 11114 and regulations issued thereunder, or any other regulations or instructions, insofar as such regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground.

(a) *Forms and instructions.* Each responsible Department official shall issue, and promptly make available to interested persons, forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(b) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations.

§ 141.12 Definitions.

As used in this part—

(a) The term "Department" means the Department of State and includes each of its operating agencies and other organizational units except the Agency for International Development.

(b) The term "Secretary" means the Secretary of State.

(c) The term "responsible Department official" with respect to any program receiving Federal financial assistance means the official of the Department having responsibility within the Department for the program extending such assistance or such official of the Department as the Secretary designates.

(d) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(e) The term "Federal financial assistance" includes (1) grants and loans

of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, and (4) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(f) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient.

(g) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(h) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(i) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

Effective date. This part shall become effective on the thirtieth day following the date of its publication in the FEDERAL REGISTER.

Dated: December 23, 1964.

DEAN RUSK,
Secretary of State.

Approved: January 7, 1965.

LYNDON B. JOHNSON.

APPENDIX A

PROGRAMS AND ACTIVITIES TO WHICH THIS PART APPLIES

1. Mutual understanding between people of the United States and the people of other countries by educational and cultural exchange—studies, research, instruction and other educational activities—cultural exchanges (Mutual Educational and Cultural Exchange Act of 1961—75 Stat. 527–538).

2. Center for Cultural and Technical Interchange Between East and West—grant to State of Hawaii (Public Law 86–472, 74 Stat. 141).

3. Assistance to or in behalf of refugees designated by the President (Migration and Refugee Assistance Act of 1962—76 Stat. 121–124).

4. Donations of certain foreign language tapes and other training material to public and private institutions (Regulations of Administrator of General Services relating to surplus property—41 CFR 101–6.2).

[F.R. Doc. 65–305; Filed, Jan. 8, 1965; 8:50 a.m.]

Chapter II—Agency for International Development, Department of State

[A.I.D. Reg. 9]

PART 209—NON-DISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Part 209 of Chapter II, Title 22 of the Code of Federal Regulations is added as follows:

Sec.

AUTHORITY: The provisions of this Part 209 issued under sec. 602, 78 Stat. 252, and sec. 621 of the Foreign Assistance Act of 1961, 75 Stat. 445; 22 U.S.C. 2402.

§ 209.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance pursuant to any authority held or delegated by the Administrator of the Agency for International Development.

§ 209.2 Application of this part.

This part applies to all programs carried on within the United States by recipients of Federal financial assistance pursuant to any authority held or delegated by the Administrator of the Agency for International Development, including the Federally-assisted programs and activities listed in Appendix A of this part. (Appendix A may be revised from time to time by notice in the FEDERAL REGISTER.) It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this regulation, even if the application for such assistance is approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred or other assistance extended under any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, (d) any employment practice under any such program of any employer, employment agency, or labor organization, or (e) any procurement of goods or services, including the procurement of training. This part does not bar selection and treatment reasonably related to the foreign assistance objective or such other authorized purpose as the Federal assistance may have. It does not bar selections which are limited to particular groups where the purpose of the program calls for such a limitation nor does not bar special treatment including special courses of training, orientation or counseling consistent with such purpose.

§ 209.3 Definitions.

For purposes of this part—

(a) The term "Act" means the Civil Rights Act of 1964 (78 Stat. 241).

(b) The term "Administrator" means the Administrator of the Agency for International Development or any person specifically designated by him to perform any function provided for under this part.

(c) The term "applicant" means one who submits an application, request or plan required to be approved by the Administrator, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such application, request, or plan.

(d) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(e) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis) Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(f) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(g) The term "program" includes any program, project or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits

provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(h) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or any other entity, or any individual in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or a sovereign foreign government.

(i) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

§ 209.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance from the Agency for International Development.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this regulation applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program, or

(vii) Deny an individual an opportunity to participate in a program as an employee where a primary objective of the Federal financial assistance is to provide employment.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits or facilities will be provided under any such program or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(3) As used in this section the services, financial aid, or other benefit provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

§ 209.5 Assurance required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The head of the bureau or office administering the Federal financial assistance shall specify the form of the foregoing assurances for each program and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) The assurance required in the case of a transfer of real property, except where covered by subparagraph (3) of this paragraph (a), shall be inserted in the instrument effecting the transfer of any such land, together with any improvements located thereon, and shall consist of (i) a condition coupled with a right to be reserved to the Agency to revert title to the property in the event of breach of such nondiscrimination condition during the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, and (ii) a covenant running with the land for the same period. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Administrator may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(3) Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR 101–6.2).

(b) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for a special training project, for a student assistance program, or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the head of the bureau or office administering the Federal financial assistance, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in

such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 209.6 Compliance information.

(a) *Cooperation and assistance.* The Administrator shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Administrator timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Administrator may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the Administrator during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Administrator finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 209.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The Administrator shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Administrator a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the Administrator.

(c) *Investigations.* The Administrator will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Administrator will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 209.8.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the Administrator will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainant shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 208.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 209.4.* If an applicant fails or refuses to furnish an assurance required under § 209.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Agency for International Development shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that the Agency shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or to continue Federal financial assistance shall become effective until (1) the head of the bureau or office administering the Federal financial assistance has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Administrator pursuant to paragraph (e) of § 209.10 and (4) the expiration of 30 days after the Administrator has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the head of the bureau or office administering the Federal financial assistance has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Administrator, (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 209.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 209.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Administrator that the matter be scheduled for hearing, or (2) advise the applicant or recipient that the matter in question has been set down for

hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 209.8(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Agency for International Development in Washington, D.C., at a time fixed by the Administrator unless he determines that the convenience of the applicant or recipient or of the Agency requires that another place be selected. Hearings shall be held before the Administrator or before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient, and the Agency for International Development shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Agency for International Development and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Administrator may, by agreements with such other department or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 209.10.

§ 209.10 Decisions and notices.

(a) *Decision by a hearing examiner.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Administrator for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and the complainant. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the Administrator his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Administrator may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the Administrator shall review the initial decision and issue his own decision thereon including the reasons therefor. The decision of the Administrator shall be mailed promptly to the applicant or recipient and the complainant, if any. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the Administrator.

(b) *Decisions on record or review by the Administrator.* Wherever a record is certified to the Administrator for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Administrator conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the Administrator shall be given in writing to the applicant or recipient and the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Wherever a hearing is waived pursuant to § 209.9(a) a decision shall be made by the Administrator on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or the Administrator shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Administrator that it will fully comply with this part.

§ 209.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 209.12 Effect on other regulations; supervision and coordination.

(a) All regulations, orders or like directions heretofore issued by any officer of the Agency for International Development which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925 and 11114, and regulations issued thereunder, or (2) any other regulation or instruction insofar as it prohibits discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibits discrimination on any other ground.

(b) *Supervision and coordination.* The Administrator may from time to time assign to officials of other departments or agencies of the government (with the consent of such department or agency) responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 209.10), including the achievement of effective coordination and maximum uniformity within the Agency for International Development and within the Executive branch of the Government in the application of Title VI and this part to similar programs and in similar situations.

§ 209.13 Delegation of authority.

Responsibility for administration and enforcement of this part, with respect to programs administered by another Federal department or agency pursuant to delegation, transfer interagency service agreement, or other arrangement is vested in the head of such department or agency, or his delegate, and subject to such delegations or redelegations as he may make or authorize.

Effective date. This part shall become effective on the thirtieth day following the date of its publication in the FEDERAL REGISTER.

Dated: December 29, 1964.

WILLIAM S. GAUD,
Acting Administrator.

Approved: January 7, 1965.

LYNDON B. JOHNSON.

APPENDIX A

PROGRAMS TO WHICH THIS REGULATION APPLIES

1. Grants to organizations and institutions to carry on programs of technical cooperation and development in the United States to promote the economic development of less developed friendly countries (Section 211, Foreign Assistance Act, 22 U.S.C. 2171).

2. Grants to organizations and institutions to carry on programs of technical cooperation and development in the United States to promote the economic development of the less developed friendly countries of Latin America (Section 251, Foreign Assistance Act, 22 U.S.C. 2211).

3. Grants to organizations and institutions to carry out programs in the United States of research into, and evaluation of, economic development in less developed foreign countries (Section 241, Foreign Assistance Act, 22 U.S.C. 2193).

[F.R. Doc. 65-306; Filed, Jan. 8, 1965; 8:50 a.m.]

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter I—Office of Emergency Planning

OEP REG. 5—CIVIL RIGHTS

Nondiscrimination in Federally-Assisted Programs of OEP—Effectuation of Title VI of the Civil Rights Act of 1964

Sec.
1. Purpose.
2. Definitions.
3. Application of this regulation.
4. Further application of this regulation.
5. Specific discriminatory actions prohibited.
6. Life, health, and safety.
7. Assurances required.
8. Elementary and secondary schools.
9. Assurances from institutions.
10. Compliance information.
11. Conduct of investigations.
12. Procedure for effecting compliance.
13. Hearings.
14. Decisions and notices.
15. Judicial review.
16. Effect on other regulations; forms and instructions.

AUTHORITY: The provisions of this regulation are issued under sec. 602, 78 Stat. 252, and the laws referred to in section 3.

Section 1. Purpose.

The purpose of this regulation is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Office of Emergency Planning.

Sec. 2. Definitions.

As used in this regulation:

(a) The term "responsible agency official" with respect to any program receiving Federal financial assistance means the Director of the Office of Emergency Planning or other official of the agency who by law or by delegation has the principal responsibility within the agency for the administration of the law extending such assistance.

(b) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(c) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(e) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(f) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(g) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(h) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible agency official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

Sec. 3. Application of this regulation.

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination by those receiving assistance under the "Federal Disaster Assistance" program (Public Law 81-875; 42 U.S.C. 1855-1855g), or under the "Interim Emergency Management of Resources" program (section 103 of the National Security Act of 1947; Public Law 80-253, as amended; 50 U.S.C. 404).

Sec. 4 Further application of this regulation.

Other programs under statutes hereafter enacted may be covered by this regulation after notice is published in the FEDERAL REGISTER. This regulation applies to any program for which Federal financial assistance is authorized under a law administered by the Office of Emergency Planning. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of the regulation pursuant to an application approved prior to such effective date. This regulation does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this regulation, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under such program, of any employer, employment agency, or labor organization.

Sec. 5. Specific discriminatory actions prohibited.

(a) A recipient under any program to which this regulation applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(1) Deny any individual any service, financial aid, or other benefit provided under the program;

(2) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(5) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(b) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(c) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(d) The enumeration of specific forms of prohibited discrimination in this section does not limit the generality of the prohibition in section 4.

Sec. 6. Life, health, and safety.

Notwithstanding the provisions of section 5, a recipient of Federal financial assistance shall not be deemed to have failed to comply with section 3, if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health or safety.

Sec. 7. Assurances required.

Every application for Federal financial assistance to carry out a program to which this regulation applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this regulation. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible agency official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

Sec. 8. Elementary and secondary schools.

The requirements of section 7 with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (a) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (b) submits a plan for the desegregation of such school or school system which the United States Commissioner of Education determines is adequate to accomplish the purpose of the Act and this regulation, and provides reasonable assurance that it will carry out such plans; in any case of continuing Federal financial assistance the responsible agency official may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this regulation. In any case to which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

Sec. 9. Assurances from institutions.

(a) In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by section 7 shall extend to admission practices and to all other practices relating to the treatment of students.

(b) The assurances required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institutions or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the Director of the Office of Emergency Planning that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

Sec. 10. Compliance information.

(a) *Cooperation and assistance.* The responsible official in the Office of Emergency Planning shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this regulation and shall provide assistance and guidance to recipients to help them comply voluntarily with this regulation.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible agency official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible agency official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this regulation. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this regulation.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible agency official or his designee during normal ousiness hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this regulation. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible agency official finds necessary to apprise such persons of the protection against discrimination assured them by the Act and this regulation.

Sec. 11. Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible agency official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this regulation.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this regulation may by himself or by a representative file with the National Headquarters or any Regional Office of the Office of Emergency Planning a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible agency official or his designee.

(c) *Investigations.* The responsible agency official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this regulation. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this regulation occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this regulation.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this regulation, the responsible agency official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in section 12.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the responsible agency official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this regulation, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this regulation. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this regulation, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Sec. 12. Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this regulation may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with section 7.* If an applicant fails or refuses to furnish an assurance required under section 7 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The agency shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the agency shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application thereof approved prior to the effective date of this regulation.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible agency official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this regulation, (3) the action has been approved by the Director of the Office of Emergency Planning pursuant to section 14, and (4) the expiration of 30 days after the Director has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible agency official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Director of the Office of Emergency Planning, (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

Sec. 13. Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by section 12(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible agency official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and section 12(c) of this regulation and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the National Headquarters of the Office of Emergency Planning in Washington, D.C., at a time fixed by the responsible agency official unless he determines that the convenience of the applicant or recipient or of the agency requires that another place be selected. Hearings shall be held before the responsible agency official or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the agency shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of pro-

cedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the agency and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this regulation, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this regulation applies, or noncompliance with this regulation and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Director of the Office of Emergency Planning may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this regulation. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with section 14.

Sec. 14. Decisions and notices.

(a) *Decision by person other than the responsible agency official.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible agency official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible agency official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible agency official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible agency official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible agency official.

(b) *Decisions on record or review by the responsible agency official.* Whenever a record is certified to the responsible agency official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever he conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of his final decision shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to section 13(a) a decision shall be made by the responsible agency official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible agency official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this regulation with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Director.* Any final decision of a responsible agency official (other than the Director of the agency) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this regulation or the Act, shall promptly be transmitted to the Director of the Office of Emergency Planning who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this regulation, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this regulation, or to have otherwise failed to comply with this regulation, unless and until it corrects its noncompliance and satisfies the Director of the Office of Emergency Planning that it will fully comply with this regulation.

Sec. 15. Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

Sec. 16. Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Office of Emergency Planning which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this regulation, except that nothing in this regulation shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this regulation. Nothing in this regulation, however, shall be deemed to supersede Executive Orders 10925 and 11114 (including future amendments thereof) and regulations issued thereunder, or any other regulations or instructions, insofar as such regulations or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible agency official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this regulation as applied to programs to which this regulation applies and for which he is responsible.

(c) *Supervision and coordination.* The Director of the Office of Emergency Planning may from time to time assign to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this regulation (other than responsibility for final decision as provided in section 14), including the achievement of effective coordination and maximum uniformity within the agency and within the Executive Branch of the Government in the application of title VI and this regulation to similar programs and in similar situations.

Effective date. This regulation shall become effective on the thirtieth day following the date of its publication in the FEDERAL REGISTER.

Dated: December 30, 1964.

EDWARD A. MCDERMOTT,
Director,
Office of Emergency Planning.

Approved: January 7, 1965.

LYNDON B. JOHNSON.

[F.R. Doc. 65-307; Filed, Jan. 8, 1965; 8:50 a.m.]

Title 45—PUBLIC WELFARE

Chapter X—Office of Economic Opportunity

PART 1010—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE OFFICE OF ECONOMIC OPPORTUNITY—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

A new Chapter X is added to Title 45 of the Code of Federal Regulations to include regulations of the Office of Economic Opportunity under section 602 of the Civil Rights Act of 1964, as follows:

Sec.
1010.1 Purpose.
1010.2 Definitions.
1010.3 Application of this part.
1010.4 Discrimination prohibited.
1010.5 Assurances required.
1010.6 Illustrative applications.
1010.7 Compliance information.
1010.8 Conduct of investigations.
1010.9 Procedure for effecting compliance.
1010.10 Hearings.
1010.11 Decisions and notices.
1010.12 Judicial review.
1010.13 Effect on other regulations; forms and instructions.

AUTHORITY: The provisions of this part 1010 are issued under sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1; and sec. 602, 78 Stat. 528; 42 U.S.C. 2942.

§ 1010.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Office of Economic Opportunity.

§ 1010.2 Definitions.

As used in this part—

(a) The term "Office" means the Office of Economic Opportunity, and includes all of its organizational units.

(b) The term "Director" means the Director of the Office of Economic Opportunity.

(c) The term "responsible Office official" with respect to any program receiving Federal financial assistance means the Director or other official of the Office who by law or by delegation has the principal responsibility within the Office for the administration of the law extending such assistance.

(d) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(e) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the referral or assignment of VISTA volunteers (except the referral or assignment of such volunteers to work in programs or activities being carried out by private organizations under contract with the Federal Government or an agency thereof), (5) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (6) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(f) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(g) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(h) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient thereof, but such term does not include any ultimate beneficiary under any such program.

(i) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(j) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible Office official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means any such application, request, or plan.

§ 1010.3 Application of this part.

(a) This part applies to any program for which Federal financial assistance is authorized under a provision of law administered by the Office, including the Federally-assisted programs and activities listed in Appendix A of this part. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of the part pursuant to an application approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 1010.4. The fact that a program or activity is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be covered by this part after notice is published in the FEDERAL REGISTER.

(b) The regulations issued by the Department of Agriculture pursuant to Title VI of the Act (7 CFR Part 15) shall be applicable to the program of grants and loans authorized under Title III, Part A of the Economic Opportunity Act of 1964.

(c) The regulations issued by the Department of Labor pursuant to Title VI of the Act (29 CFR Part 31) shall be applicable to the work-training programs authorized under Title I, Part B of the Economic Opportunity Act of 1964.

(d) The regulations issued by the Department of Health, Education, and Welfare pursuant to Title VI of the Act (45 CFR Part 80) shall be applicable to the work-study programs, the adult basic education programs, and the work experience programs authorized under Title I, Part C; Title II, Part B; and Title V of the Economic Opportunity Act of 1964.

(e) The regulations issued by the Small Business Administration pursuant to Title VI of the Act (13 CFR Part 112) shall be applicable to the program of employment and investment incentives authorized under Title IV of the Economic Opportunity Act of 1964.

§ 1010.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin;

(i) Deny an individual any services, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program, including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section.

(2) A recipient in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(c) *Employment practices.* Where a primary objective of the Federal financial assistance to a program or part thereof to which this part applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (1) to reduce the unemployment of such individuals or to help them through employment to meet subsistence needs, (2) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, or (3) to provide work experience which contributes to the education or training of such individuals. The following programs administered by the Office have one of the above objectives as a primary objective:

(i) State-operated youth camps which receive assistance pursuant to Section 108 of the Economic Opportunity Act of 1964.

(ii) Community Action Programs or parts thereof which have as a primary objective the provision of employment.

(iii) Programs of assistance for migrant, and other seasonally employed, agricultural employees and their families which have as a primary objective the provision of employment.

(iv) Programs to which VISTA volunteers are referred or assigned and which have as a primary objective the provision of employment.

The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Executive Order 11114.

(d) *Indian programs.* An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

(e) *Medical emergencies.* Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

§ 1010.5 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to a program to which this part applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon the assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provisions of similar services or benefits. In the case of personal property, the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases, the assurance shall obligate the recipient for the duration of the period for which Federal financial assistance is extended pursuant to the application. The responsible Office official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) The assurances required in the case of a transfer of real property, except where covered by subparagraph (3) of this paragraph, shall be inserted in the instrument effecting the transfer of any such land, together with any improvements located thereon, and shall consist of (i) a condition coupled with a right to be reserved to the Office to revert title to the property in the event of breach of such nondiscrimination condition during the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services of benefits, and (ii) a covenant running with the land for the same period. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Director may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(3) Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR 101–6.2).

(b) *Elementary and secondary schools.* In the case of any program for the benefit of elementary or secondary school students which, as a necessary part of such program, utilizes to a substantial extent the facilities of an elementary or secondary school or school system, the requirements of paragraph (a) of this section shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the Commissioner of Education determines is adequate to accomplish the purposes of the Act and this part, and provides reasonable assurance that it will carry out

such plan. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(c) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for a special training project, for a student loan program, or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the institution establishes, to the satisfaction of the responsible Office official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 1010.6 Illustrative applications.

The following examples illustrate some applications of the foregoing provisions to programs of Federal financial assistance administered by the Office of Economic Opportunity. In all cases, the "discrimination" prohibited is discrimination on the ground of race, color, or national origin prohibited by Title VI of the Act and this part, as a condition of the receipt of Federal financial assistance.

(a) *State-operated youth camps.* If assistance is given under Section 108 of the Economic Opportunity Act of 1964 to a youth camp, or other program to provide education, vocational training, work experience or other benefits to young people, such camp or program must be conducted in a nondiscriminatory manner. There can be no discrimination in the recruitment or selection of enrollees or trainees in such camp or program, in their treatment in the program itself, or in related employment activities. No job referral can be made on the basis of a job order or request containing discriminatory specifications or in a case in which employment is given or refused in a discriminatory manner.

(b) *Community action programs.* Community action programs generally consist of a number of related anti-poverty programs coordinated by a central community agency, either public or private non-profit. There can be no discrimination in the formulation of groups to conduct any program funded under Title II, Part A of the Economic Opportunity Act of 1964. Nor can any such program be operated in a discriminatory manner. Such a program must be open to all regardless of race, color, or national origin, and must distribute its benefits in a non-discriminatory manner. It may not restrict service to members of a group or groups if membership in the group or groups depends on race, color, or national origin.

(c) *Volunteers in service to America.* A private or public, non-Federal program to which one or more VISTA volunteers are referred or assigned must be operated without discrimination.

(d) *Programs in elementary or secondary schools.* In the case of a program covered by this part which benefits elementary or secondary school students and which is necessarily conducted in a school regularly attended by the participating students, the program must be run on a non-discriminatory basis, or else the school system must give assurance that it is complying with a federal court order or a plan approved by the Commissioner of Education leading to the desegregation of the school system. If, however, students do not participate in such a program in the schools they regularly attend, or if the use of school facilities is incidental to the program or not necessary to its conduct, the program must be run on a non-discriminatory basis and the assurance specified in § 1010.5(a) must be given, whether or not there is a court order or approved plan with respect to the school system.

(e) *Institutions of higher education.* In any research, training, demonstration, or other grant from the Office to a university for a program to be conducted in a college or university, discrimination in the admission and treatment of students in the program is prohibited, and the prohibition extends to the entire university unless it satisfies the responsible Office official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the program.

§ 1010.7 Compliance information.

(a) *Cooperation and assistance.* Each responsible Office official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part, and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Office official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Office official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Office official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner as the responsible Office official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 1010.8 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Office official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Office official or his designee a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Office official or his designee.

(c) *Investigations.* The responsible Office official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Office official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1010.9.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the responsible Office official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 1010.9 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 1010.5.* If an applicant fails or refuses to furnish an assurance under § 1010.5 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Office shall not be required to provide assistance in such a case during pendency of the administrative proceedings under such paragraph, except that the Office shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Office official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Director pursuant to § 1010.11(e), and (4) the expiration of 30 days after the Director has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Office official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Director, (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 1010.10 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1010.9(c), reasonable notice of such hearing shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Office official that the matter be scheduled for hearing, or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 1010.9(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held in Washington, D.C., at a time and place fixed by the responsible Office official unless he determines that the convenience of the applicant or recipient or of the Office requires that another place be selected. Hearings shall be held before the responsible Office official, or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Office shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Office and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence unless dispensed with by stipulation. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Director may, by agreement with such other departments or agencies, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 1010.11.

§ 1010.11 Decisions and notices.

(a) *Decision by person other than the responsible Office official.* If the hearing is held by a hearing examiner, such hearing examiner shall either make any initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Office official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner, the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible Office official his exceptions to the initial decision, with his reasons therefor. In

the absence of exceptions, the responsible Office official may, on his own motion, within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review, the responsible Office official shall review the initial decision and issue his own decision thereon, including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Office official.

(b) *Decisions on record or review by the responsible Office official.* Whenever a record is certified to the responsible Office official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Office official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Office official shall be given in writing to the applicant or recipient, and the complainant, if any.

(c) *Decisions on record where hearing is waived.* Whenever a hearing is waived pursuant to § 1010.10(a), a decision shall be made by the responsible Office official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible Office official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Director.* Any final decision of a responsible Office official (other than the Director) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Director, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible Office official that it will fully comply with this part.

§ 1010.12 Judicial review.

Any action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 1010.13 Effect on other regulations; forms and instructions.

(a) Nothing in this part shall be deemed to supersede (1) Executive Orders 10925 and 11114 and regulations issued thereunder, or (2) any other regulations or instructions insofar as they prohibit discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Office official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Director may, from time to time, assign to officials of other departments or agencies of the Government (with the consent of such department or agency) responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 1010.11), including the achievement of effective coordination and maximum uniformity within the Office and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations.

Effective date. This part shall become effective on the 30th day following the date of its publication in the FEDERAL REGISTER.

Dated: December 30, 1964.

SARGENT SHRIVER,
Director,
Office of Economic Opportunity.

Approved: January 7, 1965.

LYNDON B. JOHNSON.

APPENDIX A

PROGRAMS TO WHICH THIS PART APPLIES

Programs under the following provisions of the Economic Opportunity Act of 1964 are now administered by the Office and are covered by this part:

Title I, Part A, Section 108 (State-Operated Youth Camps).
Title II, Part A (Community Action Programs).
Title II, Part C (Voluntary Assistance Program for Needy Children).
Title III, Part B (Assistance for Migrant, and Other Seasonally Employed, Agricultural Employees and Their Families).
Title VI, Section 603 (Volunteers in Service to America).

[F.R. Doc. 65-308; Filed, Jan. 8, 1965; 8:50 a.m.]