FEDERAL REGISTER

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Pages 4489–4573

PART I

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Atomic Energy Commission
Civil Service Commission
Coast Guard
Consumer and Marketing Service
Customs Bureau
Federal Aviation Agency
Federal Communications Commission
Federal Power Commission
Fish and Wildlife Service
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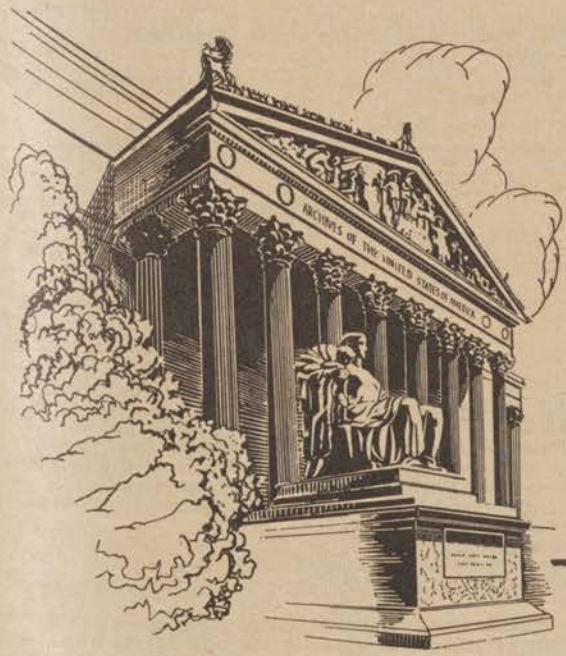

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ANNUAL INDEX TO THE FEDERAL REGISTER

[1965]

The Annual Index covers all documents published in the FEDERAL REGISTER during the calendar year 1965. Entries in the Index are carried primarily under the names of the issuing agencies; however, additional entries covering the most significant items are also carried in appropriate alphabetical position.

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[Docket No. 7129; Amdt. 39-211]

PART 39—AIRWORTHINESS DIRECTIVES

Morane-Saulnier Models M.S. 760, M.S. 760A, and M.S. 760B Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring replacement of the aluminum alloy rod with a steel rod in Morane-Saulnier Models M.S. 760, M.S. 760A, and M.S. 760B airplanes was published in 31 F.R. 1156.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

MORANE-SAULNIER. Applies to models M.S. 760, M.S. 760A, and M.S. 760B airplanes. Compliance required within the next 300 hours' time in service after the effective date of this AD unless already accomplished. Repalce aluminum alloy rudder control system rod, P/N 0176-27.1.191, located between stations 5 and 10, with steel rod, P/N 0176-27.1.218. (Morane-Saulnier Service Bulletin No. 45 pertains to this subject.)

This amendment becomes effective April 16, 1966.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, and 1423)

Issued in Washington, D.C., on March 11, 1966.

C. W. WALKER,
Acting Director,
Flight Standards Service.

[F.R. Doc. 66-2799; Filed, Mar. 16, 1966; 8:45 a.m.]

[Docket No. 7112; Amdt. 39-212]

PART 39—AIRWORTHINESS DIRECTIVES

Vickers Viscount Models 744, 745D, and 810 Series Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations by amending Amendment 457 (27 F.R. 5951), AD 62-14-6, to include Model 744 Series airplanes and to incorporate the manufacturer's latest service bulletins was published in 31 F.R. 574.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 457 (27 F.R. 5951), AD 62-14-6, is amended as follows:

1. By amending the applicability statement to read: Applies to Viscount Models 744, 745D, and 810 Series airplanes.

2. By amending the heading of paragraph (a) to read: Fork ends Part Numbers 70150-273, 74450-95, and 74450-411.

3. By amending the heading of paragraph (b) to read: Fork ends Part Numbers 72450-315 and 74450-499.

4. By striking out the note following paragraph (c).

5. By amending paragraph (d) to read:

(d) Remove and inspect using magnetic particle inspection or FAA-approved equivalent in accordance with British Aircraft Corp. (B.A.C.), Ltd., Preliminary Technical Leaflet (PTL) No. 171 Issue 6 (for 744 and 745D) or later ARB-approved issue; or PTL 31 Issue 6 (for 810) or later ARB-approved issue. Parts showing evidence of cracks shall be replaced or reworked in accordance with paragraph (e) before further flight.

6. By amending paragraph (e) to read:

(e) Parts showing evidence of cracks may be reworked once in accordance with British Aircraft Corp. (B.A.C.), Ltd., Preliminary Technical Leaflet (PTL) No. 171 Issue 6 (for 744 and 745D) or later ARB-approved issue; or PTL 31 Issue 6 (for 810) or later ARB-approved issue. Any parts showing evidence of cracks after reworking must be rejected.

7. By striking out the paragraph following paragraph (e).

8. By adding a new paragraph (f) to read:

(f) Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Chief, Aircraft Certification Staff, FAA Europe, Africa, Middle East Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

9. By adding a new paragraph (g) to read:

(g) For the purpose of complying with this AD, subject to acceptance by the assigned FAA maintenance inspector, the number of landings may be determined by dividing each airplane's hours' time in service by the operator's fleet average time from takeoff to landing for the airplane type.

10. By striking out the parenthetical reference statement.

This amendment becomes effective April 16, 1966.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, and 1423)

Issued in Washington, D.C., on March 11, 1966.

C. W. WALKER,
Acting Director,
Flight Standards Service.

[F.R. Doc. 66-2800; Filed, Mar. 16, 1966; 8:45 a.m.]

[Docket No. 7191; Amdt. 39-213]

PART 39—AIRWORTHINESS DIRECTIVES

Lockheed Model 188A and 188C Series Airplanes

There have been spanwise fatigue cracks in the lower wing plank splices and chordwise cracks in the wing lower surface planks on certain Lockheed Model 188A and 188C Series airplanes. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require a repetitive inspection of the affected areas until repair or modification.

The 700 landing compliance time for the initial inspection has been established by the Agency on the basis of safety considerations, and is the same as that recommended by the manufacturer in the applicable service bulletin. This compliance time provides the lead time for operators to schedule and plan compliance with the AD with a minimum burden. To prescribe the initial inspection required by this AD under the usual notice and public procedures followed by the Agency within the time the Agency has determined is required in the interest of safety, would necessarily result in a reduction of the compliance time for the initial inspection required by this AD. This could possibly leave the operators insufficient time to schedule airplanes for compliance with the AD. Therefore, accomplishment of the initial inspection required by this AD within the time the Agency has determined is necessary makes strict compliance with the notice and public procedure provisions of the Administrative Procedure Act impracticable and this amendment becomes effective 30 days after publication in the FEDERAL REGISTER. However, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted in du-

plicate to the Federal Aviation Agency, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. All communications received before the effective date will be considered by the Administrator, and the AD may be changed in the light of comments received. All comments will be available both before and after the effective date in the Rules Docket for examination by interested persons. Operators are urged to submit their comments as early as possible since it may not be possible to evaluate comments received near the effective date in sufficient time to amend the AD before it becomes effective.

The substance of this AD has been informally coordinated with most of the domestic operators of these airplanes. One operator requested an increase in the repetitive inspection interval to 3,000 hours' time in service for its airplanes, since they are equipped with the "soft" landing gear. The Agency cannot increase the interval for these airplanes because investigation by the manufacturer as well as the Agency has shown no difference in fatigue crack occurrences in the two types of landing gear. The operators also requested an increase in the initial inspection time, but the Agency cannot extend the compliance time of the initial inspection because the existent cracking condition does not lend itself to crack propagation rate analysis or prediction.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

LOCKHEED. Applies to Model 188A and 188C Series airplanes except those modified in accordance with Lockheed Drawing 841318A (including notes 10 and 11), or an equivalent approved by the Chief, Aircraft Engineering Division, FAA Western Region.

Compliance required as indicated.

To detect spanwise cracks in the wing lower surface aft of the main gear fulcrum fitting and chordwise cracks in the wing lower surface plank, accomplish the following:

(a) Within the next 700 landings after the effective date of this AD, unless already accomplished within the last 700 landings before the effective date of this AD, and at intervals not to exceed 1,400 landings from the last inspection until repaired or modified in accordance with paragraph (b), accomplish the following or an equivalent approved by the Chief, Aircraft Engineering Division, FAA Western Region:

(1) Inspect for cracks in accordance with subdivision (i) or (ii) the wing plank riser radius (Item 7, Lockheed Service Bulletin 88/SB-620D, Fig. 3), of riser number 29, plank 5, and riser number 36, plank 6, between Wing Stations 162 and 172 and between Wing Stations 204 and 214, of airplanes not modified in accordnace with Lockheed Drawing 841318.

(i) Inspect externally, by the ultrasonic technique described in Lockheed Service Bulletin 88/SB-620D, Section 2.B.(5)(c), pages 25 through 31, or later FAA-approved revision. Test block design must be in accordance with Lockheed Service Bulletin 88/SB-625B, Figure 2, or later FAA-approved revision. If indication of a crack is found, inspect before further flight in accordance with subdivision (ii).

(ii) Inspect internally, by dye penetrant method, as described in Lockheed Service Bulletin 88/SB-625B, Sections 2(A) through 2(F), or later FAA-approved revision.

(2) Inspect for cracks the internal plank area surrounding the bulkhead angle (P/N 810970) at the Wing Station 211 attachment hole located between the lower number 7 plank risers 37 and 38, by dye penetrant method, after removing the bolt from the attachment hole.

(b) Repair cracks found during the inspections required by this AD before further flight in accordance with Lockheed Drawing 841318A (including Notes 10 and 11), and the accomplishment instructions of Lockheed Service Bulletin 88/SB-625B or later FAA-approved revision, or an equivalent approved by the Chief, Aircraft Engineering Division, FAA Western Region, except that the airplane may be flown in accordance with FAR 21.197 to a base where the repair can be performed. Seal all splice areas to be covered with repairs in accordance with Lockheed Service Bulletin 88/SB-620D or later FAA-approved revision.

NOTE: Regional approval required by paragraph (b) may be facilitated by obtaining prior approval of a Structural DER.

(c) The repetitive inspections required by subparagraph (a)(2) may be discontinued if, during the inspections required by paragraph (a), no cracks are found, and before further flight the airplane is modified in accordance with Note 10 of Lockheed Drawing No. 841318A.

(d) For the purpose of complying with this AD, subject to acceptance by the assigned FAA maintenance inspector, the number of landings may be determined by dividing each airplane's hours' time in service by the operator's fleet average time from takeoff to landing for the airplane type.

(e) Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Chief, Aircraft Engineering Division, FAA Western Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

This amendment becomes effective April 16, 1966.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, and 1423)

Issued in Washington, D.C., on March 11, 1966.

C. W. WALKER,
Acting Director,
Flight Standards Service.

[F.R. Doc. 66-2801; Filed, Mar. 16, 1966; 8:45 a.m.]

[Docket No. 7190; Amdt. 49-1]

PART 47—AIRCRAFT REGISTRATION

PART 49—RECORDING OF AIRCRAFT TITLES AND SECURITY DOCUMENTS

Miscellaneous Amendments

The purpose of this revision is to delete from Parts 47 and 49 the acknowledgment requirement of section 503(e) of the Federal Aviation Act of 1958; to introduce new forms adapted to computer processing of Certificates of Aircraft Registration; to allow the recording and use of true copies; and to make clarifying and editorial changes. Since almost all of Part 47 is affected, it is being republished in revised form at this time.

P.L. 88-346 amended section 503(e) of the Federal Aviation Act of 1958, and added section 506 to the Act. Amended section 503(e) allows the Administrator to make exceptions by regulation to the requirement that a conveyance or other instrument be acknowledged before it is recorded. New section 506 resolves a problem of conflicts of law by providing that the law of the place of delivery (within the United States) of an instrument governs the validity of the instrument. Also, section 506 creates a presumption that, when the place of intended delivery is stated in an instrument, the instrument was delivered at that place.

The Agency is implementing amended section 503(e) by deleting the acknowledgment requirement from Parts 47 and 49. In concluding that an acknowledgment is an unnecessary condition for recording, the draftsmen of the Uniform Commercial Code have stated: "This section departs from the requirements of many chattel mortgage statutes that the instrument filed be acknowledged or witnessed or accompanied by affidavits of good faith. Those requirements do not seem to have been successful as a deterrent to fraud; their principal effect has been to penalize good faith mortgagees who have inadvertently failed to comply with the statutory niceties. They are here abandoned in the interest of a simplified and workable filing system." (Comment 3, § 9-402 of the Uniform Commercial Code.) This reasoning applies to the National Aircraft Recording System. In addition, since the lack of an acknowledgment results in the rejection of a substantial number of instruments submitted under Parts 47 and 49, the acknowledgment requirement constitutes an unnecessary burden on the public. Of course, the parties must look to applicable local law to determine whether acknowledgment is required for an instrument to be valid (as opposed to recordable). Accordingly, § 49.13(c) is amended to state that acknowledgment is not required. The conflicts of law rule and presumption of delivery in new section 506 is reflected in amended § 49.17(c).

As a result of the introduction of computers at the FAA Aircraft Registry, it will be possible to issue nearly all Certificates of Aircraft Registration in less than 30 days. FAA Forms 500, 500-2, and 500-3 have been revised for use in computer processing. FAA Form 500-1 (Temporary Certificate of Aircraft Registration) has been abolished. These new forms are FAA Form 8050-1, "Application for Aircraft Registration," FAA Form 8050-2, "Aircraft Bill of Sale" (a suggested use form), and FAA Form 8050-3, "Certificate of Aircraft Registration." As in the past, the applicant would carry a duplicate copy of the Application for Aircraft Registration as temporary operating authority that is valid for no more than 30 days. If for

any reason, the FAA Aircraft Registry cannot issue the Certificate of Aircraft Registration within the 30 day period, it will issue a letter of extension. The letter serves as authority to continue to operate the aircraft when it is carried in the aircraft with the copy of the application.

As now written, § 49.33(c) permits the recording of a "certified copy" of a document when neither the original nor a duplicate original is available. In effect, a person who wishes to record a document at the FAA Aircraft Registry in such a situation is forced to first record the instrument under local law, to have a certified copy prepared, and to submit the certified copy to the FAA Aircraft Registry. This is an unnecessary burden. In the light of the sanction of section 1001 of Title 18 of the United States Code, the Agency will accept true copies of documents when the person submitting them attaches his certificate of true copy as provided in § 49.21, and § 49.33(c) is amended to permit this practice.

Other clarifying amendments are adopted. Parts 47 and 49 are amended to use the phrase "evidence of ownership" rather than "proof of ownership," since the Agency issues a certificate on the basis of the "evidence" an applicant submits with his application. In several sections, the applicant is required to submit a "verified instrument." Since this language has resulted in several inquiries as to what is required, these sections are amended to require an "affidavit." On March 13, 1965, the Agency published its Organization Statement in the FEDERAL REGISTER (30 F.R. 3395). Paragraph 5 (c)(2) of Subpart B, "Agency organization," states that the "FAA Aircraft Registry" administers Parts 47 and 49 (30 F.R. 3399). Sections 47.19 and 49.11 are amended to reflect this designation, and to add the post office box number to the address. None of the other editorial and clarifying changes to Part 47 made at this time involves any substantive change. Section 47.69(d)(1) is amended in conformity with outstanding interpretations to clarify that it relates to flight testing of aircraft only.

This amendment relaxes and clarifies existing requirements and does not impose additional burdens on any person. Therefore, the Agency finds that notice and public procedure thereon are not necessary.

In consideration of the foregoing, effective May 1, 1966, Part 47 is revised and Part 49 is amended as hereinafter set forth.

The reporting and recordkeeping requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942 (5 U.S.C. 139–139f).

Issued in Washington, D.C., on March 10, 1966.

D. D. THOMAS,
Acting Administrator.

I. Part 47 is revised to read as follows:

Sec.
47.1 Applicability.
47.3 Registration required.
47.5 Applicants.
47.11 Evidence of ownership.
47.13 Signatures and instruments made by representatives.
47.15 Identification number.
47.17 Fees.
47.19 FAA Aircraft Registry.

Subpart B—Certificates of Aircraft Registration

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47.45 Change of address.
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47.49 Replacement of Certificate.

Subpart C—Dealers' Aircraft Registration Certificate

47.61 Dealers' Aircraft Registration Certificates.
47.63 Application.
47.65 Eligibility.
47.67 Evidence of ownership.
47.69 Limitations.
47.71 Duration of Certificate; change of status.

AUTHORITY: The provisions of this Part 47 issued under secs. 307(c), 313(a), 501, 503, 505, 506, and 1102 of the Federal Aviation Act of 1958; 49 U.S.C. 1348(c), 1354(a), 1401, 1403, 1405, 1406, and 1502, and the Convention of the International Recognition of Rights in Aircraft; 4 U.S.T. 1830.

Subpart A—General

§ 47.1 Applicability.

This part prescribes the requirements for registering aircraft under section 501 of the Federal Aviation Act of 1958 (49 U.S.C. 1401). Subpart B applies to each applicant for, and holder of, a Certificate of Aircraft Registration. Subpart C applies to each applicant for, and holder of, a Dealers' Aircraft Registration Certificate.

§ 47.3 Registration required.

(a) Section 501(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1401(b)) defines eligibility for registration as follows:

(b) An aircraft shall be eligible for registration if, but only if—

(1) It is owned by a citizen of the United States and it is not registered under the laws of any foreign country; or

(2) It is an aircraft of the Federal Government, or of a State, Territory, or possession of the United States, or the District of Columbia, or of a political subdivision thereof.

(b) No person may operate on aircraft that is eligible for registration under section 501 of the Federal Aviation Act of 1958 unless the aircraft—

(1) Has been registered by its owner;

(2) Is carrying aboard the temporary authorization required by § 47.31(b); or

(3) Is an aircraft of the Armed Forces.

(c) Governmental units are those named in paragraph (a) of this section and Puerto Rico.

§ 47.5 Applicants.

(a) A governmental unit or a citizen of the United States that wishes to register an aircraft in the United States must submit an Application for Aircraft Registration under this part.

(b) An aircraft may be registered only by, and in the legal name of, its owner. However, section 501(f) of the Federal Aviation Act of 1958 (49 U.S.C. 1401(f)) states that registration is not evidence of ownership of aircraft in any proceeding in which such ownership by a particular person is in issue. The FAA does not issue any certificate of ownership or endorse any information with respect to ownership on a Certificate of Aircraft Registration. The FAA issues a Certificate of Aircraft Registration to the person who appears to be the owner on the basis of the evidence of ownership submitted with the Application for Aircraft Registration, or recorded at the FAA Aircraft Registry.

(c) In this part, "owner" includes a buyer in possession, a bailee, or a lessee of an aircraft under a contract of conditional sale, and the assignee of that person.

§ 47.11 Evidence of ownership.

Each governmental unit or citizen of the United States that submits an Application for Aircraft Registration under this part must also submit the required evidence of ownership, recordable under §§ 49.13 and 49.17 of this chapter, as follows:

(a) The buyer in possession, the bailee, or the lessee of an aircraft under a contract of conditional sale must submit the contract. The assignee under a contract of conditional sale must submit both the contract (unless it is already recorded at the FAA Aircraft Registry), and his assignment from the original buyer, bailee, lessee, or prior assignee, that bears the written assent of the seller, bailor, lessor, or assignee thereof, under the original contract.

(b) The repossessor of an aircraft must submit—

(1) A certificate of repossession on FAA Form 8050–4, or its equivalent, signed by the applicant and stating that the aircraft was repossessed or otherwise seized under the security agreement involved and applicable local law;

(2) The security agreement (unless it is already recorded at the FAA Aircraft Registry), or a copy thereof certified as true under § 49.21 of this chapter; and

(3) When repossession was through foreclosure proceedings resulting in sale, a bill of sale signed by the sheriff, auctioneer, or other authorized person who conducted the sale, and stating that the sale was made under applicable local law.

(c) The buyer of an aircraft at a judicial sale, or at a sale to satisfy a lien or charge, must submit a bill of sale signed by the sheriff, auctioneer, or other authorized person who conducted the sale, and stating that the sale was made under applicable local law.

(d) The owner of an aircraft, the title to which has been in controversy and has been determined by a court, must submit

a certified copy of the decision of the court.

(e) The executor or administrator of the estate of the deceased former owner of an aircraft must submit a certified copy of the letters testimentary or letters of administration appointing him executor or administrator. The Certificate of Aircraft Registration is issued to the applicant as executor or administrator.

(f) The buyer of an aircraft from the estate of a deceased former owner must submit both a bill of sale, signed for the estate by the executor or administrator, and a certified copy of the letters testimentary or letters of administration. When no executor or administrator has been or is to be appointed, the applicant must submit both a bill of sale, signed by the heir-at-law of the deceased former owner, and an affidavit of the heir-at-law stating that no application for appointment of an executor or administrator has been made, that so far as he can determine none will be made, and that he is the person entitled to, or having the right to dispose of, the aircraft under applicable local law.

(g) The guardian of another person's property that includes an aircraft must submit a certified copy of the order of the court appointing him guardian. The Certificate of Aircraft Registration is issued to the applicant as guardian.

(h) The appointed trustee of property that includes an aircraft must submit either a certified copy of the order of the court appointing him trustee (if appointed by court order), or a copy of the complete trust instrument (if appointed without court order) certified as true under § 49.21 of this chapter. The Certificate of Aircraft Registration is issued to the applicant as trustee.

§ 47.13 Signatures and instruments made by representatives.

(a) Each signature on an Application for Aircraft Registration or on an instrument submitted as evidence of ownership must be in ink.

(b) When one or more persons doing business under a trade name submits an Application for Aircraft Registration or a request for cancellation of a Certificate of Aircraft Registration, the application or request must be signed by, or in behalf of, each person who shares title to the aircraft.

(c) When an agent submits an Application for Aircraft Registration or a request for cancellation of a Certificate of Aircraft Registration in behalf of the owner, he must—

(1) State the name of the owner on the application or request;

(2) Sign as agent or attorney-in-fact on the application or request; and

(3) Submit a signed power of attorney, or a true copy thereof certified under § 49.21 of this chapter, with the application or request.

(d) When a corporation submits an Application for Aircraft Registration or a request for cancellation of a Certificate of Aircraft Registration, it must—

(1) Have an authorized person sign the application or request;

(2) Show the title of the signer's office on the application or request; and

(3) Submit a copy of the authorization from the board of directors to sign for the corporation, certified as true under § 49.21 of this chapter by the president, vice president, secretary, or treasurer, with the application or request, unless—

(i) The signer is the president, vice president, secretary, or treasurer; or

(ii) A valid authorization to sign is on file at the FAA Aircraft Registry.

(e) When a partnership submits an Application for Aircraft Registration or a request for cancellation of a Certificate of Aircraft Registration, it must—

(1) State the full name of the partnership on the application or request;

(2) State the name of each general partner on the application or request; and

(3) Insert the word "partner" after the signature of the person who signs the application or request.

(f) When coowners, who are not engaged in business as partners, submit an Application for Aircraft Registration or a request for cancellation of a Certificate of Aircraft Registration, each person who shares title to the aircraft under the arrangement must sign the application or request.

(g) A power of attorney, or other evidence of a person's authority to sign for another, that is submitted under this part, is valid for the purposes of this section for not more than 2 years after the date it is signed. However, any instrument submitted before August 18, 1964, is considered to be valid until August 18, 1966.

§ 47.15 Identification number.

(a) A governmental unit or a citizen of the United States that wishes to register an aircraft must obtain the identification number ("registration mark") and place it on the Application for Aircraft Registration, FAA Form 8050–1, and the Aircraft Bill of Sale, FAA Form 8050–2. The identification number assigned to an aircraft remains with it unless the owner obtains a different number under paragraphs (d) through (g) of this section. If the aircraft was not last previously registered in a foreign country, the applicant must obtain the identification number from the nearest FAA District Office. However, if he applies for a group of identification numbers as an aircraft manufacturer or for a special identification number, under paragraphs (c) through (g) of this section, or if the aircraft was last previously registered in a foreign country, the applicant must obtain the identification number from the FAA Aircraft Registry. A U.S. identification number is assigned only after the foreign registration has been canceled or is found to be invalid by the FAA Aircraft Registry. There is no charge for this assignment of numbers.

(b) A U.S. identification number may not exceed five symbols in addition to the prefix letter "N". These symbols may be all numbers (N10000), one to four numbers and one suffix letter (N 1000A), or one to three numbers and two suffix letters (N 100AB). If the FAA has assigned one to three numbers and one suffix letter (N 100A), then the same number with a second suffix number (N 100AB) is not assigned at the same time. However, the holder of a Certificate of Aircraft Registration may apply to the FAA Aircraft Registry for permission to add a second suffix letter to the one to three numbers and one suffix letter already assigned. There is no charge for this change of number.

(c) An aircraft manufacturer may apply to the FAA Aircraft Registry for enough U.S. identification numbers to supply his estimated production for the next 18 months. There is no charge for this assignment of numbers.

(d) Any unassigned U.S. identification number may be assigned as a special identification number. However, each U.S. identification number of one to three symbols is reserved for an FAA owned aircraft, or for an aircraft that cannot accommodate a larger number. An applicant who wants a special identification number or who wants to change the identification number of his aircraft may apply for them to the FAA Aircraft Registry. The fee required by § 47.17 must accompany the application.

(e) An applicant for a one to three symbol U.S. identification number must submit with his application a statement of an FAA inspector that the structural configuration or design of the aircraft prevents the placing of a number of more than three symbols on the fuselage or vertical tail surface.

(f) The FAA Aircraft Registry assigns a special identification number on FAA Form 3475. Within 5 days after he affixes it to his aircraft, the owner must complete and sign the receipt contained in FAA Form 3475, state the date he affixed the special identification number to his aircraft, and return the original form to the FAA Aircraft Registry. The FAA then issues a revised Certificate of Aircraft Registration and an airworthiness certificate showing the special identification number. The owner shall carry the duplicate of FAA Form 3475 and the present Certificate of Aircraft Registration in the aircraft as temporary authority to operate it. This temporary authority is valid until the date the owner receives the revised Certificate of Aircraft Registration and airworthiness certificate.

(g) The owner of an aircraft need not surrender a one to three symbol identification number that was assigned to his aircraft before August 18, 1964. Before selling that aircraft, the owner may apply to the FAA Aircraft Registry for reassignment of that number to another aircraft he owns, or for the reservation of that number for later assignment. The fee required by § 47.17 for a reassigned or reserved identification number must accompany the application. At the same time, the owner must apply to the FAA Aircraft Registry for a new identification number for the aircraft he is selling. The fee required by § 47.17 for a special identification number must accompany the application.

(h) A special identification number may be reserved for no more than 1 year. If a person wishes to renew his reservation from year to year, he must apply to the FAA Aircraft Registry for renewal and submit the fee required by § 47.17 for a special identification number.

§ 47.17 Fees.

(a) The fees for applications under this Part are as follows:

(1) Certificate of Aircraft Registration (each aircraft)	$5.00
(2) Dealer's Aircraft Registration Certificate	$10.00
(3) Additional Dealer's Aircraft Registration Certificate (issued to same dealer)	$2.00
(4) Special identification number (each number)	$10.00
(5) Changed, reassigned, or reserved identification number	$10.00
(6) Duplicate Certificate of Registration	$2.00

(b) Each application must be accompanied by the proper fee, that may be paid by check or money order to the Federal Aviation Agency.

§ 47.19 FAA Aircraft Registry.

Except as provided in § 47.15(a), each application, request, notification, or other communication sent to the FAA under this part must be mailed or delivered to the FAA Aircraft Registry, Post Office Box 1082, Oklahoma City, Okla., 73101.

Subpart B—Certificates of Aircraft Registration

§ 47.31 Application.

(a) Each applicant for a Certificate of Aircraft Registration must submit the following to the FAA Aircraft Registry—

(1) The original (white) and one copy (green) of the Application for Aircraft Registration, FAA Form 8050–1;

(2) The original Aircraft Bill of Sale, FAA Form 8050–2, or other evidence of ownership authorized by § 47.33, 47.35, or 47.37 (unless already recorded at the FAA Aircraft Registry); and

(3) The fee required by § 47.17.

The FAA rejects an application when any form is not completed, or when the name and signature of the applicant are not the same throughout.

(b) After he complies with paragraph (a) of this section, the applicant shall carry the second duplicate copy (pink) of the Application for Aircraft Registration, FAA Form 8050–1, in the aircraft as temporary authority to operate it. This temporary authority is valid until the date the applicant receives the Certificate of Aircraft Registration, FAA Form 8050–3, or until the date the FAA denies the application, but in no case for more than 30 days after the date the applicant signs the application. If by 30 days after the application is signed, the FAA has neither issued the Certificate of Aircraft Registration nor denied the application, the FAA Aircraft Registry issues a letter of extension that serves as authority to continue to operate the aircraft while it is carried in the aircraft. This paragraph does not apply to an application under § 47.37 for registration of an aircraft last previously registered in a foreign country.

§ 47.33 Aircraft not previously registered anywhere.

(a) A citizen of the United States who is the owner of an aircraft that has not been registered under the Federal Aviation Act of 1958, under other law of the United States, or under foreign law, may register it under this part if he—

(1) Complies with §§ 47.11, 47.13, 47.15, and 47.17; and

(2) Submits with his application an Aircraft Bill of Sale, FAA Form 8050–2, signed by the seller, an equivalent bill of sale, or other evidence of ownership authorized by § 47.11.

(b) If, for good reason, the applicant cannot produce the evidence of ownership required by paragraph (a) of this section, he must submit other evidence that is satisfactory to the Administrator. This other evidence may be an affidavit stating why he cannot produce the required evidence, accompanied by whatever further evidence is available to prove the transaction.

(c) The owner of an amateur-built aircraft who applies for registration under paragraphs (a) and (b) of this section must describe the aircraft by class (airplane, rotocraft, glider, or balloon), serial number, number of seats, type of engine installed (reciprocating, turbopropeller, turbojet, or other), number of engines installed, and make, model, and serial number of each engine installed; and must state whether the aircraft is built for land or water operation. Also, he must submit as evidence of ownership an affidavit giving the U.S. identification number, and stating that the aircraft was built from parts and that he is the owner. If he built the aircraft from a kit, the applicant must also submit a bill of sale from the manufacturer of the kit.

(d) The owner, other than the holder of the type certificate, of an aircraft that he assembles from parts to conform to the approved type design, must describe the aircraft and engine in the manner required by paragraph (c) of this section, and also submit evidence of ownership satisfactory to the Administrator, such as bills of sale, for all major components of the aircraft.

§ 47.35 Aircraft last previously registered in the United States.

(a) A citizen of the United States who is the owner of an aircraft last previously registered under the Federal Aviation Act of 1958, or under other law of the United States, may register it under this part if he complies with §§ 47.11, 47.13, 47.15, and 47.17, and submits with his application an Aircraft Bill of Sale, FAA Form 8050–2, signed by the seller or an equivalent conveyance, or other evidence of ownership authorized by § 47.11:

(1) If the applicant bought the aircraft from the last registered owner, the conveyance must be from that owner to the applicant.

(2) If the applicant did not buy the aircraft from the last registered owner, he must submit conveyances or other instruments showing consecutive transactions from the last registered owner through each intervening owner to the applicant.

(b) If, for good reason, the applicant cannot produce the evidence of ownership required by paragraph (a) of this section, he must submit other evidence that is satisfactory to the Administrator. This other evidence may be an affidavit stating why he cannot produce the required evidence, accompanied by whatever further evidence is available to prove the transaction.

§ 47.37 Aircraft last previously registered in a foreign country.

(a) A citizen of the United States who is the owner of an aircraft last previously registered under the law of a foreign country may register it under this part if he—

(1) Complies with §§ 47.11, 47.13, 47.15, and 47.17;

(2) Submits with his application a bill of sale from the foreign seller or other evidence satisfactory to the Administrator that he owns the aircraft; and

(3) Submits evidence satisfactory to the Administrator that—

(i) If the country in which the aircraft was registered has not ratified the Convention on the International Recognition of Rights in Aircraft (4 U.S.T. 1830), the foreign registration has ended or is invalid; or

(ii) If that country has ratified the convention, the foreign registration has ended or is invalid, and each holder of a recorded right against the aircraft has been satisfied or has consented to the transfer, or ownership in the country of export has been ended by a sale in execution under the terms of the convention.

(b) For the purposes of paragraph (a)(3) of this section, satisfactory evidence of termination of the foreign registration may be—

(1) A statement, by the official having jurisdiction over the national aircraft registry of the foreign country, that the registration has ended or is invalid, and showing that official's name and title and describing the aircraft by make, model, and serial number; or

(2) A final judgment or decree of a court of competent jurisdiction that determines, under the law of the country concerned, that the registration has in fact become invalid.

§ 47.39 Effective date of registration.

(a) Except for an aircraft last previously registered in a foreign country, an aircraft is registered under this subpart on the date and at the time the FAA Aircraft Registry receives the documents required by § 47.33 or 47.35.

(b) An aircraft last previously registered in a foreign country is registered under this subpart on the date and at the time the FAA Aircraft Registry issues the Certificate of Aircraft Registration, FAA Form 8050–3, after the docu-

ments required by § 47.37 have been received and examined.

§ 47.41 Duration and return of Certificate.

(a) Each Certificate of Aircraft Registration issued by the FAA under this subpart is effective, unless suspended or revoked, until the date upon which—

(1) Subject to the Convention on the International Recognition of Rights in Aircraft when applicable, the aircraft is registered under the laws of a foreign country;

(2) The registration is canceled at the written request of the holder of the certificate;

(3) The aircraft is totally destroyed or scrapped;

(4) Ownership of the aircraft is transferred;

(5) The holder of the certificate loses his U.S. citizenship; or

(6) 30 days have elapsed since the death of the holder of the certificate.

(b) The Certificate of Aircraft Registration, with the reverse side completed, must be returned to the FAA Aircraft Registry—

(1) In case of registration under the laws of a foreign country, by the person who was the owner of the aircraft before foreign registration;

(2) Within 60 days after the death of the holder of the certificate, by the administrator or executor of his estate, or by his heir-at-law if no administrator or executor has been or is to be appointed; or

(3) Upon the termination of the registration, by the holder of the Certificate of mentioned in paragraph (a) of this section.

§ 47.43 Invalid registration.

(a) The registration of an aircraft is invalid if, at the time it is made—

(1) The aircraft is registered in a foreign country;

(2) The applicant is not the owner;

(3) The applicant is not a citizen of the United States; or

(4) The applicant is a citizen of the United States, but his interest in the aircraft was created by a transaction that was not entered into in good faith and was made to avoid (with or without the owner's knowledge) compliance with section 501 of the Federal Aviation Act of 1958 (49 U.S.C. 1401), that prevents registration of an aircraft owned by a person who is not a citizen of the United Aircraft Registration in all other cases States.

(b) If the registration of an aircraft is invalid under paragraph (a) of this section, the holder of the invalid Certificate of Aircraft Registration shall return it as soon as possible to the FAA Aircraft Registry.

§ 47.45 Change of address.

Within 30 days after any change in his permanent mailing address, the holder of a Certificate of Aircraft Registration for an aircraft shall notify the FAA Aircraft Registry of his new address. A revised Certificate of Aircraft Registration is then issued, without charge.

§ 47.47 Cancellation of Certificate for export purpose.

(a) The holder of a Certificate of Aircraft Registration who wishes to cancel the certificate for the purpose of export must submit the following to the FAA Aircraft Registry—

(1) A written request for cancellation of the certificate describing the aircraft by make, model, and serial number, stating the U.S. identification number and the country to which the aircraft will be exported; and

(2) When the aircraft is under a contract of conditional sale, the written consent of the seller, bailor, or lessor under the contract.

(b) The FAA notifies the country to which the aircraft will be exported of the cancellation by ordinary mail, or by airmail at the owner's request. The transmission of this notice by means other than ordinary mail or airmail must be arranged and paid for by the owner.

§ 47.49 Replacement of Certificate.

(a) If a Certificate of Aircraft Registration is lost, stolen, or mutilated, the holder of the Certificate of Aircraft Registration may apply to the FAA Aircraft Registry for a duplicate certificate, accompanying his application with the fee required by § 47.17.

(b) If the holder has applied and has paid the fee for a duplicate Certificate of Aircraft Registration and needs to operate his aircraft before receiving it, he may request a temporary certificate. The FAA Aircraft Registry issues a temporary certificate, by a collect telegram, to be carried in the aircraft. This temporary certificate is valid until he receives the duplicate Certificate of Aircraft Registration.

Subpart C—Dealers' Aircraft Registration Certificate

§ 47.61 Dealers' Aircraft Registration Certificates.

(a) The FAA issues a Dealer's Aircraft Registration Certificate, FAA Form 8050–6, to manufacturers and dealers so as to—

(1) Allow manufacturers to make required production flight checks; and

(2) Facilitate operating, demonstrating, and merchandising aircraft by the manufacturer or dealer without the burden of obtaining a Certificate of Aircraft Registration for each aircraft with each transfer of ownership, under Subpart B of this part.

(b) A Dealer's Aircraft Registration Certificate is an alternative for the Certificate of Aircraft Registration issued under Subpart B of this part. A dealer may, under this subpart, obtain one or more Dealers' Aircraft Registration Certificates in addition to his original certificate, and he may use a Dealer's Aircraft Registration Certificate for any aircraft he owns.

§ 47.63 Application.

A manufacturer or dealer that wishes to obtain a Dealer's Aircraft Registration Certificate, FAA Form 8050–6, must submit—

(a) An Application for Dealers' Aircraft Registration Certificates, FAA Form 8050–5; and

(b) The fee required by § 47.17.

§ 47.65 Eligibility.

To be eligible for a Dealer's Aircraft Registration Certificate, a person must have an established place of business in the United States and must be substantially engaged in manufacturing or selling aircraft.

§ 47.67 Evidence of ownership.

Before using his Dealer's Aircraft Registration Certificate for operating an aircraft, the holder of the certificate (other than a manufacturer) must send to the FAA Aircraft Registry evidence satisfactory to the Administrator that he is the owner of that aircraft. An Aircraft Bill of Sale, or its equivalent, may be used as evidence of ownership. There is no recording fee.

§ 47.69 Limitations.

A Dealer's Aircraft Registration Certificate is valid only in connection with use of aircraft—

(a) By the owner of the aircraft to whom it was issued, his agent or employee, or a prospective buyer, and in the case of a dealer other than a manufacturer, only after he has complied with § 47.67;

(b) Within the United States;

(c) While a certificate is carried within the aircraft; and

(d) On a flight that is—

(1) For required flight testing of aircraft; or

(2) Necessary for, or incident to, sale of the aircraft. However, a prospective buyer may operate an aircraft for demonstration purposes only while he is under the direct supervision of the holder of the Dealer's Aircraft Registration Certificate or his agent.

§ 47.71 Duration of Certificate; change of status.

(a) A Dealer's Aircraft Registration Certificate expires 1 year after the date it is issued. Each additional certificate expires on the date the original certificate expires.

(b) The holder of a Dealer's Aircraft Registration Certificate shall immediately notify the FAA Aircraft Registry of any of the following—

(1) A change of his name;

(2) A change of his address;

(3) A change that affects his status as a citizen of the United States; or

(4) The discontinuance of his busi-ness.

II. Part 49 is amended as follows:

1. Section 49.11 is amended to read as follows:

§ 49.11 FAA Aircraft Registry.

To be eligible for recording, a conveyance must be mailed or delivered to the FAA Aircraft Registry, Post Office Box 1082, Oklahoma City, Okla., 73101.

2. Section 49.13 is amended to read as follows:

§ 49.13 Signatures and acknowledgments.

(a) Each signature on a conveyance must be in ink.

(b) Paragraphs (b) through (f) of § 47.13 of this chapter apply to a conveyance made by, or on behalf of, one or more persons doing business under a trade name, or by an agent, corporation, partnership, coowner, or unincorporated association.

(c) No conveyance or other instrument need be acknowledged, as provided in section 503(e) of the Federal Aviation Act of 1958 (49 U.S.C. 1403(e)), in order to be recorded under this part. The law of the place of delivery of the conveyance determines when a conveyance or other instrument must be acknowledged in order to be valid for the purposes of that place.

(d) A power of attorney, or other evidence of a person's authority to sign for another, that is submitted under this part, is valid for the purposes of this section for not more than 2 years after the date it is signed. However, any instrument submitted before August 18, 1964, is considered to be valid until August 18, 1966.

3. Section 49.15(b) is amended by striking out the words "application for registration" and inserting the words "Application for Aircraft Registration" in place thereof.

4. Section 49.17 is amended as follows:

a. Paragraphs (b) and (c) are amended to read as follows:

(b) The kinds of conveyance recordable under this part include those used as evidence of ownership under § 47.11 of this chapter.

(c) The validity of any instrument, eligible for recording under this part, is governed by the laws of the State, possession, Puerto Rico, or District of Columbia, as the case may be, in which the instrument was delivered, regardless of the location or place of delivery of the property affected by the instrument. If the place where an instrument is intended to be delivered is stated in the instrument, it is presumed that the instrument was delivered at that place. The recording of a conveyance is not a decision of the FAA that the instrument does, in fact, affect title to, or an interest in, the aircraft or other property it covers.

b. Paragraphs (d) (1), (2), (3), and (e)(3) are amended by striking out the words "and acknowledged" wherever they appear.

c. Paragraph (e)(1) is amended to read as follows:

(1) A chattel mortgage must be signed by the mortgagor. If he is not the registered owner of the aircraft, the chattel mortgage must be accompanied by his Application for Aircraft Registration and evidence of ownership, as prescribed in Part 47 of this chapter, unless—

(i) He holds a Dealer's Aircraft Registration Certificate and he submits evidence of ownership as provided in § 47.67 of this chapter (if applicable);

(ii) He was the owner of the aircraft on the date the mortgage was signed, as shown by documents recorded at the FAA Aircraft Registry; or

(iii) He is the vendor, bailor, or lessor under a contract of conditional sale.

5. Section 49.21 is amended by striking out the words "signatures, and acknowledgments" and inserting the words "and signatures" in place thereof.

6. Section 49.33 is amended as follows:

a. Paragraph (b) is amended by striking out the words "FAA" and inserting the words "United States" in place thereof.

b. Paragraph (c) is amended to read as follows:

(c) It is an original document, or a duplicate original document, or if neither the original nor a duplicate original of a document is available, a true copy of an original document, certified under § 49.21;

7. Section 49.55(a) is amended by striking out the word "acknowledged" and inserting the word "signed" in place thereof.

(Secs. 307(c), 313(a), 501, 503, 505, 506, and 1102 of the Federal Aviation Act of 1958; 49 U.S.C. 1348(c), 1354(a), 1401, 1403, 1405, 1406, and 1502, and the Convention on the International Recognition of Rights in Aircraft; 4 U.S.T. 1830)

[F.R. Doc. 66-2802; Filed, Mar. 16, 1966; 8:45 a.m.]

SUBCHAPTER E—AIRSPACE

[Airspace Docket No. 65-EA-81]

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

Revocation of Control Area Extension

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to revoke the New York, N.Y., control area extension.

The following transition areas, in whole or in part, provide controlled airspace that supplants the New York, N.Y., control area extension: Allentown, Pa., Andover, N.J., Atlantic City, N.J., Binghamton, N.Y., Bridgeport, Conn., De Lancey, N.Y., Dover, Del., Harrisburg, Pa., New York, N.Y., Philadelphia, Pa., Poughkeepsie, N.Y., Riverhead, N.Y., White Plains, N.Y., Wilkes-Barre, Pa., and Wrightstown, N.J. (31 F.R. 2149).

Retention of the New York control area extension is therefore unnecessary for air traffic control purposes, and it is revoked hereby.

This action involves, in part, navigable airspace outside the United States. The Administrator has therefore consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

Since this amendment is editorial in nature and does not impose a burden upon any person, notice and public procedure hereon are unnecessary and the amendment may be made effective without regard to the 30-day statutory period required by section 4(c) of the Administrative Procedure Act.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective upon publication in the FEDERAL REGISTER, as hereinafter set forth.

In § 71.165 (31 F.R. 2055) the New York, N.Y., control area extension is revoked.

(Sec. 307(a) and 1110 of the Federal Aviation Act of 1958, 49 U.S.C. 1348 and 1510, and Executive Order 10854, 24 F.R. 9565)

Issued in Washington, D.C., on March 10, 1966.

H. B. HELSTROM,
Acting Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 66-2803; Filed, Mar. 16, 1966; 8:45 a.m.]

[Airspace Docket No. 66-SO-17]

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

Alteration of Control Zone and Transition Area

The purpose of these amendments to Part 71 of the Federal Aviation Regulations is to alter the Augusta, Ga., control zone and transition area.

The Augusta, Ga., control zone is described in 31 F.R. 2065. An extension to the control zone is described in part as, "* * * within 2 miles each side of the 348° bearing from the Augusta LMM, extending from the 5-mile radius zone to 7 miles N of the LMM * * *."

The Augusta, Ga., transition area is described in 31 F.R. 2149. An extension to the transition area is described in part as "* * * and within 2 miles each side of the 348° bearing from the Augusta LMM, extending from the Augusta LMM to 18 miles N of the LMM * * *."

Because of the cancellation of SIAP Number AL-27-ADF-3 predicated on the LMM and the establishment of SIAP Number AL-27-ADF-2 predicated on the Augusta RBN, a requirement exists to editorially alter the control zone and revoke a portion of an extension to the 700-foot transition area.

Since these changes are minor in nature and lessen the burden on the public, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

1. In § 71.171 (31 F.R. 2065) the Augusta, Ga., control zone is amended as follows:

Substitute "* * * within 2 miles each side of the 166° bearing from the Augusta RBN, extending from the 5-mile radius zone to 1 mile S of the RBN * * *" for "* * * within 2 miles each side of the 348° bearing from the Augusta LMM, extending from the 5-mile radius zone to 7 miles N of the LMM * * *."

2. In § 71.181 (31 F.R. 2149) the Augusta, Ga., transition area is amended as follows:

Delete that portion described in part as "* * * and within 2 miles each side of the 348° bearing from the Augusta

LMM, extending from the Augusta LMM to 18 miles N of the LMM * * *."

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348(a))

Issued in East Point, Georgia, on March 8, 1966.

HENRY S. CHANDLER,
Acting Director, Southern Region.

[F.R. Doc. 66-2804; Filed, Mar. 16, 1966; 8:45 a.m.]

SUBCHAPTER F—AIR TRAFFIC AND GENERAL OPERATING RULES

[Reg. Docket No. 7195; Amdt. 95-139]

PART 95—IFR ALTITUDES

Miscellaneous Amendments

The purpose of this amendment to Part 95 of the Federal Aviation Regulations is to make changes in the IFR altitudes at which all aircraft shall be flown over a specified route or portion thereof. These altitudes, when used in conjunction with the current changeover points for the routes or portions thereof, also assure navigational coverage that is adequate and free of frequency interference for that route or portion thereof.

As a situation exists which demands immediate action in the interest of safety, I find that compliance with the notice and procedure provisions of the Administrative Procedure Act is impracticable and that good cause exists for making this amendment effective within less than 30 days from publication

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (24 F.R. 5662), Part 95 [New] of the Federal Aviation Regulations is amended, effective April 28, 1966, as follows:

1. By amending Subpart C as follows:

From, to, and MEA

Section 95.1001 *Direct routes—United States* is amended to delete:

Palm Beach, Fla., (via control 1,150); Barracuda INT, Fla.; 25,000. MAA-45,000.

Section 95.1001 *Direct routes—United States* is amended by adding:

Eagle Lake, Tex., VOR; Roy INT, Tex.; *1,800. *1,400—MOCA.
Roy INT, Tex.; Key INT, Tex.; *1,800. *1,500—MOCA.
Sabine Pass, Tex., VOR; Monroe City INT, Tex.; *1,500. *1,300—MOCA.
Smith Point INT,Tex.; Beaumont, Tex,. VOR; *1,600. *1,200—MOCA.
Paige INT, Tex.; College Station, Tex., VOR; *4,500. *1,600—MOCA.

Section 95.1001 *Direct routes—United States* is amended to read in part:

Bonita INT, Fla.; Sailfish INT, Fla.; *3,000. *1,000—MOCA. MAA—45,000.
Tarpon INT, Fla.; Barracuda INT, Fla.; *25,000. MAA—45,000. *1,000—MOCA.

Puerto Rico Routes

Route 2

Isla Verdi INT, P.R.; Fajardo INT, P.R.; *1,500. *1,200—MOCA.

Section 95.6001 *VOR Federal airway 1* is amended to read in part:

Cofield, N.C. VOR; Norfolk, Va., VOR; 2,000.

Section 95.6005 *VOR Federal airway 5* is amended to read in part:

From, to, and MEA

Cincinnati, Ohio, VOR; Mason INT, Ohio; 2,700.
Mason INT, Ohio; Appleton, Ohio, VOR; 3,000.

Section 95.6005 *VOR Federal airway 5* is amended by adding:

Cincinnati, Ohio, VOR via E alter.; Appleton, Ohio, VOR via E alter.; 4,000.

Section 95.6007 *VOR Federal airway 7* is amended to read in part:

Dothan, Ala., VOR; Clio INT, Ala.; *2,000. *1,500—MOCA.

Section 95.6009 *VOR Federal airway 9* is amended to read in part:

Greenwood, Miss., VOR; Coldwater INT, Miss.; *2,100. *1,800—MOCA.
Sardis INT, Miss., via E alter.; Independence INT, Miss., via E alter.; *2,200. *1,600—MOCA.
Independence INT, Miss., via E alter.; Memphis, Tenn., VOR via E alter.; *1,900. *1,600—MOCA.
McComb, Miss., VOR; *Florence INT, Miss.; **2,200. *4,000—MRA. **1,800—MOCA.
Florence INT, Miss.; Jackson, Miss., VOR; *2,000. *1,700—MOCA.
McComb, Miss., VOR via W alter.; *Byram INT, Miss., via W alter.; 2,300. *4,200—MRA.
Byram INT, Miss., via W alter.; Jackson, Miss., VOR via W alter.; 2,300.

Section 95.6015 *VOR Federal airway 15* is amended to read in part:

Neola, Iowa, VOR; Sioux City, Iowa, VOR; *3,100. *2,800—MOCA.

Section 95.6016 *VOR Federal airway 16* is amended to read in part:

Nashville, Tenn., VOR; Statesville INT, Tenn.; *3,000. *2,000—MOCA.
Knoxville, Tenn., VOR; Piedmont INT, Tenn.; 3,000.
Piedmont INT, Tenn.; *Ottway INT, Tenn.; 4,000. *7,000—MRA.
Knoxville, Tenn., VOR via S alter.; Pittman DME Fix via S alter.; westbound, 5,000; eastbound, 8,000.
Pittman DME Fix via S alter.; Snowbird, Tenn., VOR via S alter.; 8,000.
Snowbird, Tenn., VOR via S alter.; via Afton INT, Tenn., via S alter.; 7,000.
Afton INT, Tenn., via S alter.; Holston Mountain, Tenn.; VOR via S alter.; 6,000.
Knoxville, Tenn., VOR via N alter.; Tampico INT, Tenn., via N alter.; 3,500.
North Beach INT, Md.; Kenton, Del., VOR; 1,800.

Section 95.6020 *VOR Federal airway 20* is amended to read in part:

Damon INT, Tex.; Arcola INT, Tex.; *1,800. *1,600—MOCA.

Section 95.6045 *VOR Federal airway 45* is amended to read in part:

Saginaw, Mich., VOR; Alpena, Mich., VOR; *3,500. *2,200—MOCA.
Saginaw, Mich., VOR via W alter.; Alpena, Mich., VOR via W alter.; *3,500. *2,100—MOCA.

Section 95.6052 *VOR Federal airway 52* is amended to read in part:

Troy, Ill., VOR; Cartter INT, Ill.; *2,100. *2,000—MOCA.

Section 95.6054 *VOR Federal airway 54* is amended to read in part:

From, to, and MEA

Holly Springs, Miss., VOR, via S alter.; Maud INT, Ala., via S alter.; *3,500. *1,900—MOCA.
Chattanooga, Tenn., VOR; *Crandall INT, Ga.; 3,000. *6,000—MCA Crandall INT, eastbound.
Crandall INT, Ga.; *Murphy INT, N.C.; 6,000. *7,000—MRA.
Murphy INT, N.C.; Harris, Ga., VOR; *6,000. *5,700—MOCA.
Harris, Ga., VOR; Sunset INT, S.C.; 7,500.

Section 95.6082 *VOR Federal airway 82* is amended to read in part:

Grand Forks, N. Dak., VOR via N alter.; Thief River Falls, Minn., VOR via N alter.; *2,800. *2,600—MOCA.
Thief River Falls, Minn., VOR via N alter.; Bemidji, Minn., VOR via N alter.; *3,200. *2,600—MOCA.

Section 95.6097 *VOR Federal airway 97* is amended to read in part:

Blue Ridge INT, Ga.; *Murphy INT, Tenn.; **8,000. *7,000—MRA. **5,300—MOCA.

Section 95.6139 *VOR Federal airway 139* is amended to read in part:

Haven INT, N.J.; Shark INT, N.J.; *6,000. *1,500—MOCA.
Int. 124 M rad Kennedy VOR and 236 M rad Hampton VOR; Beach INT, N.Y.; *5,000. *1,500—MOCA.

Section 95.6140 *VOR Federal airway 140* is amended to read in part:

Hartsville INT, Tenn.; Highway, Tenn., VOR; 3,200.
Granville INT, Tenn., via S alter.; Highway, Tenn., VOR via S alter.; 3,300.

Section 95.6148 *VOR Federal airway 148* is amended to read in part:

Redwood Falls, Minn., VOR; Mayer INT, Minn.; *2,800. *2,500—MOCA.
Mayer INT, Minn.; Minneapolis, Minn., VOR; *2,800. *2,300—MOCA.

Section 95.6152 *VOR Federal airway 152* is amended to read in part:

Orlando, Fla., VOR via S alter.; Daytona Beach, Fla., VOR via S alter.; *2,000. *1,300—MOCA.

Section 95.6156 *VOR Federal airway 156* is amended to read in part:

Richmond, Va., VOR; Harcum, Va., VOR; 2,000.
Harcum, Va., VOR; Cape Charles, Va., VOR; 2,000.

Section 95.6157 *VOR Federal airway 157* is amended to read in part:

Rocky Mount, N.C., VOR; Lawrenceville, Va., VOR; 2,000.
Richmond, Va., VOR; Doncaster INT, Md.; 2,000.
Doncaster INT, Md.; Washington, D.C., VOR; 1,800.

Section 95.6176 *VOR Federal airway 176* is amended to read in part:

Holly Springs, Miss., VOR, via N alter.; Maud INT, Ala., via N alter.; *3,500. *1,900—MOCA.
Memphis, Tenn., VOR via S alter.; Wyatte INT, Miss., via S alter.; *1,900. *1,700—MOCA.
Wyatte INT, Miss., via S alter.; Hamilton, Ala., VOR via S alter.; *2,400. *1,900—MOCA.

Section 95.6185 *VOR Federal airway 185* is amended to read in part:

From, to, and MEA

Marshall INT, N.C.; *Snowbird, Tenn., VOR; **8,000. *7,000—MCA Snowbird VOR, southeastbound. **7,700—MOCA.
Snowbird, Tenn., VOR; Piedmont INT, Tenn.; 6,000.
*Ottway INT, Tenn., via E alter.; Piedmont INT, Tenn., via E alter.; 4,000. *7,000—MRA.

Section 95.6189 *VOR Federal airway 189* is amended to read in part:

Rocky Mount, N.C., VOR; Franklin, Va., VOR; 2,000.

Section 95.6194 *VOR Federal airway 194* is amended to read in part:

Cofield, N.C., VOR; Norfolk, Va., VOR; 2,000.
Cofield, N.C., VOR via S alter.; *Sunbury INT, N.C., via S alter.; 2,000. *2,500—MRA.
Sunbury INT, N.C., via S alter.; Norfolk, Va., VOR via S alter.; 2,000.

Section 95.6196 *VOR Federal airway 196* is amended to read in part:

Utica, N.Y., VOR; Forge INT, N.Y.; *8,000. *4,700—MOCA.
Forge INT, N.Y.; *Cranberry INT, N.Y.; **9,000. *9,000—MCA Cranberry INT, southwestbound. *4,700—MOCA.

Section 95.6205 *VOR Federal airway 205* is amended to read in part:

Omaha, Nebr., VOR; Sioux City, Iowa, VOR; *3,100. *2,800—MOCA.

Section 95.6214 *VOR Federal airway 214* is amended to read in part:

Columbus, Ohio, ILS loc.; Hanover INT, Ohio; *2,700. MAA—4,000. *2,300—MOCA.
Hanover INT, Ohio; Zanesville, Ohio; VOR; *2,700. *2,400—MOCA.

Section 95.6222 *VOR Federal airway 222* is amended to read in part:

McComb, Miss., VOR; Hattiesburg, Miss., VOR; *2,000. *1,800—MOCA.

Section 95.6225 *VOR Federal airway 225* is amended to read in part:

Paloma INT, Fla., via E alter.; Pavilion INT, Fla., via E alter.; *3,500. *1,200—MOCA.
Pavilion INT, Fla., via E alter.; *Goodland INT, Fla., via E alter.; **3,500. *3,500—MRA. **1,300—MOCA.

Section 95.6232 *VOR Federal airway 232* is amended to read in part:

Tannersville, Pa., VOR; INT 124 M rad, Tannersville VOR and 061 M rad, Solberg, VOR; 3,000.

Section 95.6241 *VOR Federal airway 241* is amended to read in part:

Dothan, Ala., VOR via W alter.; Edd INT, Ala., via W alter.; *2,000. *1,500—MOCA.
Edd INT, Ala., via W alter; Midway INT, Ala., via W alter.; *2,500. *1,800—MOCA.

Section 95.6249 *VOR Federal airway 249* is amended to read in part:

Sparta, N.J., VOR; Huguenot, N.Y., VOR; 3,500.

Section 95.6252 *VOR Federal airway 252* is amended to read in part:

Huguenot, N.Y., VOR; Sparta, N.J., VOR; 3,500.

Section 95.6266 *VOR Federal airway 266* is amended to read in part:

From, to, and MEA

Lawrenceville, Va., VOR; Franklin, Va., VOR; 2,000.

Section 95.6267 *VOR Federal airway 267* is amended to read in part:

Norcross, Ga., VOR; College INT, Ga.; *5,000. *4,100—MOCA.
College INT, Ga.; Harris, Ga., VOR; 6,000.
Harris, Ga., VOR; Fontana INT, N.C.; 7,800.

Section 95.6286 *VOR Federal airway 286* is amended to read in part:

Brooke, Va., VOR; Cape Charles, Va., VOR; 2,000.

Section 95.6290 *VOR Federal airway 290* is amended to read in part:

Franklin, Va., VOR; *Sunbury INT, N.C.; 2,500. *2,500—MRA.
Sunbury INT, N.C.; Elizabeth City, N.C., VOR; 2,500.

Section 95.6308 *VOR Federal airway 308* is amended to read in part:

North Beach INT, Md.; Kenton, Del., VOR; 1,800.
Haven INT, N.J.; Shark INT, N.J.; *6,000. *1,500—MOCA.
Int. 124 M rad, Kennedy VOR and 236 M rad, Hampton VOR; Beach INT, N.Y.; *5,000. *1,500—MOCA.

Section 95.6317 *VOR Federal airway 317* is amended to read in part:

*Cape Spencer, Alaska, LF/RBN; **Harbor Point INT, Alaska; ***15,000. *14,200—MCA Cape Spencer LF/RBN, Westbound. **15,000—MRA. ***5,300—MOCA.

Section 95.6440 *VOR Federal airway 440* is amended to read in part:

McGrath, Alaska, VOR; Ganes Creek INT, Alaska; 6,000.
Ganes Creek INT, Alaska; Yukon INT, Alaska; *8,000. *6,000—MOCA.

Section 95.6446 *VOR Federal airway 446* is amended to read in part:

Troy, Ill., VOR; Cartter INT, Ill.; *2,100. *2,000—MOCA.

Section 95.6455 *VOR Federal airway 455* is amended to read in part:

Picayune, Miss., VOR; Hattiesburg, Miss., VOR; *2,000. *1,800—MOCA.
Madison INT, La., via W alter.; Hattiesburg, Miss., VOR via W alter.; *4,000. *1,800—MOCA.
Hattiesburg, Miss., VOR via W alter.; Louin INT, Miss., via W alter.; *2,100. *1,800—MOCA.

Section 95.6456 *VOR Federal airway 456* is amended to read in part:

King Salmon, Alaska, VOR; *Big Mountain, Alaska, LF/RBN 4,500. *10,000—MCA Big Mountain LF/RBN, northeastbound.

Section 95.6480 *VOR Federal airway 480* is amended to read in part:

*Holy Cross INT, Alaska; Joaquin INT, Alaska; **8,000. *3,500—MCA Holy Cross INT, northeastbound. **5,600—MOCA.
Joaquin INT, Alaska; McGrath, Alaska, VOR; #6,000. #Continuous navigation signal coverage does not exist below 13,000' between 110 NM BET and 60 NM MCG.
McGrath, Alaska, VOR; Medra INT, Alaska; 4,000.

From, to, and MEA

Medra INT, Alaska; Nenana, Alaska, VOR; *8,000. *4,800—MOCA.

Section 95.6483 *VOR Federal airway 483* is amended to read in part:

Sparta, N.J., VOR; Huguenot, N.Y., VOR; 3,500.

Section 95.7004 *Jet Route No. 4* is amended to read in part:

From, to, MEA, and MAA

Jackson, Miss., VORTAC; Meridian, Miss., VORTAC; 18,000; 45,000.
Meridian, Miss., VORTAC; Montgomery, Ala., VORTAC; 18,000; 45,000.

2. By amending Subpart D as follows:

Section 95.8003 *VOR Federal airway changeover points:*

Airway Segment: From; to—Changeover point: Distance; from

V–16 is amended by adding:

Knoxville, Tenn., VOR via S alter.; Snowbird, Tenn., VOR via S alter.; 25; Knoxville.

(Secs. 307 and 1110 of the Federal Aviation Act of 1958; 49 U.S.C. 1348, 1510)

Issued in Washington, D.C., on March 11, 1966.

GORDON A. WILLIAMS, Jr.,
Acting Director,
Flight Standards Service.

[F.R. Doc. 66–2805; Filed, Mar. 16, 1966; 8:45 a.m.]

Title 7—AGRICULTURE

Chapter III—Agricultural Research Service, Department of Agriculture

[P.P.C. 613, 7th Rev.]

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—European Chafer

ADMINISTRATIVE INSTRUCTIONS DESIGNATING REGULATED AREAS

Pursuant to the authority conferred by § 301.77–2 of the regulations supplemental to the European chafer quarantine (7 CFR 301.77–2), under sections 8 and 9 of the Plant Quarantine Act of 1912, as amended, and section 106 of the Federal Plant Pest Act (7 U.S.C. 161, 162, 150ee), the administrative instructions appearing as 7 CFR 301.77–2a are hereby revised to read as follows:

§ 301.77–2a Administrative instructions designating regulated areas under the European chafer quarantine and regulations.

The following counties and other civil divisions, and parts thereof, in the quarantined States listed below, are designated as European chafer regulated areas within the meaning of the provisions in this subpart:

CONNECTICUT

Hartford County. The towns of Berlin and Southington.

New Haven County. The town of Meriden.

NEW YORK

Broome County. The town of Union and the city of Binghamton.

Cayuga County. The towns of Aurelius, Brutus, Cato, Conquest, Mentz, Montezuma, Sennett, Sterling, and Throop, and the city of Auburn.

Chemung County. The towns of Ashland, Big Flats, Elmira, Horseheads, Southport, and the city of Elmira.

Chenango County. The town and city of Norwich.

Cortland County. The town of Cortlandville and the city of Cortland.

Erie County. The towns of Amherst, Cheektowago, Grand Island, and Tonawanda, and the cities of Buffalo, Lackawanna, and Tonawanda.

Genesee County. The towns of Batavia and Le Roy, and the city of Batavia.

Herkimer County. The town and city of Herkimer.

Kings County. The entire county.

Livingston County. The town of Caledonia.

Monroe County. The entire county.

New York County. Governors Island.

Niagara County. The towns of Cambria, Lewiston, Lockport, Newfane, Niagara, Pendleton, Porter, Wheatfield, and Wilson, and the cities of Lockport, Niagara Falls, and North Tonawanda.

Oneida County. The towns of Marcy, New Hartford and Whitestown, and the city of Utica.

Onondaga County. The towns of Camillus, Cicero, Clay, De Witt, Elbridge, Geddes, Lysander, Manlius, Marcellus, Onondaga, Salina, and Van Buren, and the city of Syracuse.

Ontario County. Towns of Canandaigua, East Bloomfield, Farmington, Geneva, Gorham, Hopewell, Manchester, Phelps, Seneca, Victor, and West Bloomfield, and the cities of Canandaigua and Geneva.

Oswego County. The towns of Hastings, Oswego, and Schroeppel, and the city of Oswego.

Richmond County. The entire county (Staten Island).

Schuyler County. The towns of Dix, Hector, Reading, and Tyrone.

Seneca County. The towns of Fayette, Junius, Seneca Falls, and Tyre, the village and town of Waterloo, and the city of Seneca Falls.

Wayne County. The entire county.

Yates County. The town of Starkey.

(Sec. 9, 37 Stat. 318, sec. 106, 71 Stat. 33; 7 U.S.C. 162, 150ee. Interprets or applies sec. 8, 37 Stat. 318, as amended; 7 U.S.C. 161; 29 F.R. 16210, as amended, 30 F.R. 5801; 7 CFR 301.77–2)

These administrative instructions shall become effective March 17, 1966, when they shall supersede administrative instructions effective May 19, 1965 (7 CFR 301.77–2a).

The Director of the Plant Pest Control Division has determined that infestations of the European chafer exist or are likely to exist in the counties and other civil divisions, and parts thereof, listed above, or that it is necessary to regulate such localities because of their proximity to infestation or their inseparability for quarantine purposes from infested localities. Therefore, such counties and other civil divisions, and parts thereof, are designated as European chafer regulated areas.

This revision of the administrative instructions adds the town of Caledonia, Livingston County, N.Y., to the regulated areas. It also extends the existing regulated areas in New York to include the following towns: Union, Broome County; Aurelius and Sterling, Cayuga County; Grand Island, Erie County; Marcy, Oneida County; Marcellus, Onondaga County; East Bloomfield and West Bloomfield, Ontario County; Hastings and Oswego, Oswego County; and Hector, Schuyler County.

Inasmuch as this revision imposes restrictions necessary to prevent the spread of European chafers, it should be made effective promptly to accomplish its purpose in the public interest. Accordingly, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to this revision are impracticable and contrary to the public interest, and good cause is found for making this revision effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Hyattsville, Md., this 14th day of March 1966.

[SEAL] E. D. BURGESS,
Director,
Plant Pest Control Division.

[F.R. Doc. 66–2843; Filed, Mar. 16, 1966; 8:49 a.m.]

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 0—CONDUCT OF EMPLOYEES

PART 1—STATEMENT OF ORGANIZATION, DELEGATIONS, AND GENERAL INFORMATION

Pursuant to and in accordance with sections 201 through 209 of Title 18 of the United States Code, Executive Order 11222 of May 8, 1965 (30 F.R. 6469), and Title 5, Chapter I, Part 735 of the Code of Federal Regulations, Part 0 is added to Title 10 of the Code of Federal Regulations, reading as set forth below. This Part 0 supersedes § 1.256 of this chapter.

Subpart A—General

Sec.
0.735–1 Policy.
0.735–2 Program objective.
0.735–3 Responsibilities and authorities.
0.735–4 Definitions.
0.735–5 Basic requirements.
0.735–6 National emergency application.

Subpart B—Conflict of Interest Restrictions

0.735–20 General.
0.735–21 Acts affecting a personal financial interest (based on 18 U.S.C. 208).
0.735–22 Future employment (based on 18 U.S.C. 208).
0.735–23 Activities of officers and employees in claims against and other matters affecting the Government (based on 18 U.S.C. 205).
0.735–24 Receiving salary from source other than the United States Government (based on 18 U.S.C. 209).
0.735–25 Compensation to employees in matters affecting the Government (based on 18 U.S.C. 203).
0.735–26 Disqualification of former officers and employees in matters connected with former duties or official responsibilities (based on 18 U.S.C. 207).
0.735–27 Appearances by former employees before AEC.
0.735–28 Confidential statements of employment and financial interests.

Subpart C—Other Restrictions Imposed by Statute on Conduct of Employees

0.735–30 Description of statutory provisions.

Subpart D—Restrictions Imposed by AEC Administrative Decision on Conduct of Employees

0.735–40 Outside employment and other outside activity.
0.735–41 Misuse of information.
0.735–42 Gifts, entertainment, and favors.
0.735–43 Use of Government property.
0.735–44 Scandalous conduct.
0.735–45 Employee indebtedness.
0.735–46 Gambling, betting, and lotteries.
0.735–47 Handling of funds entrusted by fellow employees.
0.735–48 Ex parte contacts.
0.735–49 Employment of persons on extended leave of absence from a previous employer with reemployment rights or other benefits with the previous employer.

Subpart E—Ethical and Other Conduct and Responsibilities of Special Government Employees

0.735–50 Use of Government employment.
0.735–51 Use of inside information.
0.735–52 Coercion.
0.735–53 Gifts, entertainment, and favors.
0.735–54 Miscellaneous statutory provisions.
0.735–55 Applicable standards of conduct.
Annex A—Concurrent Resolution.
Annex B—Position Categories Requiring Statements of Employment and Financial Interests By Incumbents.
Annex C—Criteria for Determining Positions or Categories of Positions Listed in Annex B.

AUTHORITY: The provisions of this Part 0 issued under E.O. 11222 of May 8, 1965, 30 F.R. 6469, 3 CFR, 1965 Supp.; 5 CFR 735.104.

Subpart A—General

§ 0.735–1 Policy.

(a) The personnel policy of the U.S. Atomic Energy Commission states, in part, that:

The Atomic Energy Act requires the Commission to assure itself that the character, associations, and loyalty of workers in atomic energy are of a high order. Conduct and self-discipline, both on and off the job, must measure up to unusual standards * * *.

(b) Section 735.101 of the Civil Service Commission regulations (5 CFR 735.101), issued pursuant to Executive Order 11222, May 8, 1965, states that:

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards * * *.

§ 0.735–2 Program objective.

(a) The program objective is to protect the interests of the public and em-

ployees by setting forth principles, practices, and standards governing conduct of employees in such a manner that they may be readily understood by the individuals involved and practicably administered by the AEC.

(b) It is expected that the provisions of this part will be observed and administered in a manner which is consistent with both their spirit and their letter.

(c) Of necessity, because of the nature of the criminal statutes and the subject matter involved, this part cannot deal with all of the problems which may arise with regard to the conduct, including conflicts of interest, of employees and former employees.

§ 0.735–3 Responsibilities and authorities.

(a) Employees shall:

(1) Comply with the statutes and the rules, standards of conduct, and other regulations set forth in this part.

(2) Consult the full text of applicable statutes as to whether an action in question may in any way violate the statutes.

(3) Be guided in all their actions by the Code of Ethics for Government Service, adopted by concurrent Resolution of the Congress (Annex A).

(4) Conduct themselves in such a manner as to create and maintain respect for the AEC and the U.S. Government and avoid situations which require or appear to require a balancing of private interests or obligations against official duties.

(5) Be mindful of the high standards of integrity expected of them in all their activities, personal and official.

(6) Not give or appear to give favored treatment or competitive advantage to any member of the public, including former employees of the AEC, appearing before them on their own behalf or on behalf of any nongovernmental interest.

(7) Recognize that violation of any of the instructions or statutes referred to in this part may subject them to disciplinary action by AEC in addition to the penalty prescribed by law for such violation.

(8) Discuss with their immediate supervisor, or counselor, as appropriate, any problem arising out of this part.

(b) Supervisors:

(1) Inform themselves of any problems of their employees arising out of this part, consult with the cognizant AEC counselor as appropriate, and take prompt action to see that the problems, if they cannot be resolved, are referred to higher authority.

(2) Relieve employees from assignments in accordance with § 0.735–22(a).

(c) The General Manager assumes responsibilities assigned in §§ 0.735–21(b), 0.735–22(b), 0.735–23 (d) and (e), 0.735–26 (c) and (d), and 0.735–28.

(d) The Director of Regulation, Heads of Divisions and Offices, Headquarters, and Field Office Managers:

(1) Bring to the attention of appropriate contractors under their jurisdiction those provisions of this part (such as "Future Employment"; Ex Parte Contacts"; "Assisting Former Employees"; "Gifts, Entertainment, and Favors"; "Cancellation of Contracts"; and others) which may affect the actions of a contractor and his employees in dealing with AEC employees.

(2) Report to the Division of Inspection all complaints concerning fraud, graft, corruption, diversion of AEC assets, and misconduct of AEC employees; take action as a result of investigations; and report on action taken, as provided in AEC Manual Chapter 0702, "Reporting and Investigating Irregularities."

(3) Assume responsibilities assigned in §§ 0.735–21(b), 0.735–22(b), 0.735–23 (d), 0.735–27, 0.735–28, and 0.735–40(b).

(e) Field Office Managers, and the Director, Division of Personnel, Headquarters:

(1) Provide a copy of this part to each employee and special Government employee, and to each such new employee at the time of his entrance on duty.

(2) Provide a copy of all revisions to each employee and special Government employee.

(3) Bring the provisions of this part to the attention of each employee and special Government employee annually, and at such other times as circumstances warrant.

(4) Assure the availability of counseling services under paragraph (h) of this section to each employee and special Government employee.

(5) Have available for review by employees and special Government employees, as appropriate, copies of laws, Executive Order 11222, AEC regulations, and pertinent Civil Service Commission regulations and instructions relating to ethical and other conduct.

(6) Notify employees and special Government employees at time of entrance on duty and periodically thereafter of the availability of counseling services under paragraph (h) of this section and how and where these services are available.

(f) The Director, Division of Personel, Headquarters, assumes the responsibilities assigned in §§ 0.735–40(b) and 0.735–49.

(g) The Director, Division of Inspection, Headquarters, investigates all questions of employees' conduct, fraud, etc., in AEC, in accordance with AEC Manual Chapter 0702.

(h) The General Counsel:

(1) Is the counselor for AEC.

(2) Serves as AEC's designee to the Civil Service Commission on matters covered by this part.

(3) Designates deputy counselors for the Headquarters and for field offices.

(4) Coordinates counseling services, and assures that counseling and interpretations on questions of conflicts of interest and other matters covered by the part are available to deputy counselors.

(5) Carries out the specific responsibilities assigned in §§ 0.735–27, 0.735–28, and 0.735–49(b).

§ 0.735–4 Definitions.

(a) "Commission" means the Commission of five members or a quorum thereof sitting as a body, as provided by section 21 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2031.

(b) "AEC" means the agency established by the Atomic Energy Act of 1954, as amended, comprising the members of the Commission and all officers, employees, and representatives authorized to act in any case or matter, whether clothed with final authority or not.

(c) "Employee" means an AEC officer or employee, and, insofar as statutory and Executive order restrictions are concerned, a member of the Commission, but does not include (unless otherwise indicated) a special Government employee, a member of the Uniformed Services, or an employee of another Government agency assigned or detailed to the AEC.

(d) "Former employee" means a former AEC officer or employee as defined in paragraph (c) of this section, plus a former special Government employee, as defined in paragraph (e) of this section, a former member of the Commission and a former member of the Uniformed Services (other than enlisted personnel) assigned or detailed to the AEC.

(e) "Special Government employee" means an officer or employee of the AEC, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. The term includes AEC consultants, experts, and members of advisory boards, but does not include a member of the Uniformed Services.

(f) "Official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

(g) "Organization," as used in this part in connection with 18 U.S.C. 208, means universities, foundations, nonprofit research entities and similar nonprofit organizations, States, counties and municipalities and subdivisions thereof as well as business organizations.

(h) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(i) "Uniformed services" has the meaning given that term by 37 U.S.C. 101(3).

§ 0.735–5 Basic requirements.

(a) *Applicability.* The provisions of this part apply to all current and former AEC employees and special Government employees. Except for § 0.735–28, the provisions of this part are not applicable to members of the Uniformed Services or employees of other Government agencies assigned or detailed to the AEC. Members of the Uniformed Services and employees of other Government agencies assigned or detailed to the AEC are required by § 0.735–28 to furnish a statement of employment and financial interests if they are performing duties of a position specified in § 0.735–28(a). However, a member of the Uniformed Services or an employee of another Government agency assigned or detailed to

the AEC is not relieved of his responsibilities under regulations or code of conduct prescribed by his parent military service or employing agency.

(b) *Cancellation of contracts.* The Commission reserves the right to declare void, in accordance with law, any contract negotiated or administered in violation of the provisions of AEC regulations, or statute.

(c) *Scope of part.* This part incorporates the statutes, the instructions and specific procedures, pertaining to an employee's conduct.

(d) *Construction of criminal or civil statutes.* The paraphrased version of any criminal or civil statute in this part shall not constitute a binding interpretation thereof upon the AEC or the Federal Government.

(e) *Certifications.* Certifications called for by §§ 0.735–23(e) and 0.735–26 (c) and (d), shall be submitted for publication in the FEDERAL REGISTER.

(f) *Disciplinary and other remedial action.* (1) A violation of the regulations in this part by an employee or special Government employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(2) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

(g) *Presidential appointees.* Presidential appointees covered by section 401(a) of Executive Order 11222 shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of AEC, or which draws substantially on official data or ideas which have not become part of the body of public information.

§ 0.735–6 National emergency application.

The provisions of this part continue in effect without modification in a national emergency.

Subpart B—Conflict of Interest Restrictions

§ 0.735–20 General.

(a) Part I, "Policy," of Executive Order 11222 states:

> Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or adviser of government must help to earn and must honor that trust by his own integrity and conduct in all official actions.

(b) The elimination of conflicts of interest in the Federal service is one of the most important objectives in establishing general standards of conduct. A conflict of interest situation may exist where a Federal employee's private interests, usually of an economic form, conflict, or raise a reasonable question of conflict with his public duties and responsibilities. The potential conflict is of concern whether it is real or only apparent.

(c) An employee, including special Government employee, shall not: (1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities; or (2) engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

(d) An employee, including special Government employee, is not precluded from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive Order 11222, Civil Service Commission regulations, or the regulations in this part.

(e) Certain provisions in 18 U.S.C. 201–209, dealing with conflicts of interest in Federal employment are referred to in §§ 0.735–21 through 0.735–27.

§ 0.735–21 Acts affecting a personal financial interest (based on 18 U.S.C. 208).

(a) *General.* Except as permitted by paragraphs (b), (c), and (d) of this section, no employee shall participate personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

(b) *Granting of ad hoc exemptions.* (1) If an employee desires to request an exemption from the prohibition of paragraph (a) of this section, he shall fully inform the field office manager, or the head of division or office, Headquarters, as appropriate, in writing of the nature and circumstances of the particular matter and of the financial interests involved and shall request a written determination in advance as to the propriety of his participation in such matter.

(2) The field office manager, or the head of division or office, Headquarters, as appropriate, after examining the information submitted, may relieve the employee from participation in the particular matter and so advise him in writing; or, he may approve the employee's participation in such matter upon advising him in writing:

(i) That he has determined the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, and

(ii) That no provision of law and no regulation in this part would appear to be violated by the employee's participation in the particular matter.

(3) When the field office manager, or head of division or office, Headquarters, believes it is inappropriate for him to make a determination as provided in subparagraph (2) of this paragraph, he shall forthwith submit the information with his recommendation through channels to the General Manager or to the Director of Regulation, as appropriate, who shall make a determination as provided in subparagraph (2) of this paragraph, forwarding the original of his determination to the submitting official and a copy to the employee involved.

(4) A copy of each request and response made under the provisions of subparagraphs (1) and (2) of this paragraph shall be forthwith forwarded through channels to the General Manager, or the Director of Regulations, as appropriate, as a matter of record. Copies of all documents referred to in subparagraphs (1), (2), and (3) of this paragraph shall be filed by the holders thereof in their confidential files.

(5) Whenever it can be reasonably anticipated that there will be a need to invoke these procedures repeatedly, and where it also appears that a burden would be placed on the AEC thereby, consideration should be given by the field office manager or head of division or office, Headquarters, to dismissal or transfer of the employee to another position where the problems will not arise, or to the elimination of the outside interest creating the difficulty. It is expected that the employee concerned will take the initiative in resolving any problem in this area.

(c) *Exemption of remote or inconsequential financial interests.*[1] (1) In accordance with the provisions of 18 U.S.C. 208(b)(2) the AEC has exempted the following financial interests from paragraph (a) of this section and from the requirements of paragraph (b) of this section, upon the ground that such interests are too remote or too inconsequential to affect the integrity of its employees' services:

(i) Financial interests in an enterprise in the form of shares in the ownership thereof, including preferred and common stocks whether voting or nonvoting, and warrants to purchase such shares;

(ii) Financial interests in an enterprise in the form of bonds, notes, or other evidences of indebtedness;

(iii) Investments in State or local government bonds and investments in shares of a widely held diversified mutual fund or regulated investment company, except holdings in mutual investment funds or regulated investment companies dealing primarily in atomic energy stocks.

Provided, That, in the case of subdivisions (i) and (ii) of this subparagraph: (*a*) The total market value of the financial interests described in said subdivisions with respect to any individual enterprise does not exceed $7,500; and (*b*) the holdings in any class of shares,

[1] Effective upon publication in the FEDERAL REGISTER on March 14, 1964, at 29 F.R. 3392.

or bonds, or other evidences of indebtedness, of the enterprise do not exceed 1 percent of the dollar value of the outstanding shares, or bonds or other evidences of indebtedness in said class.

(2) Where a person covered by this exemption is a member of a group organized for the purpose of investing in equity or debt securities, the interest of such person in any enterprise in which the group holds securities shall be based upon said person's equity share of the holdings of the group in that enterprise.

(3) For purposes of subparagraph (1) of this paragraph, computations of dollar-value of financial interests in corporations shall be by means of:

(i) Market value in the case of stocks listed on national exchanges; or

(ii) Over-the-counter market quotations as reported by the National Daily Quotation Service in the case of unlisted stocks; or

(iii) By means of net book value (i.e. assets less liabilities) in the case of stocks not covered by the preceding two categories.

With respect to debt securities, face value shall be used for valuation purposes.

(4) The dollar value and percentage of financial interests listed above in subparagraph (1) of this paragraph shall be computed as of the date on which the employee first participated personally and substantially in any particular matter, within the meaning of 18 U.S.C. 208(a), relating to the enterprise concerned. The dollar value and percentage so computed shall govern during the entire period that the employee participates in the particular matter unless, after the aforesaid date of computation, he, or other person or organization referred to in paragraph (a) of this section, acquires an additional interest in the same enterprise. In the event of such subsequent acquisition, the dollar value and percentage shall be recomputed as of the date of such acquisition. If, in such case, the dollar value and percentage computed exceeds the limitations described in subparagraph (1) of this paragraph, the general exemption provided therein shall no longer be applicable and an ad hoc exemption must be sought in accordance with paragraph (b) of this section.

(d) *Special exemption for special Government employees.* Federal Personnel Manual Chapter 735, Appendix C provides that a special Government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by 18 U.S.C. 208. However, that chapter states that the power of exemption may be exercised in this situation "if the special Government employee renders advice of a general nature from which no preference or advantage over others might be gained by any particular person or organization." It is the policy of the Atomic Energy Commission in conformity with the foregoing, to exercise the power of exemption pursuant to 18 U.S.C. 208(b) in such situations. The authority to grant such an exemption is delegated to the AEC official responsible for appointment or designation of the particular consultant or advisor. This exemption is noted on the form AEC–443 by the appointing official for the consultant or advisor concerned, by a statement that the employee "need not be precluded from rendering general advice in situations where no preference or advantage over others might be gained by any particular person or organization."

§ 0.735–22 Future employment (based on 18 U.S.C. 208).

(a) Solicitation, negotiation, or arrangements for private employment by an employee who is acting on behalf of the AEC in any particular matter in which the prospective employer has a financial interest are prohibited. With the authorization of his supervisor, an employee may be relieved of any assignment which, in the absence of such relief, might preclude such solicitation, negotiation, or arrangements.

(b) No employee shall undertake to act on behalf of the AEC in any capacity in a matter that to his knowledge affects even indirectly any party outside the Government with whom he is soliciting, negotiating, or has arrangements for future employment, except pursuant to the authorization of the General Manager, or the Director of Regulation, as appropriate, after full disclosure, or in the case of a field employee, the field office manager under whom he is employed. (See § 0.735–21.)

§ 0.735–23 Activities of officers and employees in claims against and other matters affecting the Government (based on 18 U.S.C. 205).

(a) No employee shall otherwise than in the proper discharge of his official duties:

(1) Act as agent or attorney for prosecuting any claim against the United States, or receive any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

(2) Act as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest.

(b) A special Government employee shall be subject to paragraph (a) of this section only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That subparagraph (2) of this paragraph shall not apply in the case of a special Government employee who has served in such department or agency no more than 60 days during the immediately preceding period of 365 consecutive days.

(c) Nothing in paragraph (a) of this section prevents an employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

(d) Nothing in paragraph (a) of this section prevents an employee from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the General Manager, the head of a division or office, Headquarters, or a field office manager, as appropriate, approves.

(e) (1) Nothing in paragraph (a) of this section prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States when represented by the AEC provided that the General Manager shall certify in writing that the national interest so requires. Such certification shall be submitted for publication in the FEDERAL REGISTER.

(2) The special Government employee shall immediately notify the AEC when so designated to act as agent or attorney by his private employer.

(f) Nothing in paragraph (a) of this section prevents an employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

§ 0.735–24 Receiving salary from source other than the U.S. Government (based on 18 U.S.C. 209).

(a) No employee shall receive any salary, or any contribution to or supplementation of salary, as compensation for his services as an employee of the AEC from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality.

(b) Nothing in paragraph (a) of this section prevents an employee of the AEC from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

(c) Paragraph (a) of this section does not apply to a special Government employee or to an employee of the Government serving without compensation,

whether or not he is a special Government employee.

(d) Paragraph (a) of this section does not prohibit acceptance of contributions, awards, or other expenses under the terms of the Government Employees Training Act (Public Law 85–507, 72 Stat. 327; 5 U.S.C. 2301–2319, July 7, 1958). See AEC Appendix 4150.

§ 0.735–25 Compensation to employees in matters affecting the Government (based on 18 U.S.C. 203).

(a) No employee shall, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or agree to receive, or ask, demand, solicit, or seek, any compensation for any services rendered or to be rendered either by himself or another in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission.

(b) A special Government employee shall be subject to paragraph (a) of this section only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That subparagraph (2) of this paragraph shall not apply in the case of a special Government employee who has served in such department or agency no more than 60 days during the immediately preceding period of 365 consecutive days.

§ 0.735–26 Disqualification of former officers and employees in matters connected with former duties or official responsibilities (based on 18 U.S.C. 207).

(a) No employee, after his employment has ceased, shall knowingly act as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed.

(b) No employee, within 1 year after his employment has ceased, may appear personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested, and which was under his official responsibility as an employee of the Government at any time within a period of 1 year prior to the termination of such responsibility.

(c) Nothing in paragraph (a) or (b) of this section prevents a former employee with outstanding scientific or technological qualifications from acting as attorney or agent or appearing personally in connection with a particular matter in a scientific or technological field if the General Manager or the Commission, as appropriate, shall make a certification in writing, submitted for publication in the FEDERAL REGISTER, that the national interest would be served by such action or appearance by the former employee.

(d) A former AEC employee who desires to request for himself an exception to the legal restrictions set forth above on the basis of "scientific or technological" grounds may do so by submitting a written request to the head of the AEC office with which he would do business, who in turn will forward it to the General Manager with his recommendation. The General Manager, if he approves the exception, shall advise the former employee in writing through the AEC office with which he applied and shall submit for publication in the FEDERAL REGISTER a statement to the effect that:

(1) The former employee has outstanding scientific or technological qualifications;

(2) The exception provided by 18 U.S.C. 207(b) is granted for a particular matter in a scientific or technological field; and

(3) The national interest would be served by granting the exception.

§ 0.735–27 Appearances by former employees before AEC.

When a former employee proposes to act as agent or attorney before an AEC office on behalf of anyone other than the United States in connection with any of the matters cited in § 0.735–26, he is expected to make known to the appropriate official of the AEC office the fact of his former assignment with AEC. The manager of the field office or the head of the division or office, Headquarters, or employee before whom the former employee appears, before transacting business with the former employee or authorizing employees under his jurisdiction to transact any business with the former employee, shall call the former employee's attention to the restrictions and penalties contained in 18 U.S.C. 207. No AEC official or employee, except the General Counsel, shall offer to the former employee an interpretation of 18 U.S.C. 207 as applied to the situation at hand.

§ 0.735–28 Confidential statements of employment and financial interests.

(a) *Categories of employees required to submit statements.*[1] The following employees[2] shall submit statements of employment and financial interests, prepared in accordance with paragraph (d) of this section:

(1) Employees paid at a level of the Federal Executive Salary Schedule established by the Federal Executive Salary Act of 1964, as amended.

(2) Employees in grade GS–16 or above, or in comparable or higher positions (including scientific and technical [STS] positions).

(3) Employees in hearing examiner positions.

(4) All consultants (including advisers and experts) (see AEC Manual Chapter 4139) and special Government employees. (A special Government employee who is not a consultant is not required to submit a statement of employment and financial interests when the operating [appointing] official finds that the duties of the position held by the special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For this purpose, "consultant" and "expert" have the meaning given those terms by Chapter 304 of the Federal Personnel Manual but do not include a physician, dentist, or allied medical specialist whose services are procured to provide care and service to patients.)

(5) Employees in positions or categories of positions, regardless of their official title, identified in Annex B to this part.

(b) *Annex B.* (1) Annex B to this part shall be maintained and changes therein made by the Atomic Energy Commission in accordance with the criteria set forth in Annex C to this part.

(2) Heads of Divisions and Offices, Headquarters, and Managers of Field Offices shall, in conformity with the above referenced criteria, recommend changes in Annex B to the Commission, the General Manager, or the Director of Regulation, as appropriate, for approval.

(3) Incumbents of positions added to Annex B shall become subject to the reporting requirements of this part upon receipt of notification as to same, pursuant to paragraph (c) of this section. Annex B shall be republished to reflect changes in the list.

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[1] Section 401 of Executive Order 11222 established separate reporting requirements for an agency head, a Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in that Office, and a full-time member of a committee, board, or commission appointed by the President.

[2] As used in § 0.735–28, the term "employee," except as otherwise indicated, includes regular Government employees, special Government employees, and members of the Uniformed Services and employees of other Government agencies assigned or detailed to the AEC.

(c) *Notice to employees of time and place to submit statements.* Regular Government employees required to submit statements shall be notified in writing of that fact by the Managers of Field Offices or the Assistant General Manager for Administration (for Headquarters employees), or by persons designated by them. The notice shall be accompanied by three copies of the statement form and shall tell the employee to which official he shall submit his statement (see par. (h) of this section). Such employee shall submit his statement to the designated official not later than:

(1) 90 days after the effective date of the regulations in this part if employed on or before that effective date; or

(2) 30 days after his entrance on duty but not earlier than 90 days after the effective date of the regulations in this part, if appointed after that effective date.

Statements of special Government employees other than consultants (including experts and advisers) shall be submitted in accordance with the foregoing. Notice to such individuals shall also be in accordance with the foregoing. Statements of consultants (including experts and advisers) shall be submitted prior to appointment, and notice to same shall be in accordance with AEC Manual Chapter 4139.

(d) *Preparation of statement.* Statements shall be prepared in accordance with the following:

(1) *Form and content of statement.* The forms prescribed by AEC are:

Regular Government employees—Form AEC–269.

Consultants (including experts and advisers) Form AEC–443.

Special Government employees (other than consultants) Form AEC–443 (excluding items 2–11).

(2) *Interests of employee's relatives.* The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this subparagraph, "member of an employee's immediate household" means those blood relations who are full-time residents of the employee's household.

(3) *Information not known by employees.* If any information required to be included on the statement or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf, and shall report such request in Part IV of Form AEC–269 or item 16b. of Form AEC–443.

(4) *Information not required to be submitted.* This section does not require an employee to submit on a statement or supplementary statement any information relating to:

(i) The employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise and which is not engaged in the ownership or conduct of a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement.

(ii) Precise amounts of financial interests, indebtedness, or value of real property. The employee may, however, at a later time be required to reveal precise amounts if the AEC needs that information in order to carry out its responsibilities under applicable laws and regulations.

(iii) For special Government employees:

(*a*) Remote or inconsequential financial interests, as set forth in § 0.735–21 (c), and

(*b*) Those financial interests which are determined by the official responsible for such employee's appointment as not to be related either directly or indirectly to the duties and responsibilities of said employee.

(5) *Supplementary statements.* Changes in, or additions to, the information in an employee's statement shall be reported by the employee in a supplementary statement within 10 days following the end of the calendar quarter in which the changes occur. Quarters end March 31, June 30, September 30, and December 31. The forms prescribed in subparagraph (1) of this paragraph shall be used for this purpose and plainly marked "Supplementary." The changes and additions shall be identified in terms of the specific part(s) of the statement being modified. All changes or additions occurring during the preceding quarterly period are to be reported, not merely employment and financial interests status as of the reporting date. If there are no changes or additions in a quarter, a negative report is not required. However, for the purpose of annual review, a supplementary statement by the employee, negative or otherwise, is required as of June 30 of each year. The employee shall submit his supplementary statement(s) to the official who would be the recipient of an initial statement from the employee, as identified in paragraph (h) of this section.

(e) *Reviewing statements and reporting conflicts of interest.* (1) The employee shall prepare the statement in triplicate, retain one copy, and submit two copies to the appropriate reviewer (see paragraph (h) of this section).

(2) The reviewer of the statement shall assess it for conflicts or the appearance of conflicts of interests in the context of the employee's assigned duties and responsibilities in AEC.

(3) If the reviewer desires advice and guidance, he may discuss the statement with the counselor or appropriate deputy counselor.

(4) The reviewer shall discuss with the employee and point out any aspects of the statement which give rise, in the reviewer's opinion, to questions of conflict or of appearance of conflict. (The reviewer shall not take, or direct the employee to take, any action with respect to such conflict without first seeking the advice of the counselor or appropriate deputy counselor.)

(5) The reviewer shall in all cases record his opinion as to the presence or absence of a conflict on both copies of the statement, and forward same to the AEC counselor or deputy counselor, as appropriate.

(6) The AEC counselor or deputy counselor shall review the statement, and discuss any questions with the reviewer and/or employee.

(7) If the AEC counselor or deputy counselor believes that the statement evidences no question of conflict of interest, he shall record his opinion on both copies of the statement, and notify the reviewer.

(8) If the AEC counselor or deputy counselor believes there is a question of conflict of interest, he shall return the statement to the reviewer with his opinion recorded thereon. (The counselor or deputy counselor shall make his services available to the reviewer and employee involved to assist in effecting a resolution of any conflict or appearance of conflict.) The reviewer shall report to the counselor or deputy counselor the results of endeavors to effect resolution of the conflict at the employee-reviewer level, which results shall be recorded on the employee's statement and submitted to the counselor or deputy counselor for review and approval.

(9) When a statement submitted or information from other sources indicates a conflict between the interests of an employee and the performance of his services for the AEC and when the conflict or appearance of conflict is not resolved at a lower level in the AEC, the information concerning the conflict or appearance of conflict shall be reported to the General Manager, or Director of Regulation, as appropriate, through the counselor. The employee concerned shall be provided an opportunity to explain the conflict or appearance of conflict.

(10) When, after consideration of the explanation of the employee provided for in subparagraph (9) of this paragraph, the General Manager or Director of Regulation decides that remedial action is required, he shall take immediate action to end the conflict or appearance of conflict of interest. Remedial action may include, but is not limited to:

(i) Changes in assigned duties;

(ii) Divestment by the employee of his conflicting interest;

(iii) Disciplinary action; or

(iv) Disqualification for a particular assignment.

Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations. Disciplinary remedial action with respect to a member of the Uniformed Services or an employee of another Government agency assigned or detailed to the AEC shall be effected only by the parent military service or employing agency.

(11) Upon completion of processing, both AEC copies of statements shall be filed in the office of the counselor or dep-

uty counselor, in a special file maintained for that purpose. If an AEC reviewer subsequently requires a copy of a statement for purposes of carrying out responsibilities under this part, he may request same from the counselor or deputy counselor.

(12) The required supplementary statements shall be processed in the same manner as an initial statement. When an AEC reviewer or the counselor or a deputy counselor receives a supplementary statement from an employee for whom he does not have an initial statement, he shall request the file from the counselor or deputy counselor of the employee's previous office.

(f) *Confidentiality of employee's statements.* AEC shall hold each statement of employment and financial interests, and each supplementary statement, in confidence. AEC shall not disclose information from a statement except in accordance with the procedures set forth in paragraph (e) of this section, or as the General Manager, or the Director of Regulation, as appropriate, or the Civil Service Commission shall determine for good cause shown.

(g) *Effect of employee's statements on other requirements.* The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee or the absence of any requirement that an employee submit such a statement does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

(h) *To whom statements are to be submitted.* Submission of required statements shall be in accordance with the following:

(1) Submitted to the Commission:

(i) The General Manager.

(ii) The Deputy General Manager.

(iii) The Director of Regulation.

(iv) The Deputy Director of Regulation.

(v) The Secretary.

(vi) Hearing Examiners.

(vii) Chairman, Contract Appeals Board.

(viii) The General Counsel.

(ix) Director, Division of Inspection.

(2) Submitted to the Individual Commissioners: Special Assistants.

(3) Submitted to the General Manager:

(i) Members of his immediate staff.

(ii) Assistant General Managers.

(iii) Director, Division of Military Application.

(iv) Managers of Operations Offices.

(v) The Controller.

(4) Submitted to the Assistant General Managers and the Director of Regulation:

(i) Members of their immediate staffs.

(ii) Heads of Divisions and Offices, Headquarters, reporting directly to them.

(5) Submitted to the Assistant General Manager: Heads of Divisions and Offices, Headquarters, not reporting directly to an Assistant General Manager.

(6) Submitted to Managers of Field Offices and Heads of Divisions and Offices, Headquarters: Employees under their respective jurisdictions.

(7) Submitted to officials responsible for their appointments: Special Government employees, including consultants, experts, and advisers.

Subpart C—Other Restrictions Imposed by Statute on Conduct of Employees

§ 0.735–30 Description of statutory provisions.

Each employee has a positive duty to acquaint himself with each statute that relates to his ethical and other conduct as an employee of the AEC and of the Government. Certain of these statutes are referred to in §§ 0.735–21—0.735–27. Attention of employees is also directed to the following statutory provisions:

(a) The prohibitions contained in the following sections of the Atomic Energy Act of 1954, as amended: Section 222, "Violation of Specific Sections"; section 223, "Violation of Sections Generally"; section 224, "Communication of Restricted Data"; section 225, "Receipt of Restricted Data"; section 226, "Tampering with Restricted Data"; and section 227, "Disclosure of Restricted Data." (42 U.S.C. 2272 through 2277)

(b) The prohibitions against the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783).

(c) The prohibition against the disclosure of confidential information (18 U.S.C. 1905).

(d) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(e) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(f) The prohibition against proscribed political activities—The Hatch Act (5 U.S.C. 118i) and 18 U.S.C. 602, 603, 607 and 608. (See AEC Manual Chapter 4122, "Political Activity.")

(g) The prohibition against bribery of public officials and witnesses (18 U.S.C. 201).

(h) The prohibition against acceptance or solicitation to obtain appointive public office (18 U.S.C. 211).

(i) The prohibitions against disloyalty and striking (5 U.S.C. 118p, 118r). (See also AEC Manual Chapter 4121, "Oath of Office" and AEC Manual Chapter 4166, "Employee-Management Cooperation.")

(j) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 640).

(k) The prohibition against the misuse of a Government vehicle (5 U.S.C. 78(c)). (See also AEC Manual Chapter 5142, "Motor Vehicle and Aircraft Management.")

(l) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(m) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (5 U.S.C. 637).

(n) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(o) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071). (See also AEC Appendix 0230, "Records Disposition.")

(p) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(q) The prohibition against embezzlement of Government money or property (18 U.S.C. 641). (See also AEC Manual Chapter 5101, "Personal Property and Supply Management.")

(r) The prohibition against failing to account for public money (18 U.S.C. 643).

(s) The prohibition against an employee's private use of public money (18 U.S.C. 653).

(t) The prohibition against embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(u) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(v) The prohibition against making false entries in official records with intent to defraud or making false reports concerning moneys and securities with such intent (18 U.S.C. 2073).

(w) The prohibition against receiving from any foreign Government "any present, decoration, or other thing," unless authorized by act of Congress and tendered through the Department of State (Constitution, Art. 1, sec. 9, clause 8; 5 U.S.C. 114–115a).

(x) The prohibition against soliciting contributions from another employee for a gift or present to anyone in a superior official position; against a superior official accepting a gift as a contribution from employees receiving less salary than himself; and against an employee's making a donation as a gift to any official superior (5 U.S.C. 113).

Subpart D—Restrictions Imposed by AEC Administrative Decision on Conduct of Employees

§ 0.735–40 Outside employment and other outside activity.

(a) AEC employees are entitled to the same rights and privileges with regard to outside employment and other outside activity as all other citizens. There is, therefore, no general prohibition against employees engaging in outside employment or other outside activity; except that no employee shall engage in such employment or activity if it is not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interests; or

(2) Outside employment which tends to impair his mental or physical capacity

to perform his Government duties and responsibilities in an acceptable manner.

(b) In any case in which there is a question as to the propriety of outside employment in which an employee proposes to engage and when the field office manager or head of the division or office, Headquarters, concludes that the proposed outside employment may be in violation of AEC policy, the following information shall be sent to the Director, Division of Personnel, Headquarters, for prior approval of the proposed activity (in consultation, as appropriate, with the counselor): (1) Name, job title, and grade of the employee involved; (2) a brief summary of his official AEC duties; (3) a brief description of the proposed employment, including the compensation to be received; and (4) the name and nature of the business of the employing individual or organization.

(c) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (18 U.S.C. 209).

(d) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, Executive Order 11222, CSC regulations, or the regulations in this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the General Manager or Director of Regulation, as appropriate, has given written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(e) Except as provided in section 19(a) of the Government Employees Training Act, 5 U.S.C. 2318(a), and Executive Order 10800, no employee shall accept a fee from an outside source on account of a public appearance, a speech, or lecture, if the public appearance or the preparation or delivery of the speech or lecture was a part of the official duties of the employee, if the public appearance, the speech, or the lecture was made during official working hours, or if travel for the purpose of the public appearance, speech, or lecture was made at Government expense. In addition, no employee shall accept a fee for the preparation, publication, or review of an article, story, or book if it was prepared during official working hours and/or was a part of the official duties of the employee.

(f) An employee shall not engage in outside employment under a State or local government except in accordance with AEC manual section 4122–05.

(g) An employee is not precluded by this § 0.735–40 from:

(1) Receipt of bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence as is otherwise compatible with this section for which no Government payment or reimbursement is made. However, an employee may not be reimbursed, and payment may not be made on his behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits.

(2) Participation in the activities of political parties not proscribed by law.

(3) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

§ 0.735–41 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in § 0.735–40(d), directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public. See also section 68a of the Atomic Energy Act of 1954, 42 U.S.C., section 2098(a), "Public and acquired lands," which provides as follows:

> a. No individual, corporation, partnership, or association, which had any part, directly or indirectly, in the development of the atomic energy program, may benefit by any location, entry, or settlement upon the public domain made after such individual, corporation, partnership, or association took part in such project, if such individual, corporation, partnership, or association, by reason of having had such part in the development of the atomic energy program, acquired confidential official information as to the existence of deposits of uranium, thorium, or other materials in the specific lands upon which such location, entry, or settlement is made, and subsequent to August 30, 1954, made such location, entry, or settlement, or caused the same to be made for his, or its, or their benefit.

§ 0.735–42 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with AEC;

(2) Conducts operations or activities that are regulated by AEC or is an applicant for a license from AEC; or

(3) Has interests that may be substantially affected by the performance or nonperformance of his official duty.

(b) The following exceptions are authorized as being necessary and appropriate in view of the nature of the AEC's work and the duties and responsibilities of its employees:

(1) When the circumstances make it clear that it is obvious family or personal relationships (such as those between the parents, children, or spouse of the employee and the employee) rather than the business of the persons concerned which are the motivating factors;

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans;

(4) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal intrinsic value; and

(5) Acceptance of transportation not inconsistent with the provisions of paragraph (c) of this section.

(c) No employee shall accept free transportation in motor vehicles, aircraft, or other means, for official or unofficial purposes from AEC contractors, prospective contractors, licensees or prospective licensees, or representatives of any of them when such transportation might reasonably be interpreted as seeking to influence the impartiality of the employee or the agency.

(d) An employee shall avoid any action, whether or not specifically prohibited by this section, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

§ 0.735–43 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him.

§ 0.735–44 Scandalous conduct.

No employee shall engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government.

§ 0.735–45 Employee indebtedness.

The AEC considers the credit affairs of its employees essentially their own concern. However, employees are expected to conduct their credit affairs in a manner which does not reflect adversely on the Government as their employer. The AEC will not be placed in the position of acting as a collection agency or of determining the validity or amount of contested debts. An employee is expected to pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. Failure on the part of an employee without good reason to honor just financial obligations or to make or adhere to satisfactory arrangements for settlement may be cause

for disciplinary action. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which AEC determines does not, under the circumstances, reflect adversely on the Government as his employer.

§ 0.735–46 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or -leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order 10927 and similar agency-approved activities.

§ 0.735–47 Handling of funds entrusted by fellow employees.

No employee shall receive, retain, or disburse funds entrusted to him by fellow employees, e.g., credit union deposits or donations to charitable organizations, except with the utmost care in the safeguarding of such funds and the maintenance of full and complete records with regard to the receipt, custody, and disbursement of such funds. Such records shall be made available to appropriate authorities upon proper request.

§ 0.735–48 Ex parte contacts.

Certain ex parte contacts by an employee are prohibited in quasi-judicial proceedings under §§ 2.719 and 2.780 of this chapter.

§ 0.735–49 Employment of persons on extended leave of absence from a previous employer with reemployment rights or other benefits with the previous employer.

(a) AEC may employ persons on extended leave of absence from private employers where it is the way most advantageous to the AEC to obtain qualified employees with needed skills and no violation of conflict of interest statutes would be involved. The necessity for continued employment of such persons shall be reviewed annually by the Director, Division of Personnel, Headquarters. In their AEC assignments, such employees shall not be permitted to handle, directly or indirectly, or have access to, business confidential data of their former employers' competitors.

(b) When it is proposed to employ such a person, a statement of the exact terms and conditions of the leave of absence from his employer will be obtained from the prospective employee and submitted to the General Counsel for a prior determination of possible violation of statute.

(c) The following quotation from 18 U.S.C. 209 is pertinent to this situation.

(b) Nothing herein prevents an officer or employee of the executive branch of the U.S. Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

Subpart E—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 0.735–50 Use of Government employment.

A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

§ 0.735–51 Use of inside information.

(a) A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(b) Special Government employees may teach, lecture, or write in a manner not inconsistent with § 0.735–40(d), in regard to employees.

§ 0.735–52 Coercion.

A special Government employee shall not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

§ 0.735–53 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with AEC anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business, or financial ties.

(b) Exceptions authorized for employees under § 0.735–42 shall have equal application with respect to special Government employees.

§ 0.735–54 Miscellaneous statutory provisions.

Each special Government employee shall acquaint himself with each statute that relates to his ethical and other conduct as a special Government employee of AEC and of the Government. The AEC official responsible for his appointment shall call his attention specifically to §§ 0.735–21, 0.735–22, 0.735–23, 0.735–24(c), 0.735–25, 0.735–26, 0.735–27, and 0.735–30.

§ 0.735–55 Applicable standards of conduct.

Special Government employees shall adhere to the standards of conduct made applicable to such employees by Subpart B of this part and to the standards of conduct made applicable to regular employees by §§ 0.735–43, 0.735–44, 0.735–46, and 0.735–48. In addition, special Government employees who are not consultants or advisers shall also be subject to §§ 0.735–45 and 0.735–47.

This Part 0 has been approved by the Civil Service Commission under date of January 24, 1966.

Effective date. This Part 0 shall become effective upon publication in the FEDERAL REGISTER.

Dated at Washington, D.C., this 11th day of March 1966.

For the Atomic Energy Commission.

F. T. HOBBS,
Acting Secretary.

ANNEX A—CONCURRENT RESOLUTION

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including officeholders:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
8. Never use any information coming to him confidentially in the performanec of governmental duties as a means for making private profit.
9. Expose corruption wherever discovered.
10. Uphold these principles, ever conscious that public office is a public trust.

Approved by the House of Representatives August 28, 1957.

Approved by the Senate July 11, 1958.

ANNEX B—POSITION CATEGORIES REQUIRING STATEMENTS OF EMPLOYMENT AND FINANCIAL INTERESTS BY INCUMBENTS

(1) Contracting Officers;
(2) Contract administrators (GS–13 and above);
(3) Procurement officers (GS–12 and above);
(4) Auditors (GS–12 and above);
(5) Attorneys (including patent attorneys), except Interns;
(6) Project engineers (GS–13 and above);
(7) Positions (in grades GS–13 and above unless otherwise indicated) involving assigned duties and responsibilities which require the incumbent to exercise judgment in making or recommending a decision or in taking or recommending an action in regard to:

a. Evaluation, appraisal or selection of contractors or subcontractors, prospective contractors or prospective subcontractors, proposals of such contractors or subcontractors, the activities performed by such contractors or subcontractors, or determination of the extent of compliance of such contractors or subcontractors with contract provisions.
b. Negotiation, modification or approval of contracts or subcontracts.
c. Evaluation, appraisal or selection of prospective project sites, or locations of work or activities, including real property proposed for acquisition by purchase or otherwise.
d. Inspection and quality assurance of material, products or components for acceptability (GS–11 and above).
e. Review or approval of applications for access permits.
f. Engineering planning and design which involves preparation of specifications and technical requirements.
g. Negotiation of agreements for cooperation or implementing arrangements with foreign countries.
h. Analysis, evaluation or review of licensees' and prospective licensees' compliance with AEC regulations and requirements.
i. Analysis, evaluation or review of license applications.
j. Utilization or disposal of excess or surplus property (GS–12 and above).
k. Procurement of materials, services, supplies, or equipment (GS–12 and above).
l. Authorization or monitoring of grants to educational institutions or other non-Federal enterprises.
m. Audit of financial transactions (GS–11 and above).
n. Promulgation of safety standards, procedures and hazards evaluation systems.
o. Nuclear materials management.
p. Activities (irrespective of grade) where the decision or action has an economic impact on the interests of any non-Federal enterprise.

Positions in the above categories (a–p) may be excluded when it is determined by the Commission, the General Manager, the Director of Regulation, or Managers of Operations, as appropriate, that the duties are at such a level of responsibility that the submission of a statement is not necessary because of the degree of supervision and review over the incumbents and the remote and inconsequential effect on the integrity of the Government.

ANNEX C—CRITERIA FOR DETERMINING POSITIONS OR CATEGORIES OF POSITIONS LISTED IN ANNEX B

Annex B shall be maintained and changes therein made by the Atomic Energy Commission in accordance with the following criteria:

1. Positions shall be included, the basic duties and responsibilities of which require the incumbent to exercise judgment in making or recommending a Government decision or in taking or recommending Government action in regard to:

a. Contracting or procurement;
b. Administering or monitoring grants or subsidies;
c. Regulating or auditing private or other non-Federal enterprise; or
d. Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise.

Generally, such duties and responsibilities will have been spelled out in local statements of delegation of authority and responsibility and the degree of responsibility for decisions and recommendations will be reflected in the Position Evaluation records under the factor "Decisions."

2. Positions in 1., above, may be excluded when their duties are at such a level of responsibility that the submission of a statement is not necessary because of the degree of supervision and review over the incumbents and the remote and inconsequential effect on the integrity of the Government.

3. In addition to 1., above, positions shall be included which are determined by the Atomic Energy Commission as requiring the incumbents to report employment and financial interests to carry out the purpose of law, Executive Order 11222, and CSC and AEC regulations.

[F.R. Doc. 66–2826; Filed, Mar. 16, 1966; 8:47 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

Subpart D—Food Additives Permitted in Food for Human Consumption

YELLOW PRUSSIATE OF SODA

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition (FAP 5N1656) filed by the International Salt Co., Clarks Summit, Pa., 18411, and other relevant material, has concluded that the food additive regulations should be amended to provide for additional safe uses of yellow prussiate of soda as an anticaking agent in salt for animal and human use. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (21 CFR 2.120; 31 R.R. 3008), Part 121 is amended in the following respects:

1. A new section is added to Subpart C, as follows:

§ 121.284 Yellow prussiate of soda.

Yellow prussiate of soda (sodium ferrocyanide decahydrate; $Na_4Fe(Cn)_6 \cdot 10H_2O$) may be safely used as an anticaking agent in salt for animal consumption at a level not to exceed 13 parts per million. The additive contains a minimum of 99.0 percent by weight of sodium ferrocyanide decahydrate.

2. Section 121.1032 is amended by inserting a second limitation for the first item listed in paragraph (a), as follows:

§ 121.1032 Yellow prussiate of soda.

* * * * *

(a) * * *

Uses	*Limitations*
As an anticaking agent in salt	5 parts per million calculated as anhydrous sodium ferrocyanide; or 13 parts per million in fine salt, which for the purpose of this section is salt 96% of which passes through a U.S. No. 60 sieve.

* * * * * *

* * * * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C., 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

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

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

Dated: March 9, 1966.

J. K. KIRK,
Assistant Commissioner for Operations.

[F.R. Doc. 66–2827; Filed, Mar. 16, 1966; 8:47 a.m.]

SUBCHAPTER C—DRUGS

PART 146a—CERTIFICATION OF PENICILLIN AND PENICILLIN-CONTAINING DRUGS

Sodium Oxacillin for Oral Solution

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended; 21 U.S.C. 357) and delegated by him to the Commissioner of Food and Drugs (21 CFR 2.120; 31 F.R. 3008), the

antibiotic drug regulation for certification of sodium oxacillin for oral solution is amended to provide for an additional potency of 25 milligrams per milliliter and to add "stabilizers" to the list of substances permitted in the product. Accordingly, § 146a.113 is amended by changing paragraph (a) to read as follows:

§ 146a.113 Sodium oxacillin for oral solution.

(a) *Standards of identity, strength, quality, and purity.* Sodium oxacillin for oral solution is a mixture of sodium oxacillin with one or more suitable colorings, flavorings, buffer substances, stabilizers, and preservatives. When reconstituted as directed in the labeling, it contains the equivalent of either 25 milligrams or 50 milligrams of oxacillin per milliliter. Its moisture content is not more than 1.0 percent. The pH of the solution, when reconstituted as directed in its labeling, is not less than 5.0 and not more than 7.5. The sodium oxacillin used conforms to the standards prescribed by § 146a.12(a) (1), (4), (5), (6), and (7). Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

* * * * *

Since the established antibiotic drug as affected by the amendments specified in this order has been determined to be safe and efficacious for use, conditions prerequisite to certification under section 507 of the Federal Food, Drug, and Cosmetic Act, and since the amendments are noncontroversial and are in the public interest, notice and public procedure and delayed effective date are deemed unnecessary prerequisites to the promulgation of this order.

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

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

Dated: March 10, 1966.

J. K. KIRK,
Assistant Commissioner for Operations.

[F.R. Doc. 66-2828; Filed, Mar. 16, 1966; 8:47 a.m.]

SUBCHAPTER C—DRUGS

PART 148y—METHACYCLINE

Methacycline Hydrochloride

Correction

In F.R. Doc. 66-2489, appearing at page 4201 of the issue for Thursday, March 10, 1966, the equations in § 148y.1(b) (1) (vi) should read as follows:

$$L=\frac{3a+2b+c-e}{5},$$

$$H=\frac{3e+2d+c-a}{5},$$

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter V—Smithsonian Institution

PART 500—STANDARDS OF CONDUCT

Pursuant to and in conformity with sections 201 through 209 of the United States Code, Executive Order 11222 of May 8, 1965 (30 F.R. 6469), and Title 5, Chapter I, Part 735 of the Code of Federal Regulations, Part 500 is added to Title 36 of the Code of Federal Regulations, reading as set forth below. The heading of Chapter V is revised to read as set forth above.

Subpart A—General Provisions

Sec.
500.735-101 Purpose.
500.735-102 General.
500.735-103 Interpretative, advisory, and review services.
500.735-104 Disciplinary and other remedial action.

Subpart B—Gifts, Entertainment, and Favors

500.735-201 Gifts, entertainment, and favors from outside sources.
500.735-202 Unauthorized solicitations and gifts.

Subpart C—Outside Employment

500.735-301 General.
500.735-302 Representation.
500.735-303 Other activities.
500.735-304 Teaching, lecturing, and writing.
500.735-305 Holding office under State or local government.

Subpart D—Financial Interests

500.735-401 General.
500.735-402 Employees in procuring and contracting activities.
500.735-403 Exceptions.

Subpart E—Financial Responsibility

500.735-501 General.
500.735-502 Borrowing and lending money.

Subpart F—Conduct on the Job

500.735-601 General.
500.735-602 Use of Government funds.
500.735-603 Use of Federal and Smithsonian property.
500.735-604 Restrictions on disclosure of information.
500.735-605 Nondiscrimination.
500.735-606 Participation in management of employee organizations.
500.735-607 Gambling, betting, and lotteries.

Subpart G—Statements of Employment and Financial Interests

500.735-701 Applicability.
500.735-702 Time and place for submission of employees' statements.
500.735-703 Supplementary statements.
500.735-704 Interests of employees' relatives.
500.735-705 Information not known by employees.
500.735-706 Information not required.
500.735-707 Confidentiality of employees' statements.

Subpart H—Provisions Relating to Special Government Employees

500.735-801 Applicability.
500.735-802 Ethical standards of conduct.
Sec.
500.735-803 Statement of financial interests required.
500.735-804 Statutory restrictions.
500.735-805 Requesting waivers or exemptions.

AUTHORITY: The provisions of this Part 500 issued under E.O. 11222 of May 8, 1965, 30 F.R. 6469, 3 CFR, 1965 Supp.; 5 CFR 735.104.

Subpart A—General Provisions

§ 500.735-101 Purpose.

The regulations in this part set forth minimum standards of conduct for the Federal employees and special Government employees of the Smithsonian Institution, provide for interpretative and advisory services, and outline certain statutory provisions relating to standards of conduct and conflicts of interest.

§ 500.735-102 General.

(a) The maintenance of high standards of honesty, integrity, and impartiality by employees and special Government employees of the Smithsonian is essential to assure proper conduct of its business and of public confidence in the Institution. Employees must refrain from any private business or professional activity which would place them in a position where there is a conflict between their private interests and the interests of the Smithsonian Institution. Although a technical conflict may not exist, employees must avoid the appearance of such a conflict. Such employees are not to engage in any private activity which involves the use of, or the appearance of the use of, official information or other information gained through Smithsonian employment, which is not available to the general public or would not be made available upon request, for private gain for themselves, their families, or for business associates, either directly or indirectly.

(b) In general, employees shall avoid any action, whether or not specifically prohibited by the regulations in this part, which might result in or create the appearance of: Using their Smithsonian employment for private gain; losing impartiality and giving preferential treatment to any person; impeding Smithsonian efficiency or economy; making an official decision outside official channels; or affecting adversely the confidence of the public in the integrity of the Smithsonian Institution.

(c) Employees and special Government employees will not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Smithsonian or to the Government.

(d) Each employee and special Government employee should be aware of the following statutory prohibitions against:

(1) Lobbying with appropriated funds (18 U.S.C. 1913).

(2) Disloyalty and striking (5 U.S.C. 118p and 118r).

(3) Employment of a member of a Communist organization (50 U.S.C. 784).

(4) (i) Disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783);

and (ii) disclosure of confidential information (18 U.S.C. 1905).

(5) Habitual use of intoxicants to excess (5 U.S.C. 640).

(6) Misuse of a Government vehicle (5 U.S.C. 78c).

(7) Misuse of the franking privilege (18 U.S.C. 1719).

(8) Use of deceit in an examination or personnel action in connection with Government employment (5 U.S.C. 637).

(9) Fraud or false statements in a Government matter (18 U.S.C. 1001).

(10) Mutilating or destroying a public record (18 U.S.C. 2071).

(11) Unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

§ 500.735–103 Interpretative, advisory, and review services.

The Secretary will designate a Counselor for the Smithsonian who will be the Smithsonian's designee to the Civil Service Commission on matters related to standards of conduct. Attorneys in the Office of the General Counsel will be designated as Deputy Counselors for the Smithsonian by the Counselor as needed. The Counselor shall review the statements of employment and financial interests submitted by employees and special Government employees. When that review indicates a conflict between the interests of an employee or special Government employee and the performance of his services for the Smithsonian, the Counselor will bring the indicated conflict to the attention of the employee or special Government employee, will grant the employee or special Government employee an opportunity to explain the indicated conflict, and attempt to resolve the indicated conflict. If the indicated conflict cannot be resolved, the Counselor will forward a written report on the indicated conflict to the Secretary. When the Secretary decides that remedial or disciplinary action is required to end the conflict or appearance of conflict he will effect such action as provided in § 500.735–104. Deputy Counselors will act in the absence or the unavailability of the Counselor, and their opinions shall be as authoritative as those of the Counselor.

§ 500.735–104 Disciplinary and remedial action.

A violation of the regulations in this part by an employee or special Government employee may be cause for appropriate remedial or disciplinary action, in addition to any penalty prescribed by law. Such action may include, but is not limited to: (a) Changes in assigned duties; (b) divestment by the employee or special Government employee of his conflicting interest; (c) disqualification for a particular assignment; or (d) appropriate disciplinary action.

Subpart B—Gifts, Entertainment, and Favors

§ 500.735–201 Gifts, entertainment, and favors from outside sources.

(a) In general, Federal employees may be subject to criminal penalties if they solicit, accept, or agree to accept anything of value in return for being influenced in performing or in refraining from performing an official act (see 18 U.S.C. 201, 203). Except as provided in paragraph (b) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who (1) has, or is seeking to obtain, contractual or other business or financial relations with the Smithsonian, or (2) has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The following exceptions to paragraph (a) of this section are appropriate:

(1) When the circumstances make it clear that it is a family or personal relationship (such as those between the employee's parents, children, or spouse and the employee), rather than the business of the persons concerned, acceptance of gratuities, favors, entertainment, or any other thing of monetary value is permissible;

(2) Food and refreshments of modest value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection or other tour where an employee may properly be in attendance may be accepted;

(3) Loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans, may be accepted;

(4) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of modest intrinsic value, may be accepted.

§ 500.735–202 Unauthorized solicitations and gifts.

(a) No employee shall solicit contributions from another employee for a gift to an employee in a superior official position. An employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than himself. An employee shall not make a donation as a gift to an employee in a superior official position (see 5 U.S.C. 113).

(b) Employees will not solicit contributions for, or otherwise promote, on Smithsonian Institution premises, any welfare or other type campaign, either national or local, unless participation in that campaign has had the endorsement of the Secretary.

(c) Employees will not sell tickets, stocks, articles, commodities, or services on Smithsonian Institution premises.

(d) The above prohibitions are not to be construed as prohibiting employees from engaging in bona fide activities of a recognized employee union, group, organization, or association on premises occupied by the Smithsonian Institution.

(e) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and by statute (see 5 U.S.C. 114–115a).

Subpart C—Outside Employment

§ 500.735–301 General.

(a) Outside employment or other outside activity may be appropriate when it would not adversely affect performance of an employee's official duties and would not reflect discredit on the Government or the Smithsonian Institution. Such work may include some paid or unpaid outside work which contributes to technical or professional development. Certain types of outside work, however, which give rise to real or apparent conflicts of interest, are prohibited by law or by regulation.

(b) The regulations in this part do not preclude an employee from receipt of bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence for which no Smithsonian payment or reimbursement is made. However, an employee may not be reimbursed, and payment may not be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits. Nor are employees precluded from participation in the activities of National or State political parties where such participation is not proscribed by law. Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, public service, or civic organization are permissible.

§ 500.735–302 Representation.

(a) An employee shall not, except in the discharge of his official duties, represent anyone else before a court or Government agency in any matter in which the United States is a party or has a direct and substantial interest (18 U.S.C. 203, 205).

(b) A person shall not, after his Smithsonian employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207).

(c) A person shall not, for 1 year after his Smithsonian employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has a direct and substantial interest and which was under his official responsibility (but in which he did not participate personally and substantially) during the last year of his Smithsonian employment (18 U.S.C. 207).

§ 500.735–303 Other activities.

Smithsonian employees shall not perform or engage in any outside work or outside activity, with or without compensation, which is not compatible with the full and proper discharge of the duties and responsibilities of his Smithsonian employment. Incompatible activities include but are not limited to:

(a) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or

create the appearance of, conflicts of interest;

(b) Outside employment which tends to impair his mental or physical capacity to perform his Smithsonian duties and responsibilities in an acceptable manner;

(c) Outside work which may be construed by the public to be official acts of the Smithsonian Institution;

(d) Any salary or anything of monetary value received by an employee from a private source as compensation for his services to the Smithsonian Institution (18 U.S.C. 209).

§ 500.735–304 Teaching, lecturing, and writing.

Smithsonian employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, Executive order, or the regulations in this part. However, an employee shall not, with or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his Smithsonian employment, except when that information is available to the general public or would be made available on request, or when the Secretary gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

§ 500.735–305 Holding office under State or local government.

(a) Employees of the Smithsonian may hold office under State or local government only to the extent permitted by Executive order or Part 734, Civil Service regulations (5 CFR Part 734). Part 734, Civil Service regulations, provides that with prior approval of the employing agency and a determination that an employee's service in the State or local office will not interfere with the regular and efficient performance of his duties, certain exceptions to the general prohibition can be made. However, such exceptions do not permit an employee to engage in partisan political activity. Exceptions under which officeholding is permitted with prior approval are:

(1) A full-time employee may hold a State or local office on other than a full-time basis;

(2) An employee employed on other than a full-time basis may hold a State or local office, whether full time or otherwise;

(3) An employee who is on leave without pay may hold a State or local office on a full-time basis;

(4) An employee of a State or local government who is on leave without pay may hold a Federal position on a full-time basis under a temporary appointment.

(b) Employees desiring to participate in political activities are cautioned to adhere strictly to the provisions of The Hatch Act, 5 U.S.C. 118i, 18 U.S.C. 602, 603, 607, and 608. Advice on political activities and copies of applicable statutes and regulations may be obtained from the Counselor.

Subpart D—Financial Interests

§ 500.735–401 General.

(a) An employee shall not participate in his official capacity in any matter in which he, his spouse, his minor child, or an outside business associate or organization (profit or nonprofit) with which he is connected or is negotiating employment has a financial interest (18 U.S.C. 208). Shares held in a widely diversified mutual fund or other regulated investment company are exempt from the provisions of 18 U.S.C. 208(a) as being too remote or inconsequential to affect the integrity of an officer's or employee's services, except as provided below in § 500.735–402. In other cases, whenever a question might be raised concerning the effect of a financial interest upon the integrity of an employee's official services, the employee shall, each time such a matter arises, request administrative approval to participate in the matter.

(b) An employee shall not have direct or indirect financial interests that conflict substantially, or appear to conflict substantially, with his Smithsonian duties and responsibilities, or engage in, directly or indirectly, a financial transaction as a result of, or primarily relying upon, information obtained through his Smithsonian employment. This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Smithsonian so long as it is not prohibited by law, Executive order, or the regulations in this part.

§ 500.735–402 Employees in procuring and contracting activities.

An employee who serves as a procurement or contracting officer or whose duties include authority to recommend or prepare specifications, negotiate noncompetitive contracts, or evaluate bids, shall not have financial interests in companies with which his office has any significant procurement or contracting relationship. Such employees may not hold shares in a mutual fund or other regulated investment company that specializes in holdings in industries with which his office has any significant procurement or contracting relationship.

§ 500.735–403 Exceptions.

If any situation arises in which it would appear to be contrary to the best interests of the Smithsonian, or cause undue hardship to an individual, to apply strictly the policies set forth in this subpart, a request for exception, with full disclosure of the relevant facts, should be forwarded to the Counselor.

Subpart E—Financial Responsibility

§ 500.735–501 General.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law, such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances reflect adversely on the Smithsonian as his employer. If there is a dispute between an employee and an alleged creditor, the Smithsonian is not required to determine the validity or amount of the disputed debt.

§ 500.735–502 Borrowing and lending money.

(a) While on duty, or while on Smithsonian Institution premises, employees are forbidden to borrow money or lend money to anyone for the purpose of monetary profit or other gain. This prohibition is not applicable to operations of a recognized employee credit union or employee welfare plan.

(b) No supervisor may borrow money from subordinates, nor shall he request or require any subordinate to cosign or endorse a personal note.

Subpart F—Conduct on the Job

§ 500.735–601 General.

High standards of conduct on the job are required of employees of the Smithsonian Institution. Those employees in contact with the public play a particularly significant role in determining the public's attitude toward the Institution. Attitude, alertness, courtesy, consideration, and promptness in carrying out one's official duties, are important aspects of conduct.

§ 500.735–602 Use of Government funds.

The following laws carry penalties for misuse of Government funds:

(a) Improper use of official travel (18 U.S.C. 508);

(b) Embezzlement or conversion of public money, property, or records to one's use (18 U.S.C. 641);

(c) Taking or failing to account for public funds with which an employee is entrusted in his official position (18 U.S.C. 643);

(d) Embezzlement or conversion of another's money or property in the possession of an employee by reason of his employment (18 U.S.C. 654).

§ 500.735–603 Use of Federal and Smithsonian property.

(a) Employees shall not directly or indirectly use, or allow to be used, Federal or Smithsonian Institution property of any kind for other than officially approved activities.

(b) Employees have a positive duty to protect and conserve both Federal and Smithsonian Institution property, equipment, and supplies, including property leased to the Institution, which have been entrusted or issued to them. Employees are prohibited from willfully damaging or otherwise misusing Federal and Smithsonian Institution property, vehicles, equipment, tools, and instru-

ments; and are prohibited from defacing Smithsonian buildings, offices, and other premises or facilities of the Institution in any manner whatsoever.

§ 500.735–604 Restrictions on disclosure of information.

Unless specifically authorized to do so, employees will not disclose any official Smithsonian information which is of a confidential nature or which represents a matter of trust, or any other information of such character that its disclosure might be contrary to the best interests of the Government or of the Smithsonian Institution, e.g., private, personal, or business related information furnished to the Smithsonian in confidence. Security and investigative data for official use only shall not be divulged to unauthorized persons or agencies. This section shall not be construed, however, as directing any employee of the Smithsonian to withhold unclassified information from the press or public.

§ 500.735–605 Nondiscrimination.

In the performance of his duties, an employee shall not discriminate on grounds of race, color, religion, national origin, sex, or age. Discrimination because of political opinions or affiliations, refusal to render political service, or refusal to contribute money for political purposes is also prohibited.

§ 500.735–606 Participation in management of employee organizations.

Any employee has the right to be a member of an employee organization. He shall not, however, participate in the management of an employee organization as an officer of the organization or represent it in dealings with management when such activity might result in a conflict of interest or otherwise be incompatible with law or with the official duties of the employee. The duties of managerial executives who determine management policies and put them into effect and the duties of personnel employees, other than those in a purely clerical capacity, are inconsistent with participation in the management or representation of an employee organization. Conflict of interest will be deemed to exist when an employer is an officer of an employee organization or actively represents it on specific matters of direct official concern, and also has continuing responsibility as a management official for making administrative decisions or formal recommendations on cases or policies advocated by the same or similar employee organizations, or has management responsibility for dealing with officers or representatives of the same or a similar employee organization. The conflict must be immediate and real, not remote and theoretical.

§ 500.735–607 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or -leased property, or while on Smithsonian-owned or -leased property, or while on duty for the Smithsonian, in any gambling activity, including, but not limited to, the operation of a gambling device, conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

Subpart G—Statements of Employment and Financial Interests

§ 500.735–701 Applicability.

The following employees shall submit statements of employment and financial interests:

(a) Employees paid at a level of the Federal Executive Salary Schedule established by the Federal Executive Salary Act of 1964, as amended;

(b) Employees in grade GS–16 or above of the General Schedule established by the Classification Act of 1949, as amended, or in comparable or higher positions not subject to that Act;

(c) Positions in GS–13 and above, unless otherwise indicated, whose basic duties and responsibilities require the incumbent to exercise judgment in making or recommending a Smithsonian decision or in taking or recommending a Smithsonian action in regard to:

(1) Contracting or procurement, including the appraisal or selection of contractors; the negotiation or approval of contracts; the supervision of activities performed by contractors; the inspection of materials for acceptability; the procurement of materials, services, supplies, or equipment;

(2) Administering or monitoring grants, including grants to educational institutions and other non-Federal enterprises;

(3) Audit of financial transactions;

(4) Use and disposal of excess or surplus property (GS–11 and above);

(5) Establishment and enforcement of safety standards and procedures systems; and

(6) Activities (regardless of grade) where the decision or action has an economic impact on the interests of a non-Federal enterprise. Positions in the above categories may be excluded from the reporting requirement when the Secretary determines that the duties are at such a level of responsibility that the submission of a statement is not necessary because of the degree of supervision and review over the incumbents and the remote and inconsequential effect on the integrity of the Government and the Smithsonian.

§ 500.735–702 Time and place for submission of employees' statements.

An employee required to submit a statement of employment and financial interests under the regulations in this part shall submit that statement to the Counselor not later than:

(a) 90 days after the effective date of the regulations in this part if employed on or before that effective date; or

(b) 30 days after his entrance on duty, but not earlier than 90 days after the effective date of the regulations in this part, if appointed after that effective date.

§ 500.735–703 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement at the end of the quarter in which the changes occur. Quarters end March 31, June 30, September 30, and December 31. If there are no changes or additions in a quarter, a negative report is not required. However, for the purpose of annual review, a supplementary statement, negative or otherwise, is required as of June 30 each year, to be filed not later than July 10.

§ 500.735–704 Interests of employees' relatives.

The interest of a spouse, minor child, stepchild, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, "member of an employee's immediate household" means those blood relations of the employee who are residents of the employee's household.

§ 500.735–705 Information not known by employees.

If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

§ 500.735–706 Information not required.

This subpart does not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational or other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 500.735–707 Confidentiality of employees' statements.

Each statement of employment and financial interests and each supplementary statement, shall be held in strict confidence by the Smithsonian. The Smithsonian may not disclose information from a statement except as the Civil Service Commission or the Secretary may determine for good cause shown.

Subpart H—Provisions Relating to Special Government Employees

§ 500.735–801 Applicability.

The requirements of this subpart apply to "special Government employees." The

term "special Government employees" means and includes employees who are retained, designated, appointed, or employed to perform, with or without compensation, for not more than 130 days during any period of 365 consecutive days, temporary duties on a full-time or intermittent basis.

§ 500.735–802 Ethical standards of conduct.

A special Government employee must conduct himself according to ethical behavior of the highest order:

(a) He must refrain from any use of his Smithsonian employment which is, or appears to be, motivated by a desire for private gain for himself or other persons, particularly those with whom he has family, business, or financial ties.

(b) He shall not use inside information obtained as a result of his Smithsonian employment for private gain for himself or another person either by direct action on his part or by counsel, recommendations, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Smithsonian authority which has not become part of the body of public information.

(c) He shall not use his Smithsonian employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

(d) While employed or in connection with his employment as a special Government employee, he shall not receive or solicit from any person having business with the Smithsonian anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business, or financial ties. The exceptions deemed appropriate for regular Smithsonian employees under § 500.735–201(b) also apply to special Government employees.

(e) He may write, teach, lecture, and hold office under State or local government under the conditions prescribed for regular employees in §§ 500.735–304 and 500.735–305.

§ 500.735–803 Statement of financial interests required.

(a) Each special Government employee described in §500.735–801 must submit a statement which reports:

(1) All other employment;

(2) The financial interests which relate either directly or indirectly to his duties and responsibilities with the Smithsonian.

(b) Such statement of employment and financial interests must be submitted not later than the time of employment by the Smithsonian. If during the period of appointment the special Government employee undertakes a new employment, he must promptly file an amended statement. He must also report any new financial interests acquired during the period of appointment, which interests relate either directly or indirectly to his duties.

(c) The requirements of this section may be waived or modified to the extent consistent with § 735.412 of the Civil Service Commission's regulations (5 CFR 735.412), upon application to the Secretary through the Counselor, who will attach his recommendations thereto.

§ 500.735–804 Statutory restrictions.

Each special Government employee shall acquaint himself with the provisions of the following statutes:

(a) Prohibitions affecting the activities of Government employees in their private capacities (18 U.S.C. 203, 205);

(b) Prohibitions affecting the activities of persons who leave the service of the Government (18 U.S.C. 207);

(c) A restriction on the activities of the Government employee in performing his functions as a Government employee (18 U.S.C. 208);

(d) The specific exclusion of special Government employees from the coverage of 18 U.S.C. 209 which prohibits a regular employee's receipt of compensation from private sources in certain circumstances.

§ 500.735–805 Requesting waivers or exemptions.

A special Government employee may request the following waivers or exemptions.

(a) An exemption if the outside financial interest is determined not to be substantial enough to have an effect on the integrity of his services (see 18 U.S.C. 208(b)).

(b) A limited waiver is permitted of restrictions in 18 U.S.C. 205 for the benefit of an employee who represents his own parents, spouse, child, or a person or estate which he serves as a fiduciary, if such representation is approved by the Secretary. No waiver is available for matters in which he has participated personally and substantially, or which are the subject of his official responsibility (see 18 U.S.C. 202(b)).

(c) He may be allowed to represent his regular employer or other outside organization in the performance of work under a grant or contract upon certification by the Secretary that the national interest requires it. Publication in the FEDERAL REGISTER of such certification is required.

This Part 500 was approved by the Civil Service Commission on February 8, 1966.

Effective date. This Part 500 shall become effective upon publication in the FEDERAL REGISTER.

S. DILLON RIPLEY,
Secretary.

[F.R. Doc. 66–2838; Filed, Mar. 16, 1966; 8:48 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 3949]

[Oregon 016908]

OREGON

Partial Revocation of Reclamation Withdrawals (Medford and Sams Valley Projects)

By virtue of the authority contained in section 3 of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), as amended and supplemented, it is ordered as follows:

1. The departmental orders of February 20, 1943, withdrawing lands for reclamation purposes are hereby revoked so far as they affect the following described lands:

WILLAMETTE MERIDIAN

T. 33 S., R. 1 E.,
Sec. 14, SW¼NW¼, SE¼SW¼, and SW¼SE¼;
Sec. 20, SW¼SE¼ and E½SE¼;
Sec. 24, NW¼SW¼.
T. 34 S., R. 1 E.,
Sec. 2, S½SW¼;
Sec. 10, W½NE¼, SW¼SW¼, and SW¼SE¼;
Sec. 14, NE¼NE¼.
T. 33 S., R. 2 E.,
Sec. 30, lot 4.
T. 33 S., R. 1 W.,
Sec. 34, NE¼ and N½SE¼.
T. 34 S., R. 1 W.,
Sec. 2, N½SW¼, SE¼SW¼, and W½SE¼.

The areas described, including the public and national forest lands, aggregate 1,041.93 acres in Jackson County. Those in section 34, T. 33 S., R. 1 W., are in the Rogue River National Forest. Some of the lands are withdrawn in Project No. 828 for transmission line purposes, to which the Federal Power Commission's General Determination of April 17, 1922, is applicable, and some are withdrawn for other purposes.

The lands are situated from 24 to 35 miles north of Medford, Oreg. Elevation varies from 1,400 feet to 2,000 feet. Lands in this area generally support a growth of Douglas fir, Ponderosa pine, Incense cedar, madrona, buckbrush, and other native shrubs, forbs, and grasses.

2. At 10 a.m., on April 15, 1966, the national forest lands shall be open to such forms of disposition as may by law be made of national forest lands.

3. The State of Oregon has waived the preferred right of application to select the public lands as provided by R.S. 2276, as amended (43 U.S.C. 852). At 10 a.m., on April 15, 1966, the public lands shall be open to operation of the public land laws generally, including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of appli-

cable law. All valid applications received at or prior to 10 a.m., on April 15, 1966, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order or filing.

The lands have been open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Portland, Oreg.

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

MARCH 10, 1966.

[F.R. Doc. 66-2817; Filed, Mar. 16, 1966; 8:46 a.m.]

Title 46—SHIPPING

Chapter I—Coast Guard, Department of the Treasury

SUBCHAPTER B—MERCHANT MARINE OFFICERS AND SEAMEN

[CGFR 66-18]

PART 11—LICENSES IN TEMPORARY GRADES OR SPECIAL ENDORSEMENTS ON LICENSES TO PERMIT TEMPORARY SERVICE

The adequate manning of vessels has become a serious problem with the sudden increase in the number of active vessels needed to carry cargoes from U.S. ports. This condition has been reported to various agencies of the U.S. responsible for movement of cargoes connected with maritime activities. The Coast Guard has found that personnel to man vessels being reactivated are not always available and concurs in the findings of other Agencies concerning the unavailability of personnel. The Coast Guard has the administrative responsibility for establishing requirements and procedures for the licensing of persons who are deemed sufficiently qualified to serve as licensed officers on merchant vessels.

The regulations in 46 CFR Part 10 set forth the qualifications for men to serve as officers of merchant vessels under normal conditions and procedures for applicants to obtain various grades of licenses. Under emergency conditions or other special circumstances when licensed officers are not available in sufficient numbers to man all the vessels required to meet the needs of commerce, it is reasonable to provide for the licensing of officers for such emergency purposes. This is necessary in order that vessels be manned by officers who are considered sufficiently qualified under such emergency conditions who might not otherwise be considered as fully qualified.

The Under Secretary of the Navy in a letter dated January 20, 1966, requested the Coast Guard to take appropriate action to alleviate the problem concerning a shortage of available Third Assistant Engineers and proposed that favorable consideration be given to reducing the sea service requirements in 46 CFR Part 10 for applicants to qualify as Third Assistant Engineers. The problems in availability in various ports of persons holding Third Assistant Engineer licenses, as well as those holding Third Mate licenses and the potential shortages of other licensed personnel, were investigated. The Coast Guard has found that definite shortages or potential shortages in the availability of licensed officers below the grades of Master and Chief Engineer exist. Therefore, it is found necessary in the public interest that additional regulations designated as 46 CFR Part 11, as set forth in this document, regarding licenses in temporary grades or special endorsements on licenses to permit temporary service in higher grades are needed in order to make available persons found to be qualified to serve as officers of vessels under present conditions.

It is hereby found that compliance with the Administrative Procedure Act (respecting notice of proposed rule making, public rule making procedures thereon and effective date requirements) for the establishment of 46 CFR Part 11, as set forth in this document, is contrary to the public interest and therefore are exempted from such requirements under the provisions of section 4 of that Act (5 USC 1003).

By virtue of the authority vested in me as Commandant, U.S. Coast Guard, under section 632 of Title 14, U.S. Code, and Treasury Department Order 120, dated July 31, 1950 (15 F.R. 6521), and the laws cited with the regulations in this document, the following regulations designated as 46 CFR Part 11 are prescribed and shall become effective on publication of this document in the FEDERAL REGISTER.

Subpart 11.01—General

Sec.
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Subpart 11.05—Definitions

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Subpart 11.10—Licenses in Temporary Grades

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11.10-5 Regular license as Third Mate.
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Subpart 11.15—Endorsements on Licenses To Permit Temporary Services

Sec.
11.15-1 Special provisions.
11.15-5 Authority of endorsement on license for temporary service.

AUTHORITY: The provisions of this Part 11 issued under R.S. 4405, as amended, 4462, as amended; 46 U.S.C. 375, 416. Interpret or apply R.S. 4417a, as amended, 4426, as amended, 4427, as amended, 4438, as amended, 4440, as amended, 4441, as amended, 4445, as amended, 4447, as amended, sec. 2, 29 Stat. 188, as amended, sec. 1, 34 Stat. 1411, as amended, secs. 1, 2, 49 Stat. 1544, 1545, as amended, sec. 3, 68 Stat. 675; 46 U.S.C. 391a, 404, 405, 224, 228, 229, 231, 233, 367, 50 U.S.C. 198. Treasury Department Orders 120, July 31, 1950, 15 F.R. 6521; 167-14, Nov. 26, 1954, 19 F.R. 8026; 167-20, June 18, 1956, 21 F.R. 4894.

Subpart 11.01—General

§ 11.01-1 Application.

(a) The regulations in this part apply to all applicants for licenses to serve as "Temporary Third Mate" or "Temporary Third Assistant Engineer," and for special endorsements on regular licenses as Second and Third Mates and Second and Third Assistant Engineers which will permit the holders to serve temporarily in the grade next higher than that endorsed on the regular licenses.

(b) The applicable regulations in Part 10 of this subchapter shall apply in all cases except to the extent that certain requirements in §§ 10.05-1 to 10.10-29, inclusive, are modified to permit issuance of licenses as "Temporary Third Mate" or "Temporary Third Assistant Engineer," and for endorsement of certain licenses authorizing the holders to serve temporarily in the grade next higher than the grade in which the license is issued other than as Master or Chief Engineer.

§ 11.01-3 Purpose.

(a) The regulations in this part set forth the special, reduced requirements of sea service by which applicants may be considered qualified for licenses as "Temporary Third Mate" or "Temporary Third Assistant Engineer." Compliance with these requirements will permit the issuance of licenses in temporary grades to those applicants who have established to the satisfaction of the Officer in Charge, Marine Inspection, that they possess the other qualifications necessary and are entitled to be issued such licenses.

(b) The regulations in this part set forth the special conditions under which the Officers in Charge, Marine Inspection, may endorse regular licenses as Second and Third Mates or Second and Third Assistant Engineers to permit qualified holders to serve temporarily in the grade next higher than that endorsed on the regular licenses.

§ 11.01-5 Duration of regulations.

(a) The regulations in this part shall be in effect for such a period of time as may be considered necessary to provide licensed officers in emergency situations upon the request of an authorized official of the U.S. Government. The amendments, revisions, additions or cancellations of these regulations shall become effective ninety (90) days after the date of publication in the FEDERAL REGISTER unless the Commandant shall fix a different time.

§ 11.01-10 Duration of licenses in temporary grades or special endorsements issued pursuant to this part.

(a) The licenses in temporary grades issued under the provisions of this part shall be valid for a period of five (5) years from the date of issuance unless sooner canceled or suspended by proper

authority as published in the FEDERAL REGISTER. Licenses in temporary grades shall not be renewed.

(b) The special endorsements placed on regular licenses to permit service in the grade next higher shall be valid for the period of the regular license. The special endorsement may be continued upon the first renewal of the regular license subsequent to obtaining the special endorsement unless sooner canceled or suspended by proper authority as published in the FEDERAL REGISTER. Except as provided in this paragraph, special endorsements shall not be renewed.

Subpart 11.05—Definitions

§ 11.05–1 General.

(a) Certain terms or words used in this part shall be used in accordance with the definitions in this subpart unless otherwise stated. When terms or words are defined in other regulations in this chapter, such definitions shall apply to the terms or words in this part except when such term or word is defined otherwise in this subpart.

§ 11.05–5 Endorsement for temporary service.

(a) The endorsement for temporary service means the special endorsement placed on a regular license authorizing the holder to serve in a temporary capacity on vessels in the grade next higher than the grade of the regular license, but subject to any other limitations placed on the regular license.

§ 11.05–10 Regular license.

(a) The term "regular license" means the license issued to an applicant who qualifies therefor under the provisions of Part 10 in this subchapter, and authorizes the holder to serve in the grade or grades stated therein and subject to any limitations placed on the license.

§ 11.05–15 License in temporary grade.

(a) The term "license in temporary grade" means the license issued to an applicant who qualifies for "Temporary Third Mate" or "Temporary Third Assistant Engineer" under the provisions of this part.

Subpart 11.10—Licenses in Temporary Grades

§ 11.10–1 Temporary Third Mate.

(a) The applicable procedures and requirements in Part 10 of this subchapter shall be followed and the applicant for a license as "Temporary Third Mate" will be considered eligible upon presentation of evidence of 24 months' service on deck in a watchstanding capacity and endorsement as "Able Seaman" on his merchant mariner's document.

(b) After application to the Officer in Charge, Marine Inspection, any person who is found qualified under the requirements set forth in this part shall be issued a license endorsed as "Temporary Third Mate."

(c) Such license endorsed as "Temporary Third Mate" authorizes the holder to serve in the capacity of "Third Mate" subject to any limitations appended with the same force and effect of a regular license issued without the term "temporary."

§ 11.10–5 Regular license as Third Mate.

(a) The holder of a license as "Temporary Third Mate," upon completion of such additional service as to meet the 36 months' service required for a regular license as "Third Mate" in Part 10 of this subchapter, is considered eligible for a regular license as Third Mate without examination. Such holder may submit a regular application with evidence of additional service to the Officer in Charge, Marine Inspection, who shall issue a regular license as Third Mate.

§ 11.10–50 Temporary Third Assistant Engineer.

(a) The applicable procedures and requirements in Part 10 of this subchapter shall be followed and the applicant for a license as "Temporary Third Assistant Engineer" shall be considered eligible upon presentation of evidence of 18 months' service in the capacity of Fireman, Oiler, Watertender, Junior Engineer, Deck Engine Mechanic, or Engine Man. Applicants presenting evidence of service as Electrician or Refrigeration Engineer will be given consideration when specifically recommended for a license by the Chief Engineer of a vessel on which such service has been performed and by the Superintending Engineer of a company on whose vessel the applicant has served in such capacity.

(b) After application to the Officer in Charge, Marine Inspection, any person who is found qualified under the requirements set forth in this part shall be issued a license endorsed as "Temporary Third Assistant Engineer."

(c) Such license endorsed as "Temporary Third Assistant Engineer" authorizes the holder to serve in the capacity of "Third Assistant Engineer" subject to any limitations appended with the same force and effect of a regular license issued without the term "temporary."

§ 11.10–55 Regular license as Third Assistant Engineer.

(a) The holder of a license as "Temporary Third Assistant Engineer," upon completion of such additional service as to meet the 36 months' service required for a regular license as "Third Assistant Engineer" in Part 10 of this subchapter, is considered eligible for a regular license as Third Assistant Engineer without examination. Such holder may submit a regular application with evidence of additional service to the Officer in Charge, Marine Inspection, who shall issue a regular license as Third Assistant Engineer.

Subpart 11.15—Endorsements on Licenses To Permit Temporary Services

§ 11.15–1 Special provisions.

(a) Upon application and after finding that an applicant meets the special conditions in this subpart, the Officer in Charge, Marine Inspection, may place on a regular license of Second and Third Mates and Second and Third Assistant Engineers an endorsement which will permit the holder to serve in a temporary capacity in the next higher grade, subject to any other limitations on such license.

(b) The holder of a regular license as Second or Third Mate or Second or Third Assistant Engineer who has served at sea under the authority of and in the capacity of such a regular license for a period of at least 6 months is eligible to apply for an endorsement authorizing him to serve temporarily in the grade next higher than the capacity stated on the regular license, but subject to any other limitations placed on such license, without examination.

(c) The holder of a regular license with an endorsement permitting service in the next higher grade, upon completion of such additional service as to meet the 12 months' service for the next higher grade as required by Part 10 of this subchapter, may apply for a regular license in that grade subject to examination. When such holder presents his application and shows to the satisfaction of the Officer in Charge, Marine Inspection, that he possesses all the applicable qualifications for such higher grade regular license specified in Part 10, the Officer in Charge, Marine Inspection, shall issue such regular license. No regular license shall be issued until the applicant has met all the service and examination requirements specified in Part 10 for such regular license.

§ 11.15–5 Authority of endorsement on license for temporary service.

(a) The endorsement on a regular license for temporary service authorizes the holder to serve in the capacity stated thereon subject to any limitations appended with the same force and effect of a regular license issued without the term "temporary."

Dated: March 11, 1966.

[SEAL] W. D. SHIELDS,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[F.R. Doc. 66–2839; Filed, Mar. 16, 1966; 8:48 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 168—DIRECTORY OF INTERNATIONAL MAIL

Italy; Postal Union Mail

The regulations of the Post Office Department are amended as follows:

In § 168.5 *Individual country regulations*, make the following change which modifies existing prohibitions to Italy in view of new Italian regulations which provide for Italian banknotes to be mailed to Italy by banking institutions if addressed to Italian banks to be credited to "capital accounts."

In "Italy (including Republic of San Marino)," the item *Prohibitions and import restrictions* under Postal Union Mail is revised to read as follows:

Postal Union Mail

* * * * *

Prohibitions and import restrictions. Currency and checks except as stated below: Bonds and other values; gold and silver bullion, precious stones, jewelry, and other precious articles. Italian banknotes may be mailed by banking institutions directly to Italian banks to be credited to "capital accounts." The term "checks" is understood to mean only personal checks on U.S. banks payable in Italy. Bank drafts drawn by U.S. banks on Italian banks in favor of Italian payees are understood to be admitted. Postage, stamps, except as provided under *Observations*.

Articles prohibited or restricted as parcel post are prohibited or restricted in the postal union mail.

(R.S. 161, as amended; 5 U.S.C. 22, 39 U.S.C. 501, 505)

TIMOTHY J. MAY,
General Counsel.

[F.R. Doc. 66-2850; Filed, Mar. 16, 1966; 8:49 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

PART 0—THE COMMISSION

Subpart B—Canons of Conduct

APPROVAL BY CIVIL SERVICE COMMISSION

The "Miscellaneous Amendments to Appendix I," F.R. Doc. 66-2221, 31 F.R. 3344, is corrected by inserting the following paragraph immediately before the paragraph entitled "Effective date."

These amendments have been approved by the Civil Service Commission.

By the Commission.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 66-2840; Filed, Mar. 16, 1966; 8:48 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

Upper Souris National Wildlife Refuge, N. Dak.

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.

NORTH DAKOTA

UPPER SOURIS NATIONAL WILDLIFE REFUGE

Sport fishing on the Upper Souris National Wildlife Refuge, N. Dak., is permitted only on the areas designated by signs as open to fishing. These open areas comprising 6,000 acres are delineated on maps available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis, Minn., 55408. Sport fishing shall be in accordance with all applicable State regulations subject to the following conditions:

(1) The open season for sport fishing on the refuge extends from May 7, 1966, through September 14, 1966, daylight hours only.

(2) The use of minnows or any other fish or parts thereof, for bait (except perch eyes) is prohibited in all waters which lie north of the Lake Darling dam.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Part 33, and are effective through September 14, 1966.

JOHN M. DOHL,
Refuge Manager, Upper Souris National Wildlife Refuge, Foxholm, N. Dak., 58738.

MARCH 10, 1966.

[F.R. Doc. 66-2816; Filed, Mar. 16, 1966; 8:46 a.m.]

Proposed Rule Making

FEDERAL AVIATION AGENCY

[14 CFR Part 39]

[Docket No. 7192]

AIRWORTHINESS DIRECTIVES

Lycoming O–540–B2B5 Engines

The Federal Aviation Agency is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Lycoming Model O–540–B2B5 engines. There have been failures of the crankshaft idler gear shaft on certain of these Lycoming engines. Since this condition is likely to exist or develop in other engines of the same design, the proposed AD requires the replacement of crankshaft idler shafts and accessory housing.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Agency, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. All communications received on or before April 16, 1966, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423).

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

LYCOMING. Applies to Model O–540–B2B5 engines, Serial Numbers 101–40 through 8267–40, installed in Piper PA–25 and Intermountain Manufacturing Co. airplanes, except engines remanufactured at Lycoming after November 14, 1965.

Compliance required as indicated, unless already accomplished.

To prevent further failures of crankshaft idler shafts, accomplish the following:

(a) For engines with, on the effective date of this AD, less than 300 hours' time in service since new or overhaul, comply with paragraph (c) before the accumulation of 400 hours' time in service since new or overhaul, whichever occurs first.

(b) For engines with, on the effective date of this AD, 300 or more hours' time in service since new or overhaul, comply with paragraph (c) within the next 100 hours' time in service.

(c) Replace crankshaft idler shaft, P/N 70390, and accessory housing, P/N 71648, with crankshaft idler shaft, P/N 73014, and accessory housing, P/N 75367 or 71648–85. (Lycoming Service Bulletin No. 308 pertains to this subject.)

Issued in Washington, D.C., on March 11, 1966.

C. W. WALKER,
Acting Director,
Flight Standards Service.

[F.R. Doc. 66–2806; Filed, Mar. 16, 1966; 8:45 a.m.]

[14 CFR Part 39]

[Docket No. 7193]

AIRWORTHINESS DIRECTIVES

Boeing Model 727 Series Airplanes

The Federal Aviation Agency is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Boeing Model 727 Series airplanes. There have been instances of cracking in the B-nuts at the engine firewall resulting in extensive fuel leakage. It has been determined that only those B-nuts supplied by a particular manufacturer are susceptible to cracking. Since this condition is likely to exist or develop in other airplanes of the same design, the proposed AD would require inspection and replacement of defective fuel line B-nuts.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Agency, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. All communications received on or before April 16, 1966, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423).

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

BOEING. Applies to Model 727 Series airplanes.

Compliance required as indicated, unless already accomplished.

It has been determined that certain of the B-nuts at the engine firewall on Boeing Model 727 Series airplanes are susceptible to cracking. To correct this condition:

(a) Within the next 600 hours' time in service after the effective date of this AD, inspect the engine fuel feed system B-nut, P/N NAS596, located at each engine firewall to determine if it is an AFCO (Aircraft Fitting, Inc.) manufactured part. Identification must be made in accordance with the instructions listed in Boeing Service Bulletin 28–25 dated December 3, 1965 or later FAA-approved revision.

(b) If the B-nut is not an AFCO part, no further action under this AD is required. If the B-nut is an AFCO part, accomplish the following before further flight:

(1) Inspect for cracks using a 10-power glass, dye penetrant or ultrasonic method.

(2) If cracks are found, remove the fuel line tube assembly and replace with a new part in accordance with Boeing Service Bulletin 28–25 dated December 3, 1965, or later FAA-approved revision or an equivalent approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(3) If no cracks are found, repeat the inspection required under subparagraph (1) every 600 hours' time in service until the AFCO B-nuts are replaced as specified in paragraph (c).

(c) Within the next 3,000 hours' time in service after the effective date of this AD, unless already accomplished under paragraph (b), remove all fuel feed line tube assemblies incorporating AFCO B-nuts and replace in accordance with Boeing Service Bulletin 28–25 dated December 3, 1965, or later FAA-approved revision or an equivalent approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(d) Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Chief, Aircraft Engineering Division, FAA Western Region, may adjust the repetitive inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

Issued in Washington, D.C., on March 11, 1966.

C. W. WALKER,
Acting Director,
Flight Standards Service.

[F.R. Doc. 66–2807; Filed, Mar. 16, 1966; 8:45 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 65–PC–5]

CONTROL ZONE, CONTROL AREA EXTENSION, AND TRANSITION AREA

Proposed Alteration, Revocation, and Designation

In consonance with ICAO International Standards and Recommended Practices, notice is hereby given that the Federal Aviation Agency (FAA) is considering amendments to Part 71 of the Federal Aviation Regulations. This proposal relates to navigable airspace both within and outside the United States.

Applicability of International Standards and Recommended Practices, by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 and Annex 11 to the Convention on Interna-

tional Civil Aviation (ICAO), which pertains to the establishment of air navigation facilities and services necessary to promoting safe, orderly and expeditious flow of civil air traffic. Its purpose is to insure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operating in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The following controlled airspace is presently designated in the Kwajalein Island terminal area:

1. Kwajalein Island control zone is designated as that airspace within a 5-nmi radius of NAS Kwajalein Island.

2. The Kwajalein Island control area extension is designated as that airspace extending upward from 700 feet above the surface within a 100-nmi radius of the Kwajalein radio beacon from the 270° to the 180° bearings from the radio beacon, and within a 25-nmi radius of the Kwajalein radio beacon from the 180° to the 270° bearings from the radio beacon.

The Federal Aviation Agency, having completed a comprehensive review of the terminal airspace requirements at Kwajalein Island, including studies attendant to implementation of provisions of CAR Amendment 60-21/60-29, proposes the airspace actions hereinafter set forth.

1. In § 71.171 (31 F.R. 2065) Kwajalein Island control zone would be redescribed as follows: The Kwajalein Island control zone would be designated as that airspace within a 5-mile radius of the Kwajalein Island AAF (latitude 08°43′ N., longitude 167°44′ E.), within 2 miles each side of the Kwajalein TACAN 248° True radial, extending from the 5-mile radius zone to 6 miles west of the TACAN, within 2 miles each side of the 008° True bearing from the Kwajalein RBN, extending from the 5-mile radius zone to 12 miles north of the RBN, and within 2 miles each side of the 078° True bearing from the Kwajalein RBN, extending from the 5-mile radius zone to 8 miles east of the RBN.

2. In § 71.181 (31 F.R. 2149) the following transition area would be added: The Kwajalein Island transition area would be designated as that airspace extending upward from 700 feet above the surface within a 12-nautical mile radius of the Kwajalein TACAN; and that airspace extending upward from 1,200 feet above the surface within a 100-nautical mile radius of the Kwajalein TACAN.

3. In § 71.165 (31 F.R. 2055) the Kwajalein Island control area extension would be revoked.

The control zone as proposed is necessary to protect aircraft executing prescribed instrument approach and departure procedures at the airport involved. The proposed transition areas are necessary to protect aircraft executing prescribed instrument approach and departure procedures, transition between terminal and oceanic control area and special operations in connection with Kwajalein test site activities.

The alteration to the control zone would provide extensions to protect aircraft making instrument approaches to Kwajalein.

The revocation of the presently designated control area extension and substitution of the transition area as proposed herein would result in the raising of the floor of controlled airspace from 700 feet to 1,200 feet above the surface outside of the 12-nmi radius from the TACAN.

Specific details of the changes to procedures and minimum instrument flight rules altitudes that would be required may be examined by contacting the Chief, Air Traffic Division, Pacific Region, Federal Aviation Agency, Post Office Box 4009, Honolulu, Hawaii, 96812.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Pacific Region, Attention: Chief, Air Traffic Division, Federal Aviation Agency, Post Office Box 4009, Honolulu, Hawaii, 96812. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. The proposals contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Agency, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. An informal docket also will be available for examination at the Office of the Regional Air Traffic Division Chief.

These amendments are proposed under the authority of sections 307(a) and 1110 of the Federal Aviation Act of 1958 (49 U.S.C. 1348 and 1510), and Executive Order 10854 (24 F.R. 9565).

Issued in Washington, D.C., on March 10, 1966.

H. B. HELSTROM,
Acting Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 66-2808; Filed, Mar. 16, 1966; 8:45 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 66-CE-21]

TRANSITION AREA

Proposed Designation

The Federal Aviation Agency is considering an amendment to Part 71 of the Federal Aviation Regulations which would designate controlled airspace in the Huntingburg, Ind., terminal area.

The Federal Aviation Agency, having completed a comprehensive review of the terminal airspace structural requirements in the Huntingburg, Ind., terminal area, proposes the following airspace action:

Designate the Huntingburg, Ind., transition area as that airspace extending upward from 700 feet above the surface within a 6-mile radius of Huntingburg Airport (latitude 38°15′00″ N., longitude 86°57′00″ W.), and within 2 miles each side of the 067° bearing from the Huntingburg Airport extending from the 6-mile radius area to 8 miles northeast of the airport.

An "MH" facility is to be established to serve Huntingburg, Ind., Airport. A public-use instrument approach procedure has been developed using this facility, and it will be effective concurrent with the designation of controlled airspace.

The proposed transition area will provide controlled airspace for departing aircraft during climb from 700 to 1,200 feet above the surface. It will also provide controlled airspace protection for aircraft executing the prescribed instrument approach procedure during descent from 1,500 to 700 feet above the surface.

The controlled airspace proposed herein will underlie the Evansville, Ind., 1,200-foot transition area.

The floor of the airways that would traverse the transition area proposed herein will automatically coincide with the floor of the transition area.

A new approach procedure is to be established; therefore, no procedural changes would be effected in conjunction with the actions proposed herein.

Specific details of the new approach procedure for Huntingburg, Ind., Airport and of the proposal contained herein may be examined by contacting the Chief, Airspace Branch, Air Traffic Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City, Mo., 64110.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Agency,

4825 Troost Avenue, Kansas City, Mo., 64110. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Agency, 4825 Troost Avenue, Kansas City, Mo., 64110.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348).

Issued at Kansas City, Mo., on March 4, 1966.

EDWARD C. MARSH,
Director, Central Region.

[F.R. Doc. 66-2809; Filed, Mar. 16, 1966; 8:45 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 66-SO-19]

TRANSITION AREA

Proposed Designation

The Federal Aviation Agency is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Eufaula, Ala., transition area.

The proposed Eufaula, Ala., transition area would be designated as that airspace extending upward from 700 feet above the surface within a 4-mile radius of the Weedon, Ala., Airport (latitude 31°56'45" N., longitude 85°08'15" W.); within 2 miles each side of the Eufaula, Ala., VOR 014° radial extending from the 4-mile radius area to 8 miles NE of the VOR; and that airspace extending upward from 1,200 feet above the surface within 8 miles W and 5 miles E of the Eufaula VOR 014° radial extending from the VOR to 12 miles NE, excluding that portion which coincides with the Columbus, Ga., transition area.

The floors of the airways that traverse the proposed transition area would automatically coincide with the floor of the transition area.

The proposed transition area is needed for the protection of IFR operations at Weedon, Ala., Airport. A prescribed instrument approach procedure to the Weedon Airport utilizing the Eufaula, Ala., VOR is proposed in conjunction with the designation of this transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Area Manager, Memphis Area Office, Attention: Chief, Air Traffic Branch, Federal Aviation Agency, Post Office Box 18097, Memphis, Tenn., 38118. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Chief, Air Traffic Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Southern Regional Office, Federal Aviation Agency, Room 724, 3400 Whipple Street, East Point, Ga.

This amendment is proposed under sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)).

Issued in East Point, Ga., on March 9, 1966.

HENRY S. CHANDLER,
Acting Director, Southern Region.

[F.R. Doc. 66-2810; Filed, Mar. 16, 1966; 8:46 a.m.]

[14 CFR Part 91]

[Notice No. 66-7]

AIR TRAFFIC CONTROL

Lateral Separation of Aircraft Over North Atlantic; Notice of Public Hearing

On December 8, 1965, the International Civil Aviation Organization Council approved a proposal that the 120-mile lateral separation standard for turbojet aircraft over the North Atlantic Ocean be reduced to 90 miles, effective January 13, 1966. As implemented, the 90-mile lateral separation standard for turbojet aircraft is now being applied at flight level 290[1] and above over the North Atlantic. Below flight level 290, the 120-mile lateral separation is still provided upon request if traffic permits.

On February 14, 1966, the Air Line Pilots Association requested a public hearing on the safety aspects of the change in separation, and repeated that request on February 28, 1966.

Background information. In the fall of 1961, the Federal Aviation Agency initiated a program called "Project Accordian" to measure the accuracy with which aircraft maintain position along their assigned route at flight level 290 and above over the North Atlantic. The measurements were derived from data obtained from aircraft flight logs, pilot reports, and radar sightings covering approximately 5,000 flights of 14 airlines.

Based on "Project Accordion" and nine other studies conducted by airlines, the United Kingdom, and Canada, the U.S. delegation to the ICAO special North Atlantic Regional Air Navigation Meeting of February and March, 1965, proposed that the 120-mile lateral separation between aircraft then in effect be reduced to 90 miles. Prior to this meeting, attended by representatives of 22 ICAO contracting States and 8 International Aviation Organizations, copies of the U.S. proposal were sent to U.S. aviation organizations and Government offices. All either concurred or did not comment. On June 11, 1965, the ICAO Council approved the reduction but did not establish an implementation date pending the completion of an independent study by the United Kingdom on aircraft track keeping accuracy. Upon the completion of this study, which covered over 2,000 airline flights, the ICAO Council established January 13, 1966, as the effective date for reducing the lateral separation over the North Atlantic to 90 nautical miles.

The reduction in lateral separation over the North Atlantic thus placed in effect was taken through international agreement, after determining that the present state of the navigational art permitted the reduction without any adverse effect on safety.

It is the policy of the Federal Aviation Agency to review any matter affecting air safety on a continuing basis. In view of ALPA's request for a public hearing on this matter, the Agency believes it is in the public interest to grant that request. The hearing will provide an opportunity for the presentation of data and other evidence on the safety of the present separation standards and the need, if any, for a change.

Notice of Hearing. In consideration of the foregoing, notice is hereby given that the Agency will hold a public hearing at 9 a.m., April 4, 1966, at the Federal Aviation Agency Building, 800 Independence Avenue SW., Washington, D.C., to receive the views of all interested persons on the subject.

Interested persons are invited to attend the hearing and present oral or written statements on the matters set forth herein which will be made a part of the record of the hearing. Any person who wishes to make an oral statement at the hearing should notify the Agency by March 30, 1966, stating the amount of time requested for making his statement. Each participant may be questioned by any other participant or by FAA representatives concerning his statement and any participant may submit further written comment, in duplicate, within 10 days after the closing of the hearing. In addition, any person may submit relevant written comments. These comments must be in duplicate, and must be received by the Agency by April 4, 1966, to be assured of full consideration.

A transcript of the hearing will be made. Anyone may buy a copy of the transcript from the reporter. All communications concerning this hearing should be addressed to the Office of the General Counsel, Rules Docket, Federal Aviation Agency, Washington, D.C.,

[1] "Flight level" is used to describe the altitude of a flight with the altimeter set to a constant atmospheric pressure related to a reference datum of 29.92 inches of mercury. For example, flight level 290 represents a barometric altimeter indication of 29,000 feet; flight level 295, an indication of 29,500 feet.

20553, marked "Attention: Presiding Officer, Public Hearing on Lateral Separation over North Atlantic."

All relevant matter presented will be fully considered in determining what further, if any, Agency action should be taken with respect to the present international agreement.

Issued in Washington, D.C., on March 15, 1966.

WILLIAM F. MCKEE,
Administrator.

[F.R. Doc. 66-2892; Filed, Mar. 16, 1966; 9:10 a.m.]

[14 CFR Part 151]

[Docket No. 7194; Notice No. 66-5]

REVIEW OF MISCELLANEOUS ELIGIBILITY CRITERIA AND PROGRAMING STANDARDS

Notice of Proposed Rule Making

The Federal Aviation Agency is considering amendments to Part 151 of the Federal Aviation Regulations to add, revise, and clarify certain eligibility criteria and programing standards for obtaining Federal financial assistance for airport development under the Federal-aid Airport Program.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, 800 Independence Avenue SW., Washington, D.C., 20553. All communications received on or before April 18, 1966, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Because of the number of proposals contained in this notice and the number of sections affected, specific regulatory language is not proposed except where it will enable the public to better understand the proposal. Where specific regulatory language is proposed, it is combined with the pertinent explanation. There is no separate preamble, and the proposals are listed in numerical order under two topics: Eligibility Criteria and Programing Standards.

ELIGIBILITY CRITERIA PROPOSALS

Proposal 1. Compliance With Outstanding Agreements (§§ 151.7, 151.37, and 151.67). Before the FAA authorizes any Federal-aid Airport Program funds for an airport development project grant or for an advance planning and engineering grant, § 151.7(a) requires that the Administrator must be satisfied "that the sponsorship requirements have been or will be met under existing and proposed agreements with the United States with respect to the airport involved." To be eligible to apply for a grant, § 151.37(b)(2) requires that, with respect to the airport involved, the sponsor must be able to "make, keep, and perform the assurances, agreements, and covenants" contained in the Project Application, Form FAA 1624, and described in § 151.67(a). As presently written, both §§ 151.7(a) and 151.37 apply only to agreements with the United States affecting the airport involved in the airport development project or advance planning and engineering proposal. In many cases, a sponsor may own or control two or more airports. Under these circumstances, a sponsor may have fully complied with all sponsorship requirements of agreements with the United States that affect the airport involved in the project or proposal. However, the sponsor may be in default under agreements with the United States affecting another airport he owns or controls. The FAA believes that it is not in the public interest to make a grant of Federal funds to any sponsor who is in default under any agreement with the United States affecting any airport he owns or controls. It is proposed to amend §§ 151.7, 151.37, and 151.67 to make them applicable to any agreement with the United States affecting any of the sponsor's airports.

Section 151.7(a) has been misunderstood by some to require that the sponsor be in compliance only with the terms and conditions of grant agreements with the United States made under the Federal-aid Airport Program. To clarify this problem, it is proposed to amend § 151.7(a) to state expressly that the agreements referred to include not only grant agreements and any special conditions in grant agreements, but also covenants under conveyances under section 16 of the Federal Airport Act, covenants under conveyances of surplus airport property under section 13(g) of the Surplus Property Act, and AP-4 agreements under the terminated Development Landing Areas National Defense Program and the Development Civil Landing Areas Program.

As presently written, § 151.7(a) does not expressly refer to the problem facing a sponsor who is in default under an agreement with the United States as to development, operation, and maintenance of an airport because of circumstances that he cannot control. Section 151.7(a) would be amended to allow the sponsor to establish to the satisfaction of the Administrator that the delay, deficiency, or default under the agreement is caused by factors that he is unable to control, and to provide that, when the Administrator is satisfied that the sponsor is not at fault, a grant may be made to the sponsor, if it is otherwise eligible.

As proposed to be amended, §§ 151.7(a), 151.37, and 151.67 would not apply to a sponsor's failure to comply with the assurance required under section 602 of the Civil Rights Act of 1964 and § 15.7 of the Federal Aviation Regulations (14 CFR 15.7). The remedial action that the FAA takes in the case of a default is governed by section 602 and Part 15 of the Federal Aviation Regulations.

Proposal 2. Adequate Land for Airport Development (§§ 151.9, 151.11, 151.25, 151.37, and 151.39). The basic purpose of the Federal-aid Airport Program is to provide Federal financial assistance to public agencies which own airports, to develop and maintain a national system of public airports that is adequate to anticipate and meet the needs of civil aeronautics. The basic national system to be achieved is set forth in the National Airport Plan, and the Federal-aid Airport Program is designed to make the National Airport Plan a reality. The Administrator is required to make certain that each airport development project is consistent with the National Airport Plan. To achieve this, the Administrator requires project sponsors, among other things, to own, control, or be able to acquire, interests in land that are adequate for the project and satisfactory to the Administrator. These requirements are now contained in § 151.25, for all project applications, and in §§ 151.9 and 151.11, for projects specifically including runway clear zones. Under § 151.37(d), a sponsor who cannot meet the requirements of § 151.25 is ineligible for a grant. However, the regulations contain no specific requirement that the sponsor must own, control, or be able to acquire, interests in land that are adequate to meet the future needs of civil aeronautics, and airport growth. The expenditure of Federal funds for projects at airports that cannot be developed to accommodate the future needs of civil aeronautics because of lack of land is not consistent with the policy of the Federal Airport Act, or of the FAA.

It is proposed to amend Part 151 to require project sponsors to own, control, or be able to acquire, adequate land for the next 5 years of future expansion of the airport in general, and specifically to meet the needs for new or expanded landing facilities, runway clear zones, and ground support activities. Sections 151.9, 151.11, 151.25, and 151.37(d) would be amended to reflect this proposal. Also, § 151.39(a) would be amended to require that the Administrator be satisfied that the land, or interests in land, shown on the Airport Layout Plan (§ 151.5(a)(1)) that the sponsor owns, controls, or is able to acquire, is adequate to accommodate the future needs of the airport, as projected in the National Airport Plan for the next 5 years.

Proposal 3. Value of Donated Land (§§ 151.23, 151.27, and 151.39). Except for land donated to the sponsor by another public agency, the value of land donated to the sponsor by any person may be included in a land acquisition or other project as an allowable project cost only under the circumstances stated in § 151.39(c). Related § 151.41(b)(6) states that land donated to the sponsor by another public agency is not an allowable project cost. When a project sponsor intends to include donated land in a project, § 151.23 requires the sponsor in his application to identify it as donated land, to describe the donation, and to state the value the sponsor places on the land. Also, § 151.27(c) requires the sponsor to submit with his application two or more independent appraisals of

the land made by disinterested appraisers. The FAA now uses these appraisals to determine the amount of the maximum United States' obligation in the grant offer under § 151.29(a). Requiring a sponsor to obtain these appraisals at his expense may be an undue burden, since trained FAA field personnel are available to appraise the land without cost to the sponsor. On the other hand, in some instances the appraisals a sponsor submits do not accurately reflect the actual value of the land. It is proposed to amend the regulations to make land donated to the sponsor ineligible for inclusion in any airport development project until the FAA makes or obtains an appraisal of its value, and §§ 151.23, 151.27, and 151.39 would be amended accordingly. No substantive change is proposed to § 151.41(b)(6). The proposed amendments would relieve the sponsor of the cost of obtaining the appraisals now required, and FAA would be certain that it is not obligating substantially more Federal funds than are actually necessary as the United States' share of the value of donated land.

Proposal 4. Consideration of Local Community Interest (*§ 151.39*). Under section 9(d)(3) of the Federal Airport Act, the Administrator may not approve an airport development project unless he is satisfied that fair consideration has been given to the interest of the communities in or near which the project is located. This statutory mandate is now reflected in § 151.39(a)(5). However, the regulations are silent as to how the Administrator obtains the information that is necessary for him to make his decision. It is proposed to amend § 151.39 to require the sponsor of the project to submit information to the Administrator that adequately demonstrates to him that the interest of local communities has received fair consideration, and that will enable him to make the necessary determination.

Proposal 5. Periodic Cost Estimate for Force Account Work (*§§ 151.51, 151.57, and 151.67*). In performing construction work, § 151.45(a) allows a sponsor to use his own work force, or the work force of another public agency acting as the sponsor's agent, when to do so is more effective and economical. A sponsor who uses force account must file a Periodic Cost Estimate, Form FAA 1629, when he applies for each grant payment under §§ 151.51(b) and 151.57(a)(2). Also, § 151.67(a)(5) describes Form FAA 1629 as being signed by the sponsor in the case of force account work. Among the accounting records the sponsor must keep, and make available to the FAA after proper notice under § 151.55, are the itemized costs of force account work. Since the sponsor's accounts must contain the information that the sponsor submits in the Periodic Cost Estimate, Form FAA 1629, and since these accounts are available to the FAA, it is proposed to delete the requirement that a sponsor using force account must file a Periodic Cost Estimate when he applies for a grant payment.

PROGRAMNG STANDARDS PROPOSALS

Proposal 1. High or Medium Intensity Runway Lighting (*§§ 151.43 and 151.87*). Under § 151.39(b)(7), an airport development project may include items of runway lighting. Under § 151.13(b)(3), high intensity runway edge lighting must be included in a project when: (1) A runway equipped with ILS at the airport involved does not have high intensity runway edge lighting; (2) a runway will be equipped with ILS installed by FAA under the Facilities and Equipment Program (49 U.S.C. 1348(b)); or (3) a runway equipped with high intensity runway edge lighting will be extended under the current project. Under § 151.43(d)(1), Federal participation in the cost of installing high intensity runway edge lighting is 75 percent on a designated instrument runway, or on a runway with an approved straight-in approach procedure. The programing standards for high intensity runway edge lighting are contained in § 151.87(d), and provide that high intensity runway edge lighting is eligible as follows:

(1) 75 percent of the cost, either for a designated instrument landing runway, or for a runway with an approved straight-in approach procedure; or

(2) 50 percent of the cost for a runway that does not rate 75 percent participation, but that is served by a navigational aid that will allow use of instrument approach procedures.

The FAA has reviewed the extent of Federal participation in the cost of installing runway edge lighting. The FAA believes that the greatest benefit to safety in air commerce is derived from the installation of high intensity runway edge lighting on airport runways that are equipped with an Instrument Landing System (ILS) that will permit precision approach procedures. This lighting is now required under § 151.13(b)(3). The FAA believes that Federal participation should continue to be 75 percent, as provided by § 151.43(d)(1), in the cost of installing high intensity runway edge lighting on ILS equipped runways, when it is required under § 151.13(b)(3). However, although the FAA believes that a benefit to safety in air commerce is derived from the installation of high intensity runway edge lighting on airport runways with an approved straight-in approach procedure, or with a navigational aid that will allow use of instrument approach procedures, and although the FAA now authorizes 75 percent Federal participation in the installation cost of high intensity runway edge lighting on runways with approved straight-in approach procedures under § 151.43(d)(1), the FAA does not believe that Federal participation in these cases should continue to be 75 percent. This is because the increased level of safety resulting from installations on these runways is not as great as installations on ILS runways permitting precision approach procedures. Accordingly, it is proposed to amend § 151.87(d) to provide that Federal participation is 50 percent in the cost of high intensity runway edge lighting for airport runways without ILS, but with either: (1) An approved straight-in approach procedure; or (2) a navigational aid that will allow use of instrument approach procedures.

Finally, it is proposed to amend § 151.87(d) to provide that when an airport runway is not equipped so that it is eligibile for 50 or 75 percent Federal participation in the cost of high intensity runway edge lighting, but is otherwise eligible for runway lighting, Federal participation will be limited to 50 percent of the cost of installing medium intensity runway edge lighting.

Proposal 2. In-runway Lighting (*§§ 151.43, 151.87, and Appendix F*). Under § 151.39(b)(7), an airport development project may include items of runway lighting, and under § 151.13(b)(2), the FAA requires in-runway lighting to be included in a project under stated circumstances. In-runway lighting is eligible for 75 percent Federal participation as stated in § 151.43(d), and is eligible for inclusion in any project under the programming standards of § 151.87(e). In-runway lighting is also listed as a typical eligible item in Appendix F. The words "narrow gauge, centerline, and turnoff" are used in §§ 151.43(d)(2), 151.87(e), and Appendix F to describe in-runway lighting systems. The FAA believes that these descriptive terms do not adequately describe in-runway lighting systems and that the term "touchdown lighting system, centerline lighting system, and exit taxiway lighting system" is both more accurate and more comprehensive and therefore better expresses the intent of the rule. It is proposed to amend §§ 151.43(d)(2), 151.87(e), and Appendix F to substitute the more comprehensive term stated above for the present language.

Proposal 3. Paving Second Runways (*§§ 151.77 and 151.79*). Under § 151.39(b)(5), an airport development project may include items of runway construction, and the programing standards for paving runways are contained in § 151.77 (generally) and § 151.79 (for additional runways). The standards for paving a second runway on the basis of wind conditions, contained in § 151.79(a), now apply to all airports. The FAA recently has developed new standards for eligibility of second runway paving on the basis of wind conditions on airports that serve only small aircraft. Under these new standards, a sponsor who owns such an airport would be able to include the paving of a second runway in a project under conditions that would make such paving ineligible by present standards. The FAA believes that present § 151.79 should be revised to more clearly distinguish between eligibility based on wind conditions and eligibility based on other factors. Also, the last four sentences should be deleted from § 151.79(a), since they are acceptable methods (but not the only methods) of demonstrating the existence of the required crosswind conditions.

Therefore, it is proposed to amend §§ 151.77 and 151.79, as follows:

(a) The second sentence of § 151.77(a) is amended to read as follows: "Program participation in constructing, reconstructing, or resurfacing is limited to a single runway at each airport, unless more than one runway is eligible under a standard in § 151.79 or § 151.80."

(b) Section 151.79 is amended to read as follows:

§ 151.79 Runway paving: second runway; wind conditions.

(a) Paving a second runway on the basis of wind conditions is eligible for inclusion in a project only if the sponsor establishes to the satisfaction of the Administrator that—

(1) The airport meets the applicable standards of paragraph (b), (c), (d), or (e) of this section;

(2) The operational experience, and the economic factors of air transportation at the location, justify an additional runway for the airport; and

(3) The second runway is oriented with the existing paved runway to achieve the maximum wind coverage, with due consideration to the aircraft noise factor.

(b) A second paved runway for an airport that serves both large and small aircraft is eligible when the existing paved runway is subject to a crosswind component of more than 15 miles per hour (13 knots) more than 5 percent of the time.

(c) A second paved runway for an airport that serves small aircraft exclusively is eligible when—

(1) The airport has 10,000, or more, aircraft operations each year; and

(2) The existing paved runway is subject to a crosswind component of more than 15 miles per hour (13 knots) more than 5 percent of the time.

(d) A second paved runway for an airport that serves small aircraft of less than 8,000 pounds exclusively is eligible when—

(1) The airport has 5,000, or more, aircraft operations each year; and

(2) The existing paved runway is subject to a crosswind component of more than 15 miles per hour (13 knots) more than 5 percent of the time.

(e) A second paved runway for an airport that serves small aircraft exclusively, that has limited facilities, and that is limited to VFR operations is eligible when the existing paved runway is subject to a crosswind component of more than 11.5 miles per hour (10 knots) more than 5 percent of the time.

(c) A new § 151.80 is added to read as follows:

§ 151.80 Runway paving: additional runway; other conditions.

Paving an additional runway on an airport, that does not qualify for a second runway under § 151.79, is eligible on a case-to-case basis if the Administrator is satisfied that—

(a) The layout and orientation of an additional runway would expedite traffic and justify an additional runway for an airport with 75,000, or more, aircraft operations each year; or

(b) A combination of traffic volume, wind coverage, and aircraft noise problems justifies an additional runway for any airport.

Proposal 4. Economy Approach Lighting Aids (§ 151.87 and Appendix F). Under § 151.39(b)(7), an airport development project may include items of runway, taxiway, or apron lighting, and §151.87 contains the programing standards for lighting and electrical work. The FAA has recently developed programing standards for economy approach lighting aids that include: (1) A medium intensity approach lighting system (MALS), that may include a sequence flasher (SF); (2) a runway end identifier lights system (REILS); and (3) an abbreviated visual approach slope indicator (AVASI). These economy approach lighting aids are designed to correct or substantially reduce the problem of visual reference deficiency on some lighted airport runways. When a visual reference deficiency exists on a lighted airport runway, the FAA believes that these economy approach lighting aids will increase the level of safety in aircraft operations at these airports, and recommends their inclusion in projects at airports having this problem. However, the FAA believes that it would not be in the public interest to obligate Federal-aid Airport Program funds for economy approach lighting aids when the airport will qualify for FAA installed approach lighting aids within the next 3 years under the Facilities and Equipment Program (49 U.S.C. 1348(b)). Therefore, it is proposed to amend § 151.87 to provide that economy approach lighting aids are eligible for inclusion in a project at an airport that:

(1) Has a visual reference deficiency on one of its lighted runways; and

(2) Will not qualify for FAA installed approach lighting aids within the next 3 years under the Facilities and Equipment Program. It is also proposed to amend Appendix F to add economy approach lighting aids to the list of Typical Eligible Items.

Proposal 5. Airport Entrance Roads (§ 151.89 and Appendix G). Under § 151.39(b)(8), an airport development project may include airport entrance and service road construction, alteration, and repair. Section 151.89 contains the programing standards for airport entrance and service roads. Although § 151.89(a) expressly states that Federal-aid Airport Program funds may not be used to resolve highway problems, the inclusion of an airport entrance road in a project often results in disputes between the sponsor and other public agencies as to the location, size, and adequacy of the entrance road. These disputes, in turn, result in delays in the timely completion of the project. To avoid these delays, and to limit the use of Federal funds to airport development involving efficient and safe airport operations, it is proposed to amend § 151.89 and Appendix G to limit participation in the construction of new airport entrance roads as follows:

(1) Only airport entrance roads at new airport sites leading to the nearest public highway by the shortest route would be eligible;

(2) Only airport entrance roads inside the airport boundary, as shown on the Airport Layout Plan, would be eligible; and

(3) Only the cost of a two-lane airport entrance road not more than 24 feet wide (12 feet for each lane) would be eligible. If a larger or more complex entrance road is constructed, Federal participation would be limited to the equivalent of the cost of a two-lane road under (3) above. It is not proposed to modify the programing standards for construction of service roads, or for the alteration or repair of existing airport entrance roads.

Proposal 6. Airport Utilities (§ 151.93). Under § 151.39(b)(9), an airport development project may include utility construction, installation, or connection, and under § 151.39(b)(12), a project may include utility relocation. Section 151.93(b) states that where a utility serves both eligible and ineligible airport areas or facilities, the utililty is eligible on a pro rata basis. Section 151.93(b) also states that a water system is eligible to the extent necessary to provide fire protection. Use of Federal funds to provide any supporting utility for an ineligible airport area or facility is contrary to the policy of the Federal Airport Act. To give further effect to this policy, the FAA proposes to amend § 151.93 (b) to further limit U.S. participation in airport utility construction, installation, and connection when the utility serves both eligible and ineligible airport areas and facilities, as follows:

(1) Any airport utility serving both eligible and ineligible airport areas and facilities would be eligible only to the extent of the cost of providing additional utility service capacity for eligible airport areas and facilities that is over and above the cost of providing utility service necessary for all ineligible airport areas and facilities; and

(2) A water utility system would be eligible only to the extent necessary to provide fire protection for aircraft operations, and to provide water for a fire and rescue equipment building.

It is not proposed to modify the programming standard for utility relocation necessary to allow airport development, eligible under § 151.39(b)(12).

Proposal 7. Remarking Runways and Taxiways (§ 151.95). An airport development project may include runway or taxiway construction, alteration, or repair under § 151.39(b)(5). The programing standards for runway and taxiway paving are contained in §§ 151.77, 151.79, and 151.81, and the standards for runway and taxiway marking and remarking are contained in § 151.95(f). In some cases, the FAA receives a project application involving the construction of a new runway or taxiway, or involving runway or taxiway work that will obliterate existing markings, but the project does not provide for the marking of the new runway or taxiway, or for the remarking of the improved runway or taxiway. In other cases, a project at an air-

port, where existing runway or taxiway marking is obsolete under current FAA standards, may not provide for the remarking of the runway or taxiway involved. Also, the use of the words "has been obliterated" in § 151.95(f) may cause sponsors to believe that remarking of the affected runway or taxiway must be accomplished in a separate, later project when this is not intended. The FAA believes that adequate runway or taxiway marking or remarking is necessary for safe airport operation. Accordingly, it is proposed to amend § 151.95(f) to clarify the programing standards for runway and taxiway marking and remarking, as follows:

(1) The initial marking of new or presently unmarked runways or taxiways would be eligible; and

(2) The remarking of existing runways or taxiways would be eligible when—

(a) Present marking is obsolete under current FAA standards; or

(b) Present marking is obliterated by construction, alteration, or repair work included in the current project.

The programing standards for marking of aprons would not be changed.

To assure runway or taxiway remarking under item (2)(b) above, it is proposed to amend Subpart A by adding a new section that would require runway and taxiway remarking as part of a project that includes work that would obliterate existing markings.

Proposal 8. Aprons for Cargo Buildings (Appendix E). Section 13(b) of the Federal Airport Act provides that "the following shall not be allowable project costs * * *. (2) The cost of construction of any part of an airport building except such of those buildings or parts of buildings intended to house facilities or activities directly related to the safety of persons at the airport." This provision is reflected in §§ 151.35(a)(1), 151.39(b)(4), 151.41(b)(2), and 151.93(a). Under section 13(b)(2), the FAA believes that no cargo building is eligible for inclusion in an airport development project. However, Appendix E (under § 151.83(c)) lists as item 4 under Typical Ineligible Items "Aprons for ineligible cargo buildings." This item appears to cause sponsors to believe that if there are "ineligible" cargo buildings, then there must be some eligible cargo buildings. Since all cargo buildings are ineligible for Federal participation, it is proposed to amend item 4 of Appendix E, Typical Ineligible Items, to read: "Aprons for any cargo building."

These amendments are propoesd under the authority of sections 1–15 and 17–21 of the Federal Airport Act (49 U.S.C. 1101–1114 and 1116–1120).

Issued in Washington, D.C., on March 11, 1966.

COLE MORROW,
Director, Airports Service.

[F.R. Doc. 66–2811; Filed, Mar. 16, 1966; 8:46 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

CUSTOMHOUSE BROKERS

Licenses

The present provisions of Part 31 of the Customs Regulations (19 CFR Part 31) provide for the licensing of customhouse brokers on a district basis. Under the reorganization of the customs field service by Treasury Department Order No. 165–17 (30 F.R. 10913), there are established nine customs regions, each comprised of one or more customs districts. The Bureau is considering the advisability of licensing customhouse brokers on a regional basis instead of on the present district basis. This would permit a customhouse broker to operate in all districts in the region for which he is licensed. If this is done, the Bureau may also wish to consider whether proceedings for the revocation or suspension of customhouse brokers' licenses should be on a regional basis under the regional commissioner as chief customs officer.

It is desired to obtain the views of all interested parties. Prior to taking action on these proposals, consideration will be given to any relevant data, views, or arguments pertaining to these matters which are submitted in writing to the Commissioner of Customs, Bureau of Customs, Washington, D.C., 20226, and received not later than 60 days from the date of publication of this notice in the FEDERAL REGISTER. No hearing will be held.

[SEAL] LESTER D. JOHNSON,
Commissioner of Customs.

Approved: March 7, 1966.

TRUE DAVIS,
Assistant Secretary of the Treasury.

[F.R. Doc. 66–2824; Filed, Mar. 16, 1966; 8:47 a.m.]

Foreign Assets Control

IMPORTATION OF CUT JADE STONES DIRECTLY FROM TAIWAN (FORMOSA)

Available Certification by Government of Republic of China

Notice is hereby given that certificates of origin issued by the Ministry of Economic Affairs of the Republic of China under procedures agreed upon between that government and the Office of Foreign Assets Control in connection with the Foreign Assets Control Regulations are now available with respect to the importation into the United States directly, or on a through bill of lading, from Taiwan (Formosa) of the following additional commodity :

Jade stones, cut but not set, suitable for use in jewelry.

[SEAL] MARGARET W. SCHWARTZ,
Director, Office of Foreign Assets Control.

[F.R. Doc. 66–2825; Filed, Mar. 16, 1966; 8:47 a.m.]

POST OFFICE DEPARTMENT

CITIZENS' STAMP ADVISORY COMMITTEE

Appointment of Members

Correction

In F.R. Doc. 66–2499 appearing at page 4252 in the issue for Thursday, March 10, 1966, the executive order designation referred to in item IV. now reads "Executive Order 11077". It is corrected to read "Executive Order 11007".

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

IDAHO

Notice of Filing of Idaho Protraction Diagram

MARCH 10, 1966.

Notice is hereby given that effective at and after 10 a.m., on April 14, 1966, the following protraction diagram is officially filed of record in the Idaho Land Office, Room 327, Federal Building, Boise, Idaho, 83701, and is available to the public as a matter of information only. In accordance with Title 43, Code of Federal Regulations, this protraction will become the basic record for describing the land for all authorized uses. Until this date and time the diagram has been placed in open file and is available to the public for information only.

IDAHO PROTRACTION DIAGRAM NO. 70

BOISE MERIDIAN

Approved February 24, 1966

T. 12 N., Rs. 29, 30, 31, and 32 E.
T. 13 N., Rs. 29, 30, and 31 E.

Copies of this diagram are for sale at one dollar ($1.00) each by the Cadastral Engineering Office, Bureau of Land Management, Post Office Box 2237, Boise, Idaho, 83701.

EUGENE E. BABIN,
Acting Manager, Land Office, Boise, Idaho.

[F.R. Doc. 66–2818; Filed, Mar. 16, 1966; 8:46 a.m.]

ALASKA

Notice of Termination of Proposed Withdrawal and Reservation of Lands

MARCH 8, 1966.

Notice of an application, Serial Number Anchorage 060877, for withdrawal and reservation of lands was published as F.R. Doc. 64–2006, on page 2914 of the issue for March 3, 1964. The applicant agency has canceled its application so far as it involves the lands described below. Therefore, pursuant to the regulations contained in 43 CFR Subpart 2311, such lands will be at 10 a.m., on March 21, 1966, relieved of the segregated effect of the above mentioned application.

The lands involved in this notice are:

EKLUTNA LAKE RECREATION AREA

SEWARD MERIDIAN

T. 14 N., R. 2 E. (Unsurveyed):
Sec. 12, E½SW¼.
T. 14 N., R. 3 E. (Unsurveyed):
Sec. 19, E½SE¼;
Sec. 20, W½W½;
Secs. 21 and 28, W½E½ and E½W½;
Sec. 33, E½NW¼.

The areas described aggregate approximately 1,040 acres.

R. DON CHRISTMAN,
Acting State Director.

[F.R. Doc. 66–2835; Filed, Mar. 16, 1966; 8:48 a.m.]

[Idaho 017112]

IDAHO

Notice of Proposed Withdrawal and Reservation of Lands

MARCH 11, 1966.

The Department of Agriculture has filed an application, Serial Number Idaho 017112, for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws nor disposals of materials under the Act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601–604), as amended. The applicant desires the land for public purposes as five campgrounds and one administrative site within the Caribou, Challis, and Payette National Forests.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Post Office Box 2237, Boise, Idaho, 83701.

The authorized officer of the Bureau of Land Management will undertake

such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

He will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the Department of Agriculture.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application are:

BOISE MERIDIAN, IDAHO

CARIBOU NATIONAL FOREST

Swan Lake Campground

T. 9 S., R. 43 E.,
Sec. 30, SW¼NW¼SE¼, SW¼SE¼, and SW¼SE¼SE¼.
Totaling 60 acres.

CHALLIS NATIONAL FOREST

Pole Flat Campground

T. 11 N., R. 15 E., unsurveyed,
When surveyed will probably be in the NE¼, sec. 8, more particularly described as:
Beginning at a reference point, being an iron stake set in the ground with 3.5 feet exposed and a pile of rocks raised 1.8 feet high around the stake and which is located on the north bank of the mouth of Pole Creek at the high watermark on the east bank of the Yankee Fork of the Salmon River, thence N. 12°45′ E., 1,385 feet to corner No. 1, from whence a pile of rock, raised 2.5 feet, bears S. 81°E., 3 feet; thence by metes and bounds;
N. 12° E., 734 feet along Yankee Fork to corner No. 2; N. 82° E., 1,477 feet to corner No. 3; S. 5° W., 388 feet to corner No. 4; N. 80° W., 672 feet to corner No. 5; S. 38° W., 496 feet to corner No. 6; S. 70° W., 675 feet to corner No. 1 the point of beginning.
Totaling 15 acres, more or less. All corners established by placing a Forest Service sign No. 394–C on an iron stake exposed 4.5 feet above ground at each corner.

Jerrys Creek Campground

T. 12 N., R. 15 E., unsurveyed,
When surveyed will probably be in the NE¼, sec. 32, more particularly described as:
Beginning at reference point U.S. Geodetic Survey Marker T 232, thence N. 34° W., 275 feet to corner No. 1, the true point of beginning, thence by metes and bounds;
N. 76° E., 1,070 feet to corner No. 2; S. 29° E., 300 feet to corner No. 3; S. 75° W., 856 feet to corner No. 4; S., 871 feet to corner No. 5; S. 85° W., 380 feet to corner No. 6; N. 7° W., 172 feet to corner No. 7; N. 10° E., 455 feet to corner No. 8; N., 387 feet to corner No. 9; N. 8° W., 165 feet to corner No. 1, the point of beginning.
Totaling 16 acres, more or less.

All corners were established by placing a green iron fence post in ground and Forest Service sign, Form 394–C on each post.

West Fork Campground

T. 12 N., R. 15 E., unsurveyed,
When surveyed will probably be in the W½, sec. 8, more particularly described as:
Beginning at a reference point, being an iron stake set in the ground with 4 feet exposed and which is located 45 feet above high waterline on the south bank of the mouth of Sawmill Creek which is on the west bank of the West Fork of Yankee Fork of the Salmon River, thence N. 29° W., 4,750 feet along the West Fork to corner No. 1, the true point of beginning; thence by metes and bounds;
N. 82° W., 450 feet along West Fork to corner No. 2; N. 54° W., 527 feet along West Fork to corner No. 3; N. 27° W., 711 feet along West Fork to corner No. 4; S. 88° W., 295 feet along West Fork to corner No. 5; S. 82° W., 286 feet along West Fork to corner No. 6; N. 17° W., 521 feet across West Fork Road to corner No. 7; S. 81° E., 2,130 feet to corner No. 8; S. 4° E., 859 feet to corner No. 9; S. 39° W., 384 feet to corner No. 1, the point of beginning.
Totaling 39 acres, more or less.
All corners established by placing Forest Service sign No. 394–C on an iron stake exposed 4 feet above ground.

Custer Campground

T. 12 N., R. 15 E., unsurveyed,
When surveyed will probably be in the NE¼, sec. 2, more particularly described as:
Beginning at reference point U.S. Coast and Geodetic Survey Marker No. F 234 thence S. 50° E., 237 feet to corner No. 1, the true point of beginning, thence by metes and bounds;
N. 8° W., 307 feet to corner No. 2; N. 47° E., 335 feet to corner No. 3; N. 78° E., 425 feet to corner No. 4; S. 53° E., 235 feet to corner No. 5; N. 78° E., 199 feet, to corner No. 6; S. 39° E., 130 feet to corner No. 7; S. 41° W., 403 feet to corner No. 8; S. 75° W., 225 feet to corner No. 9; N. 88° W., 223 feet to corner No. 10; S. 84° W., 367 feet to corner No. 1; the point of beginning.
Totaling 11 acres, more or less.
All corners established by placing Forest Service sign, Form 394–C on a green iron fence post exposed 54 inches above ground.

PAYETTE NATIONAL FOREST

Chamberlain Administrative Site

T. 24 N., R. 10 E., unsurveyed,
When surveyed will probably be in secs. 26, 27, 34, 35, and 36, more particularly described as:
Commencing at U.S.L.M. No. 344 thence S. 83°09′52″ W., 4,319.42 feet to corner No. 1 the real point of beginning; thence by metes and bounds;
N. 76°45′ W., 929.28 feet to corner No. 2; N. 33°18′ W., 1,537.80 feet to corner No. 3; S. 46°49′ W., 1,474.44 feet to corner No. 4; S. 4°30′ E., 2,730.25 feet to corner No. 5; S. 12°55′ E., 2,949.88 feet to corner No. 6; S. 86°28′ E., 908.82 feet to corner No. 7; S. 61°06′ E., 1,075.14 feet to corner No. 8; E., 2,046.00 feet to corner No. 9; N. 22°36′ W., 1,309.44 feet to corner No. 10; N. 71°52′ E., 1,626.24 feet to corner No. 11; N. 50°17′ E., 1,896.82 feet to corner No. 12; N. 58°12′ W., 5,230.44 feet to corner No. 1; the point of beginning.
Totaling 657.644 acres.

The areas described aggregate 799 acres more or less in Caribou, Custer, and Idaho Counties, Idaho.

ORVAL G. HADLEY,
Manager, Land Office.

[F.R. Doc. 66–2836; Filed, Mar. 16, 1966; 8:48 a.m.]

Fish and Wildlife Service

[Docket No. G–362]

HOWARD JAKE BOWMAN

Notice of Loan Application

Howard Jake Bowman, Box 574, Seadrift, Tex., 77983, has applied for a loan from the Fisheries Loan Fund to aid in financing the construction of a new 39-foot wood vessel to engage in the fishery for shrimp.

Notice is hereby given pursuant to the provisions of Public Law 89–85 and Fisheries Loan Fund Procedures (50 CFR Part 250, as revised Aug. 11, 1965) that the above-entitled application is being considered by the Bureau of Commercial Fisheries, Fish and Wildlife Service, Department of the Interior, Washington, D.C., 20240. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, Bureau of Commercial Fisheries, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operations of the vessel will or will not cause such economic hardship or injury.

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

MARCH 14, 1966.

[F.R. Doc. 66–2834; Filed, Mar. 16, 1966; 8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

CHIEF OF RATES, SERVICES AND FACILITIES BRANCH, PACKERS AND STOCKYARDS DIVISION, ET AL.

Delegation of Authority

Pursuant to authority (30 F.R. 1260, as amended, 30 F.R. 6597) delegated to the Director of the Packers and Stockyards Division:

1. The Chief of the Rates, Services, and Facilities Branch; the Chief of the Registrations, Bonds and Reports Branch and the Chief of the Scales and Weighing Branch of the Packers and Stockyards Division are hereby delegated authority, by virtue of the provisions of section 402 of the Packers and Stockyards Act (7 U.S.C. 222), to issue general and special

orders pursuant to the provisions of section 6(b) of the Federal Trade Commission Act (15 U.S.C. 46(b)) and to issue notices of default provided for in section 10 of the Federal Trade Commission Act (15 U.S.C. 50).

2. The Chief of the Rates, Services, and Facilities Branch of the Packers and Stockyards Division is hereby delegated authority to perform all acts, functions, and duties with respect to suspending the operation of schedules and extending the time of suspensions pursuant to the provisions of section 306(e) of the Packers and Stockyards Act, as amended (7 U.S.C. 207(e)).

3. The Chief of the Registrations, Bonds, and Reports Branch of the Packers and Stockyards Division is hereby delegated authority to perform all acts, functions, and duties with respect to the posting and deposting of stockyards pursuant to the provisions of section 302(b) of the Packers and Stockyards Act, as amended (7 U.S.C. 202(b)).

4. The Chief of the Packer Branch of the Packers and Stockyards Division is hereby delegated authority to perform all acts, functions, and duties with respect to the issuing of licenses pursuant to the provisions of section 502(b) of the Packers and Stockyards Act, as amended (7 U.S.C. 218a(b)).

No delegation made herein shall preclude the Director of the Packers and Stockyards Division from performing any of the duties or exercising any of the functions or powers delegated hereby. The delegations made hereby are subject at all times to withdrawal or amendment by the Director.

Done at Washington, D.C., this 11th day of March 1966.

DONALD A. CAMPBELL,
Director, Packers and Stockyards Division, Consumer and Marketing Service.

[F.R. Doc. 66-2845; Filed, Mar. 16, 1966; 8:49 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

AMERICAN CYANAMID CO.

Notice of Filing of Petition for Food Additive Chlortetracycline

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 6C1934) has been filed by American Cyanamid Co., Post Office Box 400, Princeton, N.J., 08540, proposing the following amendments to the food additive regulations relating to the safe use of chlortetracycline in swine feed and for calves:

1. The petitioner proposes that paragraph (d) of § 121.208 *Chlortetracycline* be amended by:

a. Adding to items 4 and 5 in table 2 the limitation "withdraw 24 hours before slaughter."

b. By changing the withdrawal limitation for items 1 and 2 of table 5 from "24 hours" to "48 hours."

2. It is also proposed that § 121.1014 *Chlortetracycline* be amended by reducing the tolerances of 4 parts per million in uncooked swine kidneys, 2 parts per million in uncooked swine liver, and 4 parts per million in uncooked calf kidneys and liver to 1.5 parts per million, respectively.

Dated: March 10, 1966.

J. K. KIRK,
Assistant Commissioner for Operations.

[F.R. Doc. 66-2830; Filed, Mar. 16, 1966; 8:47 a.m.]

E. I. DU PONT DE NEMOURS AND CO., INC.

Notice of Filing of Petition for Food Additives Resinous and Polymeric Coatings

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 6B1988) has been filed by E.I. du Pont de Nemours & Co., Inc., 1007 Market Street, Wilmington, Del., 19898, proposing an amendment to § 121.2569 *Resinous and polymeric coatings for polyolefin films* to provide for the safe use of glycidyl acrylate and glycidyl methacrylate as comonomers in vinylidene chloride copolymers used in coatings for polyolefin food-contact films.

Dated: March 10, 1966.

J. K. KIRK,
Assistant Commissioner for Operations.

[F.R. Doc. 66-2831; Filed, Mar. 16, 1966; 8:48 a.m.]

NORWICH PHARMACAL CO.

Notice of Filing of Petition for Food Additive Buquinolate

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 6D1851) has been filed by The Norwich Pharmacal Co., Post Office Box 191, Norwich, N.Y., 13815, proposing the issuance of regulations to provide for the safe use of buquinolate (ethyl 4-hydroxy-6,7-diisobutoxy-3-quinoline-carboxylate) in chicken feed at a level of 75 grams per ton (0.00825%) for the prevention of coccidiosis due to *Eimeria tenella, E. necatrix,* and *E. acervulina* in broiler chickens, but not for laying chickens.

Tolerances proposed by the petitioner for buquinolate in uncooked edible portions of chickens are: 0.4 part per million in livers; 0.3 part per million in kidneys and fat; and zero in muscle and skin.

Dated: March 10, 1966.

J. K. KIRK,
Assistant Commissioner for Operations.

[F.R. Doc. 66-2832; Filed, Mar. 16, 1966; 8:48 a.m.]

SALSBURY LABORATORIES

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 6D1941) has been filed by Salsbury Laboratories, Charles City, Iowa, 50616, proposing amendments to § 121.262 *3-Nitro-4-hydroxyphenylarsonic acid* and § 121.269 *2-Chloro-4-nitrobenzamide* to provide for the safe use in chicken feed of 2-chloro-4-nitrobenzamide alone or in combination with 3-nitro-4-hydroxyphenylarsonic acid, as an aid in the prevention of coccidiosis due to *E. tenella* and *E. necatrix,* plus use of the combination as an aid in growth promotion, feed efficiency, and improved pigmentation.

Dated: March 10, 1966.

J. K. KIRK,
Assistant Commissioner for Operations.

[F.R. Doc. 66-2833; Filed, Mar. 16, 1966; 8:48 a.m.]

CIVIL SERVICE COMMISSION

PROFESSIONAL ENGINEERS, CERTAIN PHYSICAL SCIENTISTS, AND MATHEMATICIANS

Notice of Adjustment of Minimum Rates and Rate Ranges

1. Under authority of section 504 of the Federal Salary Reform Act of 1962, as amended, and Executive Order 11073, the Civil Service Commission has increased the minimum salary rates and rate ranges for grades GS-6, GS-7, GS-8, and GS-9, in the following occupations under the Classification Act of 1949, as amended:

a. All Professional Series in the Engineering and Architecture Group, GS-800.

Professional Series at present in the GS-800 Group are:

GS-801	General.
GS-803	Safety.
GS-804	Fire Prevention.
GS-806	Materials.
GS-807	Landscape Architecture.
GS-808	Architecture.
GS-810	Civil.
GS-819	Sanitary.
GS-830	Mechanical.
GS-840	Nuclear.
GS-850	Electrical.
GS-855	Electronic.
GS-861	Aerospace.
GS-870	Marine.
GS-871	Naval Architecture.

GS–880 Mining.
GS–881 Petroleum Production and Natural Gas.
GS–890 Agricultural.
GS–892 Ceramic.
GS–893 Chemical.
GS–894 Welding.
GS–896 Industrial.

b. Science Series and Specializations.

GS–015 Operations Research.[1]
GS–1221 Patent Adviser.
GS–1224 Patent Examining.
GS–1301.1 Physical Science Subseries.
GS–1306 Health Physics.
GS–1310 Physics.
GS–1313 Geophysics (Seismology).
GS–1313 Geophysics (Geomagnetics).
GS–1313 Geophysics (Earth Physics).
GS–1315 Hydrology.
GS–1320 Chemistry.
GS–1321 Metallurgy.
GS–1330 Astronomy and Space Science.
GS–1340 Meteorology.
GS–1360 Oceanography.
GS–1372 Geodesy.
GS–1380 Forest Products Technology.
GS–1390 Technology, in the following specializations: Aviation Survival Equipment; Industrial Radiography; Packaging and Preservation; Photographic Equipment.
GS–1510 Actuary.
GS–1520 Mathematics.
GS–1529 Mathematical Statistics.

c. GS–690 Industrial Hygiene Series.

2. The revised rates are as follows:

PER ANNUM RATES

Grade	1	2	3	4	5	6	7	8	9	10
GS–6	$6,654	$7,046	$7,238	$7,430	$7,622	$7,814	$8,006	$8,198	$8,390	$8,582
GS–7	7,511	7,718	7,925	8,132	8,339	8,546	8,753	8,960	9,167	9,374
GS–8	7,781	8,009	8,237	8,465	8,693	8,921	9,149	9,377	9,605	9,833
GS–9	8,241	8,495	8,749	9,003	9,257	9,511	9,765	10,019	10,273	10,527

3. Geographic coverage: Worldwide.

4. Effective date: The effective date will be the first day of the pay period which begins on or after June 1, 1966.

5. After the effective date, all new employees in the specified occupational levels will be hired at the new minimum rates.

6. As of the effective date, all agencies will process a pay adjustment to increase the pay of employees on the rolls in the affected occupational levels. An employee who immediately prior to the effective date was receiving basic compensation at one of the rates of the existing special rate range, shall receive compensation at the corresponding numbered rate authorized by this notice on or after such date.

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

[F.R. Doc. 66–2868; Filed, Mar. 16, 1966; 8:49 a.m.]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority 30—Indianapolis, Ind., Region, Rev. 1]

MIDWESTERN REGIONAL AREA

Delegation of Authority To Conduct Program Activities

Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30—Midwestern Area Chicago, 30 F.R. 3252, as amended by 30 F.R. 7686, 30 F.R. 8599, 30 F.R. 13556, and 30 F.R. 14062; Delegation of Authority 30 F.R. 4732 is hereby revised to read as follows:

I. The following authority is hereby redelegated to the specific positions as indicated herein:

[1]Rates do not apply at grades 6 through 8.

A. *Size determination (delegated to the positions as indicated below).* To make initial size determinations in all cases within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions for financial assistance purposes only. Product classification decisions for procurement purposes are made by contracting officers.

B. *Eligibility determinations (delegated to the positions as indicated below).* To determine the eligibility of applicants for assistance under any program of the agency in accordance with Small Business Administration standards and policies.

C. *Chief, Financial Assistance Division.* 1. Item I.A. (Size determinations for financial assistance only).

2. Item I.B. (Eligibility determinations for financial assistance only).

3. To approve business and disaster loans not exceeding $350,000 (SBA share).

4. To decline business and disaster loans of any amount.

5. To disburse unsecured disaster loans.

6. To enter into business and disaster loan participation agreements with banks.

7. To execute loan authorizations for Washington and area approved loans and loans approved under delegated authority, said execution to read as follows:

(Name), *Administrator*
By _____
(*Name*)
Title of person signing.

8. To cancel, reinstate, modify, and amend authorizations for business or disaster loans.

9. To extend the disbursement period on all loan authorizations or undisbursed portions of loans.

10. To approve, when requested, in advance of disbursement, conformed copies of notes and other closing documents; and to certify to the participating bank that such documents are in compliance with the participation authorization.

11. To approve service charges by participating bank not to exceed 2 percent per annum on the outstanding principal balance on construction loans and loans involving accounts receivable and inventory financing.

12. To take all necessary actions in connection with the administration, servicing, collection, and liquidation of all loans and other obligations or assets, including collateral purchased; and to do and to perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing:

a. The assignment, endorsement, transfer, and delivery (but in all cases without representation, recourse or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents, and applications therefore, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator;

b. The execution and delivery of contracts of sale or lease or sublease, quitclaim, bargain and sale or special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or in part) of liens, satisfaction pieces, affidavits, proofs of claim in bankruptcy or other estates and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing.

c. The approval of bank applications for use of liquidity privilege under the loan guaranty plan.

D. *Working Supervisor, Loan Processing.* 1. Item I.A. (size determinations for financial assistance only.)

2. Item I.B. (eligibility determinations for financial assistance only.)

Final approval authority for the following actions concerning current direct or participation loans:

3. Use of the cash surrender value of life insurance to pay the premium on the policy.

4. Release of dividends of life insurance or consent to application against premiums.

5. Minor modifications in the authorization.

6. Extension of disbursement period.

7. Extension of initial principal payments.

8. Adjustment of interest payment dates.

9. Release of hazard insurance checks not in excess of $200 and endorse such checks on behalf of the agency where SBA is named as joint loss payee.

E. *Working Supervisor, Loan Administration and Liquidation.* 1. Item I.C.12 only the authority for servicing, administration and collection, including subitems a. and b.

F. *To Loan Specialists GS–9 and above assigned to all financial assistance division programs in all offices of this region.* Final authority to approve the following

actions concerning director participation loans:

1. Use of the cash surrender value of life insurance to pay the premium on the policy.

2. Release of dividends of life insurance or consent to application against premiums.

3. Minor modifications in the authorization.

4. Extension of disbursement period.

5. Extension of initial principal payments.

6. Adjustment of interest payment dates.

7. Release of hazard insurance checks not in excess of $200 and endorse such checks on behalf of the agency where SBA is named as joint loss payee.

G. Reserved.

H. *Chief, Procurement and Management Assistance.* 1. Item I.A. (Size determinations on PMA activities only).

2. Item I.B. (Eligibility determinations on PMA activities only).

I. *Regional Counsel.* To disburse approved loans.

J. *Administrative Assistant.* 1. To purchase reproductions of loan documents, chargeable to the revolving funds, requested by U.S. Attorney in foreclosure cases.

2. To (a) purchase all office supplies and expendable equipment, including all desk-top items, and rent regular office equipment; (b) contract for repair and maintenance of equipment and furnishings; (c) contract for services required in setting up and dismantling and moving SBA exhibits; (d) issue Government bills of lading; and (e) purchase printing from the General Services Administration where centralized reproduction facilities have been established by GSA.

3. In connection with the establishment of Disaster Loan Offices, to (a) obligate Small Business Administration to reimburse General Services Administration for the rental of office space; (b) rent office equipment; and (c) procure (without dollar limitation) emergency supplies and materials.

4. To rent motor vehicles from the General Services Administration and to rent garage space for the storage of such vehicles when not furnished by this Administration.

II. The authority delegated herein cannot be redelegated.

III. The authority delegated herein to a specific position may be exercised by any SBA employee designated as acting in that position.

IV. All previously delegated authority is hereby rescinded without prejudice to actions taken under such Delegations of Authority prior to the date hereof.

Effective date. March 1, 1966.

ROBERT V. HINSHAW,
Regional Director,
Indianapolis, Ind.

[F.R. Doc. 66-2837; Filed, Mar. 16, 1966; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Canadian List 208]

CANADIAN BROADCAST STATIONS

Changes, Proposed Changes and Corrections in Assignments

FEBRUARY 25, 1966.

Notification under the provisions of part III, section 2 of the North American Regional Broadcasting agreement.

List of changes, proposed changes and corrections in assignments of Canadian Broadcast Stations modifying appendix containing assignments of Canadian Broadcast Stations (Mimeograph No. 4721423) attached to the recommendations of the North American Regional Broadcasting Agreement Engineering Meeting.

Call letters	Location	Power kw	Antenna	Schedule	Class	Expected date of commencement of operation
CKPG (now in operation with increased power).	Prince George, British Columbia.	*550 kilocycles* 10 kw	DA-N	U	III	
CKXR (assignment of call letters—now in operation).	Salmon Arm, British Columbia.	*580 kilocycles* 1 kw	DA-2	U	III	
CHRC (PO: 800 kc/s 10 kw DA-1.	Quebec, Province of Quebec.	*800 kilocycles* *50 kw*	DA-1	U	II	E.I.O. 2-15-67.
CHRE (assignment of call letters).	Sydney, Nova Scotia	*950 kilocycles* 10 kw	DA-1	U	III	
CHEX (PO: 980 kc/s 5 kw DA-2).	Peterborough, Ontario	*980 kilocycles* *10 kw D/5 kw N*	DA-2	U	III	E.I.O. 2-15-67.
CKNW (NIO with increased power and change in orientation as notified in List No. 198).	New Westminster, British Columbia.	*980 kilocycles* 50 kw	DA-1	U	III	
New	New Liskeard, Ontario.	*1230 kilocycles* 1 kw D/0.25 kw N.	ND	U	IV	E.I.O. 2-14-67.
New	Osoyoos, British Columbia.	*1240 kilocycles* 1 kw D/0.25 kw N.	ND	U	IV	E.I.O. 2-15-67.
CFVR (correction of operation from that shown in in List No. 206).	Abbotsford, British Columbia.	*1240 kilocycles* 1 kw D/ 0.25 kw N.	{ *DA-D* / ND-N }	U	IV	
CJOE (assignment of call letters. Change in location, increase in power, and change in pattern).	London, Ontario	*1290 kilocycles* *10 kw*	*DA-1*	U	III	E.I.O. 2-15-67.
CKLM (PO: 1570 kc/s 10 kw DA-1).	Montreal, Province of Quebec.	*1570 kilocycles* *50 kw*	DA-2	U	II	E.I.O. 2-15-67.

[SEAL]

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE,
Secretary.

[F.R. Doc. 66-2846; Filed, Mar. 16, 1966; 8:49 a.m.]

FEDERAL POWER COMMISSION

[Docket No. CP66-281]

EASTERN SHORE NATURAL GAS CO.

Notice of Application

MARCH 11, 1966.

Take notice that on March 4, 1966, Eastern Shore Natural Gas Co. (Applicant), Post Office Box 615, Dover, Del., filed in Docket No. CP66-281 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of metering and connecting facilities for the sale and delivery of gas on an interruptible basis to Standard Bitulithic Co. (Standard), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to tap its 6-inch pipeline at Mount Pleasant, Del., and provide a metering and regulating station for the sale and delivery of gas on an interruptible basis to Standard for use in the processing of asphalt paving. Applicant states that the proposed delivery point will make connection with a 2-inch pipeline to be constructed at the expense of Standard in

order to connect the gas supply to its plant located approximately 1,400 feet from Applicant's 6-inch line.

The application states that Standard's use of gas will be limited to the summer and fall months of the year and that during these periods the maximum daily volume of gas to be consumed by Standard is estimated at 500 Mcf, while the total annual consumption is estimated at 22,500 Mcf. The application further states that authorization of the proposed service will not affect Applicant's ability to supply service to its remaining customers.

The total estimated cost of Applicant's proposed meter and regulator facilities is $2,150, which cost will be financed from funds on hand.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (157.10) on or before April 8, 1966.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-2812; Filed, Mar. 16, 1966; 8:46 a.m.]

[Docket No. E-7277]

IOWA SOUTHERN UTILITIES CO.

Notice of Application

MARCH 11, 1966.

Take notice that on March 10, 1966, the Iowa Southern Utilities Co. (Iowa), an operating public utility incorporated under the laws of the State of Delaware and doing business in the State of Iowa with its principal place of business office in Centerville, Iowa, filed an application with the Federal Power Commission seeking authority pursuant to section 204 of the Federal Power Act to issue short term notes in an aggregate amount not to exceed $20,000,000.

According to Iowa the notes are to be issued from time to time as a need for funds arises with maturity dates not in excess of 6 months from the date of issue and in any event not later than October 31, 1967, and will bear interest at a rate not to exceed the prime rate in effect at the time of the borrowing of the first $15,000,000 and will not exceed one-quarter of a percent above such rate on the balance. Iowa represents that the notes are to be issued to the Continental Illinois National Bank & Trust Co. of Chicago in an amount not to exceed $20,000,000.

Iowa states that the notes are to be issued for the purpose of financing its 1966, 1967, and 1968 construction program. The principal item in this program is the construction of the 212,000 kw, Burlington Generation Station, which has an estimated total cost of $24,580,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 29, 1966, file with the Federal Power Commission, Washington, D.C., 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-2813; Filed, Mar. 16, 1966; 8:46 a.m.]

[Docket No. CP66-284]

MICHIGAN GAS STORAGE CO.

Notice of Application

MARCH 11, 1966.

Take notice that on March 7, 1966, Michigan Gas Storage Co. (Applicant), 212 West Michigan Avenue, Jackson, Mich., filed in Docket No. CP66-284 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to use its existing facilities for the transportation, for and in behalf of Consumers Power Co. (Consumers), of up to 350,000 Mcf of natural gas per day, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

By order of the Commission issued in Docket No. CP65-245 on April 13, 1965, Applicant was authorized to transport up to 275,000 Mcf of natural gas per day for and in behalf of Consumers commencing November 1, 1965. The gas contemplated by said authorization was to be supplied to Consumers by Trunkline Gas Co. (Trunkline).

Applicant states that an amendment dated December 29, 1965, to an agreement between Consumers and Trunkline dated October 29, 1963, provides, inter alia, for the delivery to Consumers of 350,000 Mcf of gas per day commencing November 1, 1966, 400,000 Mcf per day commencing November 1, 1967, 450,000 Mcf per day commening November 1, 1968, 500,000 Mcf per day commencing November 1, 1969, and 575,000 Mcf per day commencing November 1, 1970. The Commission on February 11, 1966, in Docket No. CP66-131 approved, inter alia, the 1966 increase in deliveries by Trunkline to Consumers.

The application states that in connection with the receipt by Consumers of the additional deliveries from Trunkline commencing November 1, 1966, pursuant to the aforementioned order issued in Docket No. CP66-131, Applicant desires to commence transporting, for and in behalf of Consumers, up to 350,000 Mcf of natural gas per day commening November 1, 1966. The application further states that these transportation services will be provided by Applicant without any additional facilities and all costs arising from said service will be passed on to Consumers pursuant to Applicant's cost of service tariff.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (157.10) on or before April 11, 1966.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-2814; Filed, Mar. 16, 1966; 8:46 a.m.]

[Docket No. CP66-283]

WISCONSIN PUBLIC SERVICE CORP. AND MICHIGAN WISCONSIN PIPE LINE CO.

Notice of Application

MARCH 11, 1966.

Take notice that on March 7, 1966, Wisconsin Public Service Corp. (Applicant), Post Office Box 420, Oshkosh, Wis., 54901, filed in Docket No. CP66-283 an application pursuant to section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Co. (Respondent) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant and to sell and deliver natural gas to Applicant for resale and distribution in the Villages of Coleman and Pound, and the towns of Beaver and Pound, all in the State of Wiscon-

sin, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct a gate station, a regulator, 4.6 miles of 4-inch pipeline and appurtenant transmission facilities together with the necessary distribution facilities for the aforementioned communities. Applicant also proposes that Respondent construct approximately 3.3 miles of 4-inch pipeline, pursuant to its 10-cent formula, extending from its main transmission line in a northwesterly direction to Applicant's proposed gate station.

The total estimated volumes of natural gas necessary to meet Applicant's annual and peak day requirements for the initial 3-year period of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	23,910	68,840	100,420
Peak day (Mcf)	175	431	627

The total estimated cost of Applicant's proposed transmission and distribution facilities is $271,075, which cost will be financed from internal funds.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 11, 1966.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-2815; Filed, Mar. 16, 1966; 8:46 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[812-1923]

BARNETT NATIONAL SECURITIES CORP. AND BARNETT FIRST NATIONAL BANK OF JACKSONVILLE

Filing of Application for Order Exempting Proposed Transaction

MARCH 11, 1966.

Notice is hereby given that Barnett National Securities Corp. ("Corporation"), 100 Laura Street, Jacksonville, Fla., 32202, and Barnett First National Bank of Jacksonville ("Barnett Bank"), 100 Laura Street, Jacksonville, Fla., 32202, have filed an application pursuant to section 17(b) of the Investment Company Act of 1940 ("Act") for an order exempting from the provisions of section 17(a) of the Act an exchange of shares of common stock of the Corporation for shares of common stock of Barnett Bank. Consolidated Financial Corp. ("Consolidated") of Sebring, Fla., one of the exchange offerees and presently a holder of 23.51 percent of the outstanding common stock of the Corporation and 23.51 percent of the outstanding common stock of Barnett Bank, is a registered investment company under the Act. Section 17, as here pertinent, makes it unlawful for an affiliated person of a registered investment company, or an affiliated person of such a person, to sell to or buy from such company any security or property unless exempted by the Commission pursuant to section 17(b) thereof. Under section 17(b) of the Act, the Commission shall grant an exemption from the prohibitions of section 17(a) of the Act if it finds that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any persons concerned, that the proposed transaction is consistent with the policy of the registered investment company concerned, as recited in the registration statement and reports filed under the Act, and with the general purposes of the Act. All interested persons are referred to the application filed with the Commission for a full statement of the representations therein which are summarized below.

The Corporation, organized under the laws of Florida, is a bank holding company registered under the Bank Holding Company Act of 1956. It is engaged solely in managing, controlling and servicing its subsidiary banks. It presently controls five Florida banks having aggregate deposits of $75,638,295 as of June 30, 1965. Its stock ownership in these banks varies from 60.46 percent to 82.57 percent. Barnett Bank, the fourth largest bank in the State of Florida, had deposits of $161,389,875 as of June 30, 1965. The Corporation presently owns 346 of the outstanding 300,000 shares of Barnett Bank. However, the two managements are closely related and 97 percent of the Corporation stock was owned by stockholders who also owned 96 percent of the stock of Barnett Bank, as of January 12, 1966. Two directors of both the Corporation and Barnett Bank are directors of Consolidated and one is also an officer of Consolidated. It is represented that neither the Corporation nor Barnett Bank controls, is controlled by, or is under common control with Consolidated. Neither the Corporation nor Barnett Bank nor any subsidiary of either owns any shares or any other interest in Consolidated.

The Corporation has offered to exchange up to 675,000 shares of its common stock, par value $4.00 per share, for outstanding common stock of Barnett Bank in an exchange ratio of 2.25 Corporation shares for each share of Barnett Bank. The purpose of the exchange offer is to place the relationship of the two companies on a permanent basis by substituting a parent-subsidiary relationship for the present virtual identity of stock ownership. On December 27, 1965, the Board of Governors of the Federal Reserve System approved the acquisition of a majority of the Barnett Bank stock by the Corporation. The Corporation has filed a registration statement under the Securities Act of 1933, effective January 12, 1966, which covers the 675,000 shares to be offered pursuant to the exchange. The prospectus states that for the exchange offer to become effective 80 percent of the common stock of Barnett Bank (less the 346 shares already owned by the Corporation) must be deposited for exchange. The exchange offer, which had a termination date of February 28, 1966, may be extended by the Corporation for a period of not more than 90 additional days. As of the date of the application over 95 percent of the Barnett Bank stock had been tendered for exchange.

The exchange ratio was established by comparing financial data filed by Barnett Bank with the Comptroller of the Currency for the years 1960 through 1964, with similar data for the subsidiary banks owned by the Corporation. In determining the ratio which was developed with the advice and assistance of M. A. Shapiro & Co., Inc., brokers and dealers in bank stocks and bank stock specialists, the board of directors of the Corporation considered comparative earnings, assets, deposits, loans and relative growth, as well as the potential effect on the earnings and book value of the Corporation which may be expected to result from the proposed acquisition of Barnett Bank. The Corporation's board of directors believes the exchange ratio to be equitable. Management of Barnett Bank has considered the exchange ratio and has recommended it to shareholders. The Corporation and Barnett Bank believe that the terms of the proposed exchange, and in particular the ratio of stock of the Corporation to be issued for the stock of Barnett Bank, are reasonable and fair and do not involve overreaching on the part of any person concerned; that the proposed exchange is consistent with the policy of Consolidated and that the proposed exchange is consistent with the general purposes of the Act.

Notice is further given that any interested person may, not later than March 23, 1966, 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 of law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail (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 said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an or-

der 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. 66-2819; Filed, Mar. 16, 1966; 8:46 a.m.]

[812-1925]

CONSTITUTION EXCHANGE FUND, INC., AND JOHN L. GRANDIN, JR.

Filing of Application for Order Exempting Proposed Transaction

MARCH 11, 1966.

Notice is hereby given that Constitution Exchange Fund, Inc. ("Fund") and John L. Grandin, Jr. ("Grandin"), 50 Congress Street, Boston, Mass., have filed an application pursuant to section 17(b) of the Investment Company Act of 1940 ("Act") for an order exempting from section 17(a) of the Act the exchange of shares of common stock of American Machine & Foundry Co. having current market value of about $30,000, owned by Grandin, for shares of common stock to be issued by Fund having aggregate asset value equal to the market value of the American Machine & Foundry Co. shares. The exchange is prohibited by section 17(a) of the Act unless exempted by the Commission pursuant to section 17(b) thereof. Under section 17(b) of the Act, the Commission shall grant an exemption from the prohibitions of section 17(a) of the Act if it finds that the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned; that the proposed transactions are consistent with the policy of the registered investment company concerned, as recited in the registration statement and reports filed under the Act, and with the general purposes of the Act. All interested persons are referred to the application filed with the Commission for a statement of the representations therein which are summarized below.

Fund, an open-end diversified investment company of the management type registered as such under the Act, has filed a registration statement under the Securities Act of 1933 for the sale of 600,000 shares of its common stock, which registration statement became effective on November 15, 1965. The prospectus and registration statement under the Securities Act of 1933 state that Fund is intended as an investment vehicle for investors who wish to exchange securities which they hold having a low federal tax basis for shares of Fund in a simultaneous exchange on a tax-free basis.

The offering is being conducted through A. G. Becker & Co. Inc., as Dealer Manager, and Soliciting Dealers who are members of the National Association of Securities Dealers, Inc. Investors are being solicited to deposit their securities pursuant to the terms of the prospectus and the Transmittal Letter which provide an opportunity to the Fund to decide which securities it wishes to accept and an opportunity to depositing investors to withdraw after notice of the list upon which the Fund has determined as meeting its investment objectives at the end of the offering period. The solicitation period ended March 4, 1966. The portfolio review period is expected to end on March 30, 1966, and the Fund has the right to reject securities on deposit during the following 5 days. The terms of the offering provide that unless the Fund has received and accepted at the end of the solicitation period securities having a market value of at least $30,000,000 the exchange will not be consummated. At the present time securities having a market value in excess of $30,000,000 have been deposited.

Grandin is a director of Fund and an affiliated person of Fund within the meaning of the Act. He proposes to deposit 1,573 shares of the common stock of American Machine & Foundry Co., as stated above, which the Fund proposes to accept subject to the right of Grandin to withdraw such shares and the Fund to reject such shares in whole or in part. The application states that Grandin is not an underwriter with respect to the stock to be deposited and is not in control of, controlled by or under common control with American Machine & Foundry Co. within the meaning of the Securities Act of 1933; that Grandin and all other depositors will pay the applicable subscription fee described in the prospectus and that the Fund intends to accept all deposits of American Machine & Foundry Co. common stock by persons other than Grandin if such depositors meet the minimum dollar requirements set forth in the prospectus.

The common stock of American Machine & Foundry Co. is actively traded on the New York Stock Exchange and its exchange value, as defined in the prospectus, is readily ascertainable. The representation is made that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; that they are consistent with the policy of the Fund as recited in its registration statement and reports filed under the Act and that they are consistent with the general purposes of the Act.

Notice is further given that any interested person may, not later than March 31, 1966, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the Fund at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the matter herein may be issued by the Commission upon the basis of the information stated in the application, unless an order for hearing upon said proposal 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. 66-2820; Filed, Mar. 16, 1966; 8:47 a.m.]

[File No. 1-3421]

CONTINENTAL VENDING MACHINE CORP.

Order Suspending Trading

MARCH 11, 1966.

The common stock, 10 cents par value, of Continental Vending Machine Corp., being listed and registered on the American Stock Exchange and having unlisted trading privileges on the Philadelphia-Baltimore-Washington Stock Exchange, and the 6 percent convertible subordinated debentures due September 1, 1976 being listed and registered on the American Stock Exchange, pursuant to provisions of the Securities Exchange Act of 1934; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such Exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the American Stock Exchange, the Philadelphia-Baltimore-Washington Stock Exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period March 13, 1966, through March 22, 1966, both dates inclusive.

By the Commission.

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

[F.R. Doc. 66-2821; Filed, Mar. 16, 1966; 8:47 a.m.]

[File No. 70-4355]

PENNZOIL CO.

Proposed Issuance of Common Stock Pursuant to Terms of Outstanding Stock Options and Convertible Debentures

MARCH 10, 1966.

Notice is hereby given that Pennzoil Co. ("Pennzoil"), 900 Southwest Tower, Houston, Tex., 77002, a registered holding company, has filed a declaration and an amendment thereto with this Com-

mission, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a) and 7 of the Act as applicable to the transactions therein proposed. All interested persons are referred to said amended declaration, on file in the office of the Commission, for a description of the proposed transactions which are summarized below.

On December 21, 1965, Pennzoil filed its notification of registration as a public utility holding company under the Act. On January 28, 1966, it had outstanding 4,009,088 shares of common stock, par value $2.50 per share, exclusive of shares held in its treasury. It also had outstanding options to purchase 131,903 shares of the common stock; a series of 5 percent convertible debentures due 1972 convertible into 11,305 shares of the common stock; and a series of such debentures due 1975 convertible into 28,566 shares of the common stock. Pennzoil proposes to issue and sell, from time to time, shares of its authorized but unissued common stock, as follows: (1) A maximum of 131,903 shares upon the exercise of the options, and (2) a maximum of 39,871 shares upon conversion of the debentures.

The declaration states that the options had been issued, from time to time, pursuant to a Restricted Stock Option Plan ("the Plan") for the full-time key employees of Pennzoil and its subsidiaries which had been adopted in 1963. The Plan provides that the exercise price of an option granted thereunder may not be less than 100 percent of the fair market value of the stock subject to the option on the date such option is granted. The outstanding options on 131,903 shares of common stock are exercisable with respect to 115,503 of such shares at a price of $23.4375 per share, and at varying higher prices with respect to the balance of 16,400 of such shares.

The 5 percent convertible debentures due 1972 had been issued in 1957 and the series due 1975 had been issued in 1960 by a company which was merged into Pennzoil in 1963. In connection with such merger Pennzoil assumed the obligations under the debentures. The 1972 series of debentures, $646,000 principal amount outstanding, are convertible into shares of common stock at a price of $57.1428 per share, and the 1975 series of debentures, $857,000 principal amount outstanding, are convertible at a price of $30.00 per share.

No fees, commissions or expenses are anticipated in connection with the exercise of the outstanding common stock options other than $3,300 estimated annual fees and expenses, including counsel fees of $1,200, involved in maintaining in effect a current prospectus of Pennzoil under the Securities Act of 1933. No fees, commissions or expenses are anticipated in connection with the conversion of the outstanding 1972 and 1975 debentures other than the fee of the conversion agent, Morgan Guaranty Trust Co. of New York, which is expected to be determined at the rate of $1.00 per $1,000 principal amount of debentures converted, and other miscellaneous expenses estimated at not in excess of $100.

It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than March 28, 1966, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said amended declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed contemporaneously with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

By the Commission.

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

[F.R. Doc. 66-2822; Filed, Mar. 16, 1966; 8:47 a.m.]

UNITED SECURITY LIFE INSURANCE CO.

Order Suspending Trading

MARCH 11, 1966.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $1 par value, of United Security Life Insurance Co., Birmingham, Ala., otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period March 14, 1966, through March 23, 1966, both dates inclusive.

By the Commission.

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

[F.R. Doc. 66-2823; Filed, Mar. 16, 1966; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 1313]

MOTOR CARRIER TRANSFER PROCEEDINGS

MARCH 14, 1966.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 179:

No. MC-FC-68638. Application filed March 9, 1966, by A. A. METLER, 117 Chicamauga Avenue NE., Knoxville 17, Tenn., for temporary authority to lease the operating rights of BAXTER TRANSFER, INC., Baxter, Ky., under section 210a(b). The Transfer to A. A. METLER, of the operating rights of BAXTER TRANSFER, INC., is still pending.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 66-2841; Filed, Mar. 16, 1966; 8:49 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

MARCH 14, 1966.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the General Rules of Practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 40353—*Crude phosphate rock to Courtright, Ont., Canada.* Filed by O. W. South, Jr., agent (No. A4864), for interested rail carriers. Rates on crude phosphate rock (other than ground phosphate rock), in carloads, subject to minimum shipment of 1,500 net tons, from producing points in Florida, to Courtright, Ont., Canada.

Grounds for relief—Rail-water competition.

Tariff—Supplement 105 to Southern Freight Association, agent, tariff I.C.C. S-140.

FSA No. 40354—*Joint motor-rail rates—Southern Motor Carriers.* Filed by Southern Motor Carriers Rate Conference, agent (No. 136), for interested carriers. Rates on property moving on class and commodity rates over joint routes of applicant rail and motor carriers, between points in southern territory.

Grounds for relief—Motor-truck competition.

Tariff—Supplement 23 to Southern Motor Carriers Rate Conference, agent, tariff MF-I.C.C. 1351.

FSA No. 40355—*Joint motor-rail rates—Southern Motor Carriers.* Filed by Southern Motor Carriers Rate Conference, agent (No. 137), for interested carriers. Rates on property moving on class and commodity rates over joint routes of applicant rail and motor carriers, between points in southern territory.

Grounds for relief—Motor-truck competition.

Tariff—Supplement 23 to Southern Motor Carriers Rate Conference, agent, tariff MF-I.C.C. 1351.

FSA No. 40356—*Pig iron to Saginaw, Mich.* Filed by Traffic Executive Association-Eastern Railroads, agent (E.R. No. 2828), for and on behalf of Canadian National Railways. Rates on pig iron, in carloads, from Port Colborne, Ont., Canada, to Saginaw, Mich.

Grounds for relief—Market competition.

Tariff—Supplement 4 to Canadian National Railways, tariff I.C.C. E.527.

FSA No. 40357—*Beet or cane sugar to Belleville, Ill.* Filed by Western Trunk Line Committee, agent (No. A-2445), for interested rail carriers. Rates on beet or cane sugar, in bulk, in covered hopper cars, in carloads, from points in Montana, transcontinental and western trunk-line territories, to Belleville, Ill.

Grounds for relief—Market competition, and restoration of rate relationship.

Tariff—Supplement 36 to Western Trunk Line Committee, agent, tariff I.C.C. A-4481, and any other schedules named in the application.

FSA No. 40358—*Liquid caustic soda from McIntosh, Ala.* Filed by Southwestern Freight Bureau, agent (No. B-8831), for interested rail carriers. Rates on liquid caustic soda, in tank carloads, from McIntosh, Ala., to Brian, Princeton, Shreveport, and West Monroe, La.

Grounds for relief—Market competition.

Tariff—Supplement 121 to Southwestern Freight Bureau, agent, tariff I.C.C. 4469.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 66-2842; Filed, Mar. 16, 1966; 8:49 a.m.]

[No. 17000]

GRAIN AND GRAIN PRODUCTS WITHIN WESTERN DISTRICT AND FOR EXPORT

Rate Structure Investigation

At a general session of the Interstate Commerce Commission held at its office in Washington, D.C., on the 1st day of March 1966.

In our report in Docket No. 33171 et al., Omaha Grain Exc. v. Chicago, B. & Q. R. Co., 322 I.C.C. 743, decided June 5, 1964, we reopened the above-entitled proceeding and modified the orders entered therein on October 22, 1934, and March 4, 1936, so as to vacate and set aside the requirement that under the absolute rate-break rule therein prescribed the rate-break combinations and the proportional rates prescribed in the same proceeding must be observed as the exclusive basis of charges on shipments of grain and grain products at points from which proportional rates are applicable.

On appeal by certain railroad defendants in the indicated proceedings, the U.S. District Court for the Northern District of Illinois, Eastern Division, in Chicago, B. & Q. R. Co. v. United States, 242 F. Supp. 414, held that the plaintiff railroads did not have notice from the outset of the proceeding that this docket was in issue, and that such carriers were "entitled to clear, decisive notice of the Commission's contemplated enlargement of the issues in the proceeding and of the proposed amendatory action in Docket 17000 Part VII." The Court declared our order of June 5, 1964, in the last mentioned docket void, without prejudice to further proceedings before or by us not inconsistent with its opinion. The decision of the District Court was affirmed by the U.S. Supreme Court in a per curiam opinion in Chicago & N. W. R. Co. v. Chicago, B. & Q. R. Co., No. 751, and interstate Commerce Commission v. Chicago B. & Q. R. Co., No. 752 (Oct. Term 1965), decided January 24, 1966.

The issue of the propriety of the portion of our outstanding orders in this docket, which compels compliance with the absolute rate-break rule, remains unresolved. Further proceedings are essential. Accordingly, this proceeding will be reopened for the purpose of determining the advisability of continued mandatory compliance with the described rate-break rule. The record in the proceedings in Nos. 33171, et al., will be incorporated by reference herein, and special rules of procedure will be adopted to expedite final decision. Publication of such rules will be made in the FEDERAL REGISTER to insure adequate notice to all interested parties.

It is ordered, That this proceeding be, and it is hereby, reopened to consider the advisability of the continued mandatory compliance with orders entered herein on October 22, 1934, and March 4, 1936, prescribing the absolute rate-break rule, under which the rate-break combinations and the proportional rates therein prescribed must be the exclusive basis of charges on shipments of grain and grain products at points from which proportional rates are applicable.

It is further ordered, That the record in Docket Nos. 33171, et al., be, and it is hereby, incorporated by reference into this proceeding;

It is further ordered, That the following special rules of procedure be, and they are hereby, prescribed for the submission of evidence in this reopened proceeding:

(a) Anyone desiring to be made a party of record herein shall notify the Commission giving his name, address, and statement of position on or before April 1, 1966;

(b) A service list will be prepared and served on all parties of record about April 15, 1966;

(c) All parties of record shall submit their evidence in writing in the form of verified statements, with exhibits attached, if any, with an original and 14 copies to the Commission and service on each of the parties of record on or before June 1, 1966; and

(d) All parties of record shall submit their rebuttal evidence in writing in the form of verified statements, with exhibits, if any, with an original and 14 copies to the Commission with service on each of the parties on or before July 1, 1966; and

(e) An oral hearing for the purpose of cross-examination of witnesses, if any, is deemed necessary by the Commission, shall be held at a time and place hereafter to be established.

And it is further ordered, That a copy of this order be posted in the Office of the Secretary of this Commission, and that a copy be delivered to the Director, Office of Federal Register, for publication in the FEDERAL REGISTER.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 66-2876; Filed, Mar. 16, 1966; 10:27 a.m.]

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PART II

Federal Communications Commission

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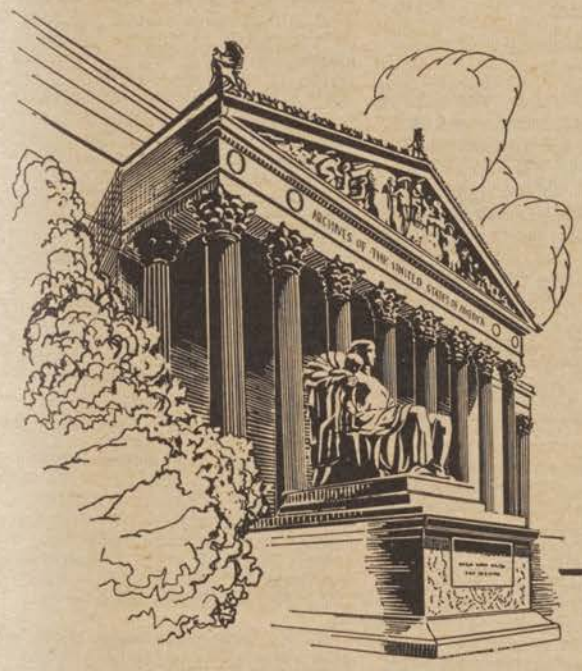
Community Antenna Television (CATV) Systems



Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket Nos. 14895, 15233, 15971; FCC 66-220]

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

PART 74—EXPERIMENTAL, AUXILIARY AND SPECIAL BROADCAST SERVICES

PART 91—INDUSTRIAL RADIO SERVICES

Community Antenna Television (CATV) Systems

In the matter of amendment of Subpart L, Part 91, to adopt rules and regulations to govern the grant of authorizations in the Business Radio Service for microwave stations to relay television signals to community antenna systems, Docket No. 14895; amendment of Subpart I, Part 21 to adopt rules and regulations to govern the grant of authorizations in the Domestic Public Point-to-Point Microwave Radio Service for microwave stations used to relay television broadcast signals to community antenna television systems, Docket No. 15233; amendment of Parts 21, 74, and 91 to adopt rules and regulations relating to the distribution of television broadcast signals by community antenna television systems, and related matters, Docket No. 15971 (RM Nos. 636, 672, 742, 755 and 766).

1. On April 23, 1965, the Commission issued a notice of inquiry and notice of proposed rule making in Docket No. 15971 (30 F.R. 6078), which divided the proceeding into two parts. In Part I the Commission reached an initial conclusion that it has jurisdiction over all community antenna television (CATV) systems, whether or not microwave facilities are used, and proposed to extend to nonmicrowave CATV systems the substantive provisions of the carriage and nonduplication rules adopted for microwave-served CATV's in Docket Nos. 14895 and 15233. First report and order in Docket Nos. 14895 and 15233, 30 FCC 683; memorandum opinion and order in Docket Nos. 14895 and 15233, 1 FCC 2d 524. Part I also invited comment on various auxiliary questions affecting all CATV's which were not resolved in Docket Nos. 14895 and 15233. These have to do with color duplication, educational television stations, station-owned translators, and a possible transition period before the carriage provisions are made fully applicable to existing CATV systems with limited channel capacity (notice, pars. 33–36).

2. In Part II of the proceeding the Commission initiated an inquiry looking toward possible rule making on broader questions posed by the trend of CATV development, including (1) the effect of CATV entry into major cities on UHF independent stations, (2) the possible need for limitations on the distance a station's signal may be extended by CATV, (3) "leap-frogging,"[1] (4) program origination or alteration by CATV and the related question of Pay-TV or combined CATV-Pay-TV operations, and (5) various miscellaneous questions. In paragraph 49 of Part II the Commission adopted an interim policy, pending the outcome of the proceeding, which provides that a microwave application to serve a CATV system in a community with four or more commercial channel assignments and three or more stations in operation (or with at least two stations in operation and one or more stations authorized or applied for) must be accompanied by a clear and full showing that in the particular circumstances a grant would not pose a substantial threat to the development of independent UHF service in the area. A like showing was required for microwave facilities to serve a CATV system in an "overshadowed" community where, because of its proximity to three or more existing stations, any new UHF station would be independent in operation. In paragraph 50 of Part II, the Commission proposed an interim rule along similar lines to govern nonmicrowave CATV entry into such areas.

3. Comment on Part I and paragraph 50 of Part II was due at an earlier date than that specified for the remaining portions of Part II,[2] which, it was anticipated, would require more lengthy consideration and possibly a further notice to afford an opportunity for comment on any specific rule proposals of the Commission (notice, pars. 64, 68). Comments and reply comments on Part I and paragraph 50 have now been fully considered by the Commission. This report and order deals only with these aspects of the proceeding.

Part I. The Carriage and Nonduplication Provisions

4. In proposing that the substantive provisions of the carriage and nonduplication rules governing microwave CATV systems be extended to all CATV systems, the notice emphasized (pars. 27, 30) that two main issues were presented: (1) Whether the Commission can appropriately proceed on the basis of its present statutory authority and (2) whether any special problems of substance or procedure are posed by rules going to nonmicrowave systems. We turn now to a discussion of the first issue.

5. The threshold jurisdictional question is twofold: (a) Whether the Commission has jurisdiction as a matter of law over nonmicrowave CATV systems under the present provisions of the Communications Act and (b) whether it would be appropriate to exercise any such jurisdiction without a legislative enactment on the subject. In the notice we concluded initially, for the reasons set forth in our memorandum on jurisdiction attached to the notice, that CATV systems are engaged in interstate communication by wire to which the provisions of the Communications Act are applicable (secs. 2(a) and 3(a), 47 U.S.C. 152(a) and 153(a)). It further appeared to us that the Commission's statutory powers, particularly under sections 4(i), 303 (f), (h), and (r), include authority to promulgate necessary and reasonable regulations to carry out the provisions of section 1 and 307(b) of the Act and to prevent frustration of the regulatory scheme by CATV operations, irrespective of the use of microwave. However, we pointed up the following matters (par. 31 of the notice):

> While we have initially concluded that we have jurisdiction, we would carefully consider comments addressed to this aspect. The attached memorandum presents the case for jurisdiction—a strong one in our view—and is set out in order to afford interested parties a full opportunity to direct their comments to that case. Second, we adhere to our position that clarifying legislation would be desirable, and have no intention of bypassing congressional action in this field. We are clearly concerned here with new and important questions of policy and law in the communications field. That being the case, the Commission would welcome (i) a congressional guidance as to policy and (ii) congressional clarification of our authority, which would lay the troublesome jurisdictional question at rest.
>
> It is our understanding that hearings will shortly commence. The information gathered in this proceeding will, we think, be of assistance to the Congress in its consideration of the matter. In short, by instituting this proceeding, we shall gather essential data, both for the Commission and the Congress, and will have conserved valuable time and be in a position to take final effective action in either of two eventualities: (1) Congress has enacted legislation in this field which does not preclude the Commission from promulgating rules along the lines of those adopted in Docket Nos. 14895 and 15233; or (2) no legislation is forthcoming, and the comments in the rule-making proceeding lead to the conclusion that the Commission does have present jurisdiction to extend the substantive provisions of the rules adopted in the above dockets to all CATV systems, whether or not they use microwave facilities. In the latter event, we would be remiss in our statutory duties if we had failed to exercise, without undue delay, our existing jurisdiction and authority to promote a public interest in this important area. The rule-making proceeding instituted by this notice will thus be conducted concurrently with legislative consideration, with final Commission decision withheld for an appropriate period to afford Congress an opportunity to act.

6. Following the issuance of the notice, H.R. 7715 was introduced in the House on April 28, 1965, and hearings on the bill were held before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign

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[1] "Leap-frogging" means the distribution by the CATV system of more distant signals in preference to signals of stations located much closer to the system.

[2] Comments and reply comments on Part I and par. 50 were originally due on June 25 and July 26, 1965, respectively. By orders issued on June 16 and June 30, 1965, these times for filing were extended to July 26 and Sept. 17, 1965. Formal comments and/or reply comments have been received from the parties listed in the attached Appendix A. In addition, a large number of informal comments or letters from members of the public have been received and placed in the docket.

Commerce in May and June 1965. In the Commission's testimony concerning the bill, it was stated that the Commission did "not contemplate applying any new rules that we may enact with respect to the rest of the CATV industry until 1966, in other words, until at least after this session of Congress is over and it has had the ability to consider this problem." (Hearings before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce on H.R. 7715, 89th Cong., 1st sess., p. 25.) No bill relating to CATV has been introduced in the Senate, and the 89th Congress adjourned its 1st session without enacting any legislation on CATV.

7. We think it appropriate, therefore, to take up without further delay Part I and paragraph 50 of the rulemaking proceeding. Here we note that CATV is developing and expanding at a very rapid rate (see pars. 31–39 within). We cannot ignore the increasing risk of adverse impact on the "public interest in the larger and more effective use of radio" (section 303(g)) which accompanies the burgeoning CATV development. See paragraphs 116–117; Part II, within. Further, it is contrary to sound regulation for carriage and nonduplication to be applicable to the microwave CATV system and inapplicable to the nonmicrowave, which constitutes the other three-fourths of the industry. And, if the carriage and nonduplication provisions are to be applied to nonmicrowave systems, it would obviously minimize the disruption to the viewing public to do so as soon as possible—before a large number of incipient CATV systems commence operation and their subscribers become accustomed to service not in compliance with the rules. It would also appear to entail less hardship to the new CATV operator to commence operation under the rules than to undergo a subsequent conversion. Moreover, removal of the present uncertainty would assist local franchising authorities, as well as franchise applicants. We have received several inquiries from local authorities as to when a decision might be expected, with an indication in some instances that action on franchise applications was being withheld pending our decision. The "introduction of as much stability as possible into the planning perspective of those affected by our regulation" is regarded by us as a "highly desirable objective" (first report and order in Docket Nos. 14895 and 15233, par. 78). For all these considerations, developed more fully within, we think it our responsibility under the Communications Act to resolve the issues in Part I and paragraph 50.

A. JURISDICTION AS A MATTER OF LAW

8. While the comments filed in support of present jurisdiction outnumber those opposed,[3] there appears to be no need to review the substance of the supporting comments here. The bulk of the supporting comments either restate essentially the same matters set forth in the Commission's memorandum on its jurisdiction and authority (notice, attachment B) or express agreement with that memorandum.[4] Since we believe that the case for jurisdiction is sufficiently set forth in our memorandum, a copy of which is attached to this document for convenient reference (attachment C), we shall discuss only the arguments made in the opposition comments.

9. The comments urging a want of jurisdiction make three principal arguments. It is asserted, first, that the Communications Act contains no provision granting the Commission authority over CATV systems. Second, it is contended that there are specific provisions in the Act which show a lack of authority. And, third, it is urged that the Commission itself has repeatedly denied jurisdiction over CATV systems, that Congress is aware of and has acquiesced in this administrative interpretation, and that principles of statutory construction foreclose the Commission from now claiming jurisdiction. We shall discuss these arguments in order.

10. The contention that the Communications Act contains no provision granting the Commission authority over CATV systems takes issue with the sufficiency of the statutory base set forth in the Commission's memorandum (pp. 2–7). We there relied on the fact that section 2(a) states that the "provisions of this Act shall apply to all interstate and foreign communication by wire or radio * * * and to all persons engaged within the United States in such communication," and concluded that CATV systems are engaged in "communication by wire," within the meaning of section 3(a), which is interstate in nature. With respect to the provisions of the Act to be applied, we stated that the authority conferred by section 303(h) to issue rules establishing the area or zone to be served by any station includes the power to prevent infringement of the rules by "any person" (secs. 312(b) and 502 of the Communications Act), and specifically a person subject to the provisions of the Act, and encompasses authority to specify by rule the conditions under which the station's signal may be extended beyond the prescribed service area or zone by CATV. Moreover, apart from section 303(h), the general rule making authority of the Commission (secs. 4(i) and 303 (f) and (r)) includes authority to take necessary action, not inconsistent with the Act or law, to prevent frustration of section 307(b) by CATV—an "interstate communication by wire" to which the Act's provisions are applicable (secs. 2(a) and 3(a)).

11. It is asserted that these sections do not suffice to support jurisdiction because it is necessary to find some specific provision of the Act expressly conferring jurisdiction over the subject matter of CATV. The authorities cited in our memorandum (pp. 4–6) to the effect that our authority does not depend on a specific reference to CATV or CATV practices in the Act[5] are distinguished on the ground that they concern authority over unspecified practices of regulated licensees rather than the power to regulate unspecified persons or businesses not licensed under the Act. Unless specific authority is required for regulation of nonlicensees, it is argued, the Commission could utilize its general rule making authority to regulate any business (such as amusements, program producers, etc.) which has an impact on broadcasting or uses communications facilities.

12. The attempted distinction, even assuming arguendo its validity, does not fit the situation here. We are not presented with the question of whether the Commission's broad powers to take action necessary to carry out the provisions of the Act include authority to regulate a business not subject to the Act merely because of some impact on,

[3] Supporting comments were filed by: National Association of Broadcasters; Association of Maximum Service Telecasters, Inc.; Storer Broadcasting Co.; American Broadcasting Co.; Westinghouse Broadcasting Co., Inc.; Fuqua Industries, Inc.; WTVY, Inc.; Snyder & Associates; Western Slope Broadcasting Co.; Black Canon Broadcasting Co.; Mesa Verde Broadcasting Co.; Houston Post Co.; WKBH Television, Inc.; Bonneville International Corp.; Mobile Video Tapes, Inc.; D. H. Overmyer; Aroostook Broadcasting Corp.; Taft Broadcasting Co.; WJAC, Inc.; Springfield Television Broadcasting Corp.; Midwest Television, Inc.; West Central Broadcasting Co.; RustCraft Broadcasting Co.; WGAL Television, Inc.; American Farm Bureau Federation; National Farmers Union; National Grange; Tri-State TV Translators Association; Labor Organizations Affiliated With the AFL–CIO; Eastern Educational Network; and commenting jointly, television stations KHOU–TV, KOTV, KXTX, WANE–TV, WAVE–TV, WFIE–TV, WFRV, WISH–TV, WJXT, WMT–TV, WNOK–TV, WTOP–TV. Opposition—Commenting in opposition to jurisdiction were: National Community Television Association, Inc.; Smith & Pepper (on behalf of 150 CATV systems); Columbia Broadcasting System; National Broadcasting Co.; TV Cable Service of Abilene, Inc.; Entron, Inc.; American Cable Television, Inc.; Meredith Broadcasting Co.; Triangle Publications, Inc.; Jerrold Electronics Corp.; International Teleprompter Corp.; Montgomery Television Association, Inc.; and Journal Co. Other—American Telephone & Telegraph Co. and United States Independent Telephone Association took no position on the jurisdictional question but requested that the carriage and nonduplication provisions be applied to CATV systems directly rather than to microwave common carriers.

[4] While Storer Broadcasting Co. does not agree with the impact argument (Commission's memorandum pp. 4–5) as a jurisdictional base, it takes the position that the Commission now has limited jurisdiction over all CATV systems which is sufficient to support the measures proposed in Part I and par. 50.

[5] National Broadcasting Co. v. United States, 319 U.S. 190, 218–219; United States v. Storer Broadcasting Co.; 351 U.S. 192, 203; American Trucking Association v. United States, 344 U.S. 298, 309–311; United States v. Pennsylvania RR. Co.; 323 U.S. 612; United States v. Wrightwood Dairy Co., 315 U.S. 110; Houston, East & West Texas Railway Co. v. United States, 234 U.S. 342, Public Service Commission of State of New York v. Federal Power Commission, 327 F. 2d 893, 897 (C.A.D.C.).

or use of, interstate communications under the Act.[6] CATV systems differ from most other businesses in that they are themselves engaged in "interstate communication by wire," a business to which the Act's provisions are expressly applicable (secs. 2(a), 3(a)).[7] Moreover, they physically intercept and extend television signals, and thus have a uniquely close relationship to the regulatory scheme embodied in sections 303 (h) and 307(b). We are not powerless to prevent frustration of our actions under those sections by persons subject to the Act merely because the licensing provisions of the statute are inapplicable to them. Section 312 (b) and (c) provide for the issuance of a cease and desist order against "any person"—not merely any "licensee or permittee"—who has "violated or failed to observe any rule or regulation of the Commission authorized in this Act * * *."

13. It is further asserted that Federal Power Commission v. Panhandle Eastern Pipeline Co., 337 U.S. 498, precludes a conclusion that the general rule making power of the Commission encompasses authority to take necessary action, not inconsistent with the Act or law, to prevent frustration of section 307(b) and 303(h) by CATV. However, the Panhandle case is readily distinguishable. That case was decided upon the basis of a specific provision in the Natural Gas Act which denied the Federal Power Commission jurisdiction to deal with the problem there involved.[8] Section 1(b) of the Natural Gas Act provides that the "provisions of this Act shall apply * * * to the sale in interstate commerce of natural gas for resale * * * but shall not apply * * * to the production or gathering of natural gas" (52 Stat. 821, 15 U.S.C. sec. 717(b)). The Court held that the transfer of gas leases fell within the exclusion as to the "production or gathering of natural gas" and hence lay outside the scope of the Power Commission's regulatory powers. In declining to find authority in the Power Commission's general rule making powers, the Court stated that the "power to do the things appropriate to carry out the provisions of the Act can hardly be taken to rescind a prohibition against certain actions" (337 U.S. at 508). By contrast, there is no provision in the Communications Act which specifically excludes CATV systems from the Commission's jurisdiction. On the contrary, section 2(a) states that the "provisions of this Act shall apply to *all* interstate communication by wire or radio * * * and to *all* persons engaged within the United States in such communication * * * (italic added)." Moreover, Panhandle has been construed narrowly in a recent case arising under the Natural Gas Act, which sustained the Power Commission's jurisdiction over gas leases for resale in interstate commerce. United Gas Improvement Co. v. Continental Oil Co., 381 U.S. 392, 403–404.

14. The argument that the Communications Act contains language expressly excluding jurisdiction over CATV systems, is predicated primarily on the provisions of section 2(b) and section 214 (a) of the Act. Section 2(b) states that nothing in the Act shall be construed to give the Commission jurisdiction with respect to "intrastate communication service by wire or radio of any carrier" or "any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities located in an adjoining State * * * of another carrier * * *." Section 214(a) provides, in pertinent part, that "no carrier" shall construct or operate a line without a prior certificate from the Commission: *Provided, however,* That no certificate is required for construction or operation of "a line within a single State unless such line constitutes part of an interstate line." It further states: "As used in this section the term 'line' means any channel of communication established by the interconnection of two or more existing channels."

15. We are not persuaded that these sections demonstrate a statutory denial of jurisdiction over CATV systems. In the first place, both sections by their terms apply to "carriers" and we have repeatedly ruled that CATV systems are not "carriers" within the meaning of section 3(h) of the Act. Frontier Broadcasting Co., 24 FCC 251; CATV and TV Repeater Services, 26 FCC 403, 427–428; WSTV, Inc. v. Fortnightly Corp., 23 Pike and Fischer, R.R. 184; Philadelphia Television Broadcasting Co., et al., FCC 65–702 (Aug. 8, 1965). Nor are television stations "carriers" under section 3(h). Moreover, even if CATV systems were to be deemed carriers, their operations are interstate in nature since they are carrying interstate television signals. A common carrier carrying television signals does not fall within the exemption in section 2(b)(1) because its physical facilities are located in only one State; it "performs an interstate communications service." Idaho Microwave, Inc. v. Federal Communications Commission, 352 F. 2d 729 (C.A.D.C.); Ward v. Northern Ohio Telephone Co., 300 F. 2d 816 (C.A. 6), cert. den. 371 U.S. 820; Pacific Telatronics, Inc., 4 Pike and Fischer, R.R. 145; and cf. California Interstate Telephone Co. v. Federal Communications Commission 328 F. 2d 816 (C.A.D.C.).[9] See also, United States v. American Telephone & Telegraph Co., 57 F. Supp. 451, 454 (S.D.N.Y.), aff'd percuriam, sub nom. Hotel Astor v. United States, 325 U.S. 837. By the same token a CATV system, if it were a carrier, would constitute "part of an interstate line" for purposes of section 214(a), even though its facilities were located within a single State.

16. The most vigorously pressed argument against jurisdiction is the assertion that the Commission is estopped by past disclaimers of jurisdiction over CATV systems and congressional acquiescence in those disclaimers (see par. 28 of the notice herein). Reliance is placed on the principle of statutory construction that a consistent, longstanding administrative interpretation is entitled to great weight, particularly where Congress is aware of the administrative determination and has subsequently amended the statute without changing the applicable section.[10] Whatever the force of this principle in other circumstances, we do not think that it is dispositive of the legal question of our jurisdiction here.

17. Initially, it bears noting that some of the precedents cited as establishing a consistent contrary position primarily concerned matters upon which we do not rely as a basis for jurisdiction. We have consistently held that CATV systems are not common carriers within the meaning of section 3(h), and hence do not come within the provisions of Title II applicable to carriers. Frontier Broadcasting Co., 24 FCC 251; CATV and TV Repeater Services, 26 FCC 403, 427–248; WSTV, Inc. v. Fortnightly Corp., 23 Pike & Fischer, R.R. 184. But we have

[6] We have not claimed plenary power to regulate any business which may have some impact on broadcasting or other interstate communication by wire or radio. In the jurisdictional memorandum we stated that the "Commission clearly has no jurisdiction over bowling alleys or theatres, for example * * *." Moreover, we sought and obtained specific statutory authority to regulate the manufacture of television receivers shipped in interstate commerce for sale to the public (Public Law 87–529, 47 U.S.C. 303(s)). There may be instances, of course, where the Commission's regulatory power appropriately extends to some activities of persons not engaged in communication by wire or radio. But there is no necessity to determine the limits or basis for such authority here.

[7] Since CATV systems fall within the definition of communication by wire and their operations are interstate in nature, it makes no difference that they are not expressly mentioned by name. The Act applies to "*all* interstate communication by wire or radio" and to "*all* persons engaged in such communication" (sec. 2(a), italic added). For that matter, prior to the 1962 amendment incorporating section 303(s), the word "television" did not appear in the Act. Yet, it has long been established that the Act applies to television because it falls within the definitions of "radio communication" and "transmission of energy by radio" contained in section 3. Allen B. Dumont Labs, Inc., v. Carroll, 184 F. 2d 153, 155 (C.A. 3), cert. den. 340 U.S. 929.

[8] Other Federal Power Commission cases cited in the comments, Amerada Petroleum Corp. v. Federal Power Commission, 334 F. 2d 404 (C.A. 8), and Pan American Petroleum Corp. v. Federal Power Commission, 339 F. 2d 694, are similarly inapposite since they involved a lack of jurisdiction predicated upon a statutory exclusion.

[9] That the carrier in Idaho Microwave was carrying the signal of a television station located in another State is not of controlling significance. All television broadcasting is interstate in nature. Ward v. Northern Ohio Telephone Co., 300 F. 2d 816 (C.A. 6), cert. den. 371 U.S. 820; Capital City Telephone Co., 3 FCC 189, 193–4; Federal Radio Commission v. Nelson Bros. Bond & Mortgage Co., 289 U.S. 266, 279. Moreover, in the case of network programing the communication link between the network and the station transmitter forms an additional part of the interstate chain of communication. Ward, supra, 300 F. 2d at 819.

[10] Cases cited to us in this connection include: Hanover Bank, Ex. v. C.I.R., 369 U.S. 672, 686–687; United States v. Leslie Salt Co., 350 U.S. 382, 396–397; Norwegian Nitrogen Co. v. United States, 288 U.S. 294, 315; Luckenback Steamship Co. v. United States, 280 U.S. 173, 183; Cammarano v. United States, 358 U.S. 498.

not proposed to depart from this ruling, which has been reaffirmed since the issuance of the notice herein. Philadelphia Television Broadcasters Co., et al. v. Rollins Broadcasting, Inc., Docket No. 15926 (FCC 65–702, Aug. 2, 1965) now pending on appeal (case No. 19577, C.A.D.C.). Nor have we departed from our earlier rulings that CATV's are not engaged in "broadcasting" within the meaning of section 3(o) and are not encompassed within section 325(a). CATV and TV Repeater Services, 26 FCC 403, 428–430. In areas closer to the claimed basis for jurisdiction, the precedents do not reflect a consistent contrary position.[11] Thus, while we initially disclaimed jurisdiction to deny a common carrier microwave authorization to relay television signals to CATV systems (Intermountain Microwave, 24 FCC 54; CATV and TV Repeater Services, 26 FCC 403, 431–433), this ruling was later reversed in our Carter Mountain decision, 32 FCC 459, which was sustained on judicial review. Carter Mountain Transmission Corp. v. Federal Communications Commission, 321 F. 2d 359, 364 (C.A.D.C.), cert. den. 375 U.S. 951. In CATV and TV Repeater Services, we disclaimed plenary power, under section 303 (a), (b), (f), (g), (i), and (r), to "regulate any and all enterprises which happen to be connected with one of the many aspects of communications" (28 FCC at 429) a power which is not claimed here. However, we assumed, without deciding, that CATV's are within the scope of section 3(a) (26 FCC at 428), and also found it unnecessary to pass on the question of our authority to regulate them directly because of adverse effect on broadcasting (26 FCC at 431). And, finally, we have not previously ruled on the question of whether section 303 (h) encompasses authority to regulate CATV.

18. More important, even if our past rulings in this troublesome area had been consistent, we are not estopped from correcting a ruling of law which appears to be clearly erroneous. Carter Mountain Transmission Corp. v. Federal Communications Commission, 321 F. 2d 359, 364 (C.A.D.C.), cert. den. 375 U.S. 951; Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672; United Gas Improvement Co. v. Continental Oil Co., 381 U.S. 392, 404–406.[12] As the Supreme Court commented in the Phillips Petroleum case, in sustaining the Federal Power Commission's jurisdiction over the sale of gas by gas producers for resale in interstate commerce despite that agency's consistent past disclaimer of jurisdiction, "even consistent error is still error" (347 U.S. 672, 678, fn. 5). Moreover, in United Gas Improvement the authority of the Power Commission over gas leases for resale in interstate commerce was upheld, notwithstanding the fact that the agency had initially concluded in the same proceeding that it lacked jurisdiction and then reversed itself on remand (on another ground) from a court of appeals decision which assumed a lack of authority on the basis of Panhandle (381 U.S. at 404–406). Public Service Commission of New York v. Federal Power Commission, 287 F. 2d 143, 145 (C.A.D.C.).

19. As indicated in the notice (par. 28), our "jurisdiction to regulate nonmicrowave CATV systems under the present provisions of the Communications Act is obviously subject to reasonable difference of opinion." However, the arguments discussed above do not persuade us that jurisdiction is lacking, and no other bar to jurisdiction has been brought to our attention. After careful consideration of all the comments we are convinced that the case for present jurisdiction is a strong one. Accordingly, for the reasons set forth above and in our memorandum as to jurisdiction (Appendix C), we conclude that CATV systems are engaged in interstate communication by wire to which the provisions of the Communications Act are applicable (secs. 2(a) and 3(a), 47 U.S.C. 152(a) and 153(a)). We further conclude that our statutory powers, particularly under section 4(i), 303 (f), (g), (h), and (r), include authority to promulgate necessary and reasonable regulations to carry out the provisions of sections 1, 307(b), and 303(s) of the Act and to prevent frustration of the regulatory scheme by CATV operations, whether or not microwave facilities are used. The rules proposed in Part I and paragraph 50 of the notice are within our legal authority.

B. ASSERTION OF JURISDICTION

20. We turn now to the further question of whether jurisdiction over nonmicrowave CATV should be exercised at this time. Most of the comments in support of jurisdiction favored an immediate extension of the carriage and nonduplication requirements to nonmicrowave CATV systems, and the adoption of an interim policy either along the lines proposed in paragraph 50 of the notice or of broader scope. However, some of the supporting comments and many of the opposition comments took the position that we should not exercise jurisdiction, even if present, until Congress has legislated on the subject. It is urged that this would provide needed policy guidelines and avoid protracted litigation on the jurisdictional issue.

21. We stated in the notice (par. 31) that we would "welcome (i) a congressional guidance as to policy and (ii) congressional clarification of our authority, which would lay the troublesome jurisdictional question at rest." In this report, we stress again the desirability in our view of congressional guidance in this important area. But thus far the congressional guidance or clarification has not been forthcoming; and in the present circumstances, our decision cannot properly turn on a desire to avoid litigation or on the hope of obtaining policy guidance in the CATV field. The Commission has not been "left at large" as to the criterion to be following in performing our statutory duties in the dynamic communications field. National Broadcasting Co. v. United States, 319 U.S. 190, 219–220. The public interest touchstone provided by Congress afforded a sufficient standard for our decision to adopt the carriage and nonduplication requirements for microwave-served CATV systems in the first report and order in Docket Nos. 14895 and 15233. Since the "considerations underlying our conclusion that this is necessary in the public interest to avoid unreasonable competitive disadvantage and prejudicial effect on existing and potential television broadcast service apply equally" to nonmicrowave CATV systems (notice, par. 27), there is likewise a sufficient standard for judgment here. Finally, our action with respect to the paragraph 50 proposal is similarly dictated by the "public interest in the larger and more effective use of radio" (sec. 303(g)).

22. Most of the comments agree that, apart from the basis for jurisdiction, there is no significant difference between microwave and nonmicrowave systems. However, National Community Television Association, Inc. (NCTA), asserts that there is no basis for assuming they are alike. It points to no factual distinction. Rather, NCTA renews its contentions in Docket Nos. 14895 and 15233 that no adequate fact-finding inquiry has been conducted, and claims further that adverse impact has not been established and cannot support an assertion of jurisdiction. In this connection, NCTA has appended to its comments the material it submitted before the House Subcommittee in hearings on H.R. 7715. It urges particularly that the 15 days before and after nonduplication period is unjustified, and has no reasonable relationship to the showing of nonnetwork programing. NCTA's staff has undertaken a study to test the validity of the Commission's sample week network study (first report, pars. 104–109), and has found that the data developed by the Commission supports its conclusion that delayed programing occurs most frequently among affiliates in the mountain time zone, and there in one and two station markets. NCTA claims that its

[11] The position of Congress, if it has acquiesced in the Commission's rulings, is not clear. It is true, as set forth in the notice, par. 28, that following our decision in CATV and TV Repeater Services, 26 FCC 403, the 88th Congress gave extensive consideration to some of the various legislative proposals on CATV submitted by the Commission and others, but enacted no legislation. Moreover, bills introduced in subsequent Congresses received no action. However, Congress also took no action after being apprised of the partial reversal of that decision in Carter Mountain. Twenty-ninth FCC Annual Report, 1963. Congress likewise is aware of our initial conclusion as to jurisdiction in the notice herein issued on Apr. 23, 1965. Although a subcommittee of the House Commerce Committee subsequently held hearings on H.R. 7715, no committee report issued in the 1st session of the 89th Congress, and no legislation on CATV was considered or introduced in the Senate.

[12] See also, Calbeck v. Travellers Ins. Co., 370 U.S. 114, 127, fn. 15 Automobile Club of Michigan v. Commissioner, 353 U.S. 180, 183, Association of Clerical Employees v. Brotherhood of R. & S.S. Clerks, 85 F. 2d 152, 156 (C.A. 7).

study of 33 mountain time zone stations with CATV penetration shows no adverse consequences (NCTA comments, Exhibit A). It points in addition to specific examples of small market stations which have allegedly increased circulation and maintained the same or a higher network hourly rate since 1960, despite substantial CATV penetration of their service areas (NCTA comments, Exhibits A and B).

23. While the inferences NCTA draws from its studies are sharply criticized in the reply comments of Association of Maximum Service Telecasters (AMST), we do not think it necessary or useful to set forth the contentions of each or to discuss their dispute as to individual situations. The NCTA appendices do not differentiate between microwave and nonmicrowave CATV systems; on their face they constitute an attack on the validity the first report and order in Docket Nos. 14895 and 15233. But the supplementary material upon which NCTA now relies as indicating a lack of past impact is similar in nature to the showing there considered at length and would not in itself warrant reversal of our conclusions.[13] Indeed, NCTA, in relying upon its showing, simply ignores the two most important grounds of our decision, namely, (i) the fair competition ground and (ii) the economic impact ground, based on the CATV trend in recent years. Since this is so, it may be well to restate those grounds briefly, and to take account of current information pertinent to those grounds.

24. In the first report and order in Docket Nos. 14895 and 15233, we concluded that CATV serves the public interest when it provides program choices not locally available off-the-air and acts as a supplement rather than a substitute for off-the-air television service, explaining our principal reasons as follows (par. 44):

> * * * Because of the prohibitive cost of extending the cables beyond heavily built-up areas, CATV systems cannot serve many persons reached by television broadcast signals. Persons unable to obtain CATV service, and those who cannot afford it or who are unwilling to pay, are entirely dependent upon local or nearby stations for their television service. The Commission's statutory obligation is to make television service available, so far as possible, to all people of the United States on a fair, efficient, and equitable basis (secs. 1 and 307(b)) of the Communications Act. This obligation is not met by primary reliance on a service which, technically, cannot be made available to many people and which, practically, will not be available to many others. Nor would it be compatible with our responsibilities to permit persons willing and able to pay for additional service to obtain it at the expense of those dependent on the growth of television broadcast facilities for an adequate choice of services.

[13] We have decided, for the reasons set forth in paragraphs 47–55 below, to delete the provision for nonduplication 15 days before and after the local broadcast and to substitute a requirement for nonduplication only on the same day as the local broadcast. Thus, our resolution of this matter affords NCTA substantially the relief it has requested.

25. Our determination to adopt the carriage and nonduplication requirements rested on two basic grounds: (1) That failure to carry local stations and duplication of their programs are unfair competitive practices, which are inconsistent with the supplementary role of CATV (pars. 49–57, 76), and (2) that these requirements were necessary to ameliorate the risk that the burgeoning CATV industry would have a future adverse impact on television broadcast service, both existing and potential (pars. 58–75, 77).

26. With respect to the first ground, we found that the CATV system which fails to carry the local station on its system has in practical effect cut off the station from access to CATV subscribers (par. 51). We stated (par. 57):

> As a competitive practice, the failure or refusal by a CATV system to carry the signal of a local station is plainly inconsistent with our belief that CATV service should supplement, but not replace, off-the-air television service. The cable system that follows such a practice offers the subscriber the benefits of additional television service at the price of blocking or impeding his access to available off-the-air signals. * * *
>
> Because it is inconsistent with the concept of CATV as a supplementary service, because we consider it an unreasonable restriction upon the local station's ability to compete, and because it is patently destructive of the goals we seek in allocating television channels to different areas and communities, we believe that a CATV system's failure to carry the signal of a local station is inherently contrary to the public interest. Only if we were persuaded that the overall impact of CATV competition upon broadcasting would be entirely negligible would we consider countenancing such a practice.

27. We further pointed out that CATV, though distributing the programs of the television broadcast service, stands outside its normal program distribution process and fails to recognize the reasonable exclusivity for which the local stations have bargained in the program market when it duplicates local programing via the signals of distant stations (pars. 52–56). We summarized our conclusion that this was unfair and inconsistent with CATV's supplementary role as follows (par. 57):

> In light of the unequal footing on which broadcasters and CATV systems now stand with respect to the market for program product, we cannot regard a CATV system's duplication of local programing via the signals of distant stations as a fair method of competition. We do not regard the patterns of exclusivity created in the existing system for the distribution of television programs as sacrosanct. We think it apparent, however, that the creation of a reasonable measure of exclusivity is an entirely appropriate and proper way for program suppliers to protect the value of their product and for stations to protect their investment in programs. We think the basic congressional judgment underlying section 325(a) limitation on rebroadcasting is the same.
>
> Nor do we consider the duplication of existing off-the-air service to be consistent with CATV's appropriate role as a supplementary service. Whatever the ultimate impact of CATV competition upon the revenues and operation of competing stations, duplication is highly likely to affect the audience for the specific programs involved. And it does so without generally offering the public a substantially different service. We believe that a service such as CATV, which lives on the product of the existing television service, should at a minimum give some measure of recognition to the fundamental distribution practices which have developed in the parent industry's competitive program market—to exhibition rights for which others must bargain and pay but which it has thus far been able to use without any bargaining by itself or by the stations whose signals it carries. Once again, unless we were convinced that the impact of CATV competition upon broadcasting service would be negligible, we would favor some restrictions upon the ability of CATV systems to duplicate the programs of local broadcasting systems, as a partial equalization of the conditions under which CATV and broadcasting service compete. (Footnotes omitted.)

28. We stated that the foregoing grounds were "enough to justify regulatory action" (par. 58) and that "every station affected is entitled to appropriate carriage and nonduplication benefits—irrespective of the specific damage which any individual CATV system may do to the financial health of the individual station" (par. 76). But, as stated, we also turned to another ground based on the economic impact of CATV upon television broadcast development. We considered at some length the data and arguments before us on the question of impact (pars. 58–75), finding—as in 1959—that it is "impossible, with the data at hand, to isolate reliably the effects of CATV competition from all of the other factors which operate to produce particular financial results in differing settings" (par. 68). However, taking account of nationwide trends affecting the nature of CATV offerings, the character of the markets entered, and the degree of penetration achieved, we also found it plain that CATV could have a substantial negative effect upon station revenues and audiences even though we lack the tools to measure precisely the degree of impact (pars. 65–69). We further found reason to believe that the impact was likely to be "more serious in the future than it has been in the past" (par. 69), and stressed our concern with the effect of explosive CATV growth in a critical period for UHF development (pars. 71–72). In sum, the Commission's judgment on this ground was based very largely, not upon the past, but upon the trends which were already evident and whose dimensions called for action now to assure the public interest in the future.

29. The additional showing made in the appendices to the NCTA comments is not directed to the above crucial considerations concerning the trends in the CATV or UHF fields. Instead, it focuses upon certain situations which, it claims, establish that CATV has no adverse impact upon television broadcasting. But each of its examples is sharply disputed by AMST, which points to significant impact in some cases or sets forth other factors for the improvement in the situation of the television station in the face of CATV competition. For example, AMST notes that several stations whose network hourly rate has not declined since 1960 were already at or near the

minimum rate for the network involved (AMST reply comments, pp. 27–28, attachment A, pp. 10–14). It attributes whatever success Station WLUC–TV, Marquette, Mich., has enjoyed in recent years to new management beginning in 1960 and states that the station has suffered a decline in average quarterly hour audience while local revenues have remained stagnant (AMST reply comments, pp. 29–30, attachment A, p. 14). AMST also points out that WBOC–TV, Salisbury, Md., following a change in ownership in 1961 and the infusion of a substantial financial investment, extended its hours of operation, improved its programing, and doubled its service area through a substantial power increase. (AMST reply comments, pp. 31–32, attachment A, pp. 15–16.)

30. It would, we think, serve no useful purpose to delve into each of those situations. For even assuming that it were possible to isolate the significance of CATV in each situation from other factors (as it was feasible in the Carter Mountain case, first report, par. 64), it would not afford greater insight into the crucial aspect of the matter—the explosive growth and changing character of CATV and its possible impact upon television broadcasting in the future. And, as to that aspect, events since the issuance of the first report reinforce the judgment made by us upon the basis of the above-mentioned trends in the industry. For, as the comments in this proceeding show, without dispute in this respect, the trends described in paragraph 65 of the first report have become even more pronounced. We shall briefly review those trends in light of their importance to our judgment.

31. In the first report we relied on estimates in the Seiden Report which were based on data compiled in 1964.[14] The Seiden Report stated (p. 2) that there were approximately 1300 CATV systems serving approximately 1.2 million TV homes. The reply comments of AMST, filed on September 17, 1965, contain the following estimates as of mid-1965 (AMST reply comments, attachment A, prepared by Economic Associates, Inc., of Washington, D.C., using data from Television Factbook (No. 35) and Television Digest):

Communities with operating CATV's	1,847
Communities with CATV's franchised (but not yet operating)	758
Communities with CATV applications pending	938

While these figures are not tendered as precisely accurate,[15] the rapidly accelerating rate of growth is confirmed in statistics given by licensees commenting on the situation within their service areas,[16] in the trade press, and in letters received by the Commission from local franchising authorities and other members of the public.

32. In addition, the channel capacity of CATV systems is increasing. According to the Seiden Report (pp. 2, 54) the usual CATV system in 1964 delivered five signals and 85 percent of all systems delivered between three and seven signals. However, there is indication in the record that most of the new CATV systems have a channel capacity of 12 channels and many of the older systems are expanding their original capacity. The AMST reply comments (attachment A) contain the following table showing the cable capacity for the 753 CATV systems for which it was able to obtain data:[17]

CATV's Capacity, in Number of Channels (Includes FM) [1]

Starting	2	3	4	5	6	7	8	9	10	11	12
Through											
1951		3		28	2	1					13
1952		3		26		1	1				15
1953		3	1	36	1	4		2	1		10
1954	1	5		39	3	3		2	1		20
1955		5		43	2	2		4			11
1956		3	1	30				1			10
1957	1			23		3	1		1		5
1958		2		27	1		1		1		7
1959			1	28			1	1			4
1960		2		26		2	1	1			6
1961				21		1			1		9
1962	1			25				1			16
1963				21	1	1	1				33
1964				15	1	2	2	9		3	53
July 1965				5		1	2	1			44
Totals	3	26	3	393	11	21	10	22	5	3	256

[1] Includes expansions subsequent to starting date. Limitations of the source data make it impossible to determine the original capacity of most of these systems.

The expanding channel capacity is also reflected in the answers submitted to our questionnaire sent to all known CATV systems in connection with the transition period question. (See par. 103–107, within).

33. It further appears that CATV activity is accelerating in areas where there is the greatest interest in UHF development. The comments of AMST list all communities or metropolitan areas where UHF stations were operating, authorized or applied for as of July 8, 1965, and indicate the extent of co-located CATV activity (AMST comments, attachment C, table 2).[18] The results are summarized by AMST as follows (comments, p. 59):

> There are 237 UHF stations and 93 educational stations either operating or with outstanding construction permits or for which applications are pending in communities or metropolitan areas with a total population of over 112,000,000. The cities and metropolitan areas with CATV systems operating, pending or applied for account for at least 85,000,000 people. At least 145 communities or standard metropolitan areas with UHF stations operating, authorized or applied for also have CATV activity. In 68 such communities or metropolitan areas where there are already operating CATV systems; at least 67 have CATV systems franchised but not operating, and at least 93 have CATV applications proposed.

34. The situation in central Illinois is described by Midwest Television, Inc. (Midwest), a licensee of VHF Station WCIA, Champaign, Ill.; UHF Station WMBC–TV, Peoria, Ill.; and applicant for a new UHF station in Springfield, Ill.[19] Midwest states that CATV is in process of growth in virtually all of the major communities served by WCIA, including Champaign and Urbana themselves.[20] Franchise applications have been filed or proposed in at least 12 communities within the WCIA Grade B service area, and CATV systems are operating, under construction, or franchised in some 15 more. These 27 communities have a total population of 464,500—nearly one-half of the total population within WCIA's Grade B service area. Within the Grade B service areas of WMBD–TV, Peoria and of W71AE, Midwest's La Salle translator, CATV is at various stages—from franchise proposals to actual operation—in at least five communities, including Peoria itself (which has three operating UHF stations and a vacant UHF commercial assignment). The total urban population of these five communities is 221,294—between one-third and one-half of the total population in the Grade B service areas of WMBD–TV and the La Salle translator. In Springfield (which has one operating UHF station and applications pending for two new UHF stations), applications for CATV franchises are under active consideration in Springfield and another community located in the Grade B contour of both proposed UHF stations. The

[14] This estimate was based on comments filed in Docket Nos. 14895 and 15233 and the report submitted to us by Dr. Martin H. Seiden, entitled "An Economic Analysis of Community Antenna Television Systems and the Television Broadcasting Industry" (GPO, February 1965), hereafter referred to as the "Seiden Report."

[15] There are other estimates (see par. 116, describing the Television Digest estimate), but whatever the estimate, CATV growth is clearly explosive in nature.

[16] E.g., comments of Midwest Television, Inc.; West Central Broadcasting Co.; WKBH Television, Inc.; Mobile Video Tapes, Inc.; and Bonneville International Corp.

[17] The data were compiled from reports in Television Factbook (No. 35) Television Digest, questionnaires on file at the Commission, and ARB publications.

[18] According to AMST, table 2 is limited to the central communities or metropolitan areas where there is UHF activity, and does not include CATV activity elsewhere within the service area of a station located in the community or metropolitan area.

[19] Midwest is also the licensee of KFMB, San Diego, Calif.

[20] Champaign has one VHF and one UHF station, and is also the location of a UHF translator of a Decatur UHF station.

total urban population of these two cities is 92,072—approximately one-half of the total population within the Grade B contour of Midwest's proposed new UHF station. Midwest states that the proposals for CATV in Springfield, Peoria, Champaign, and Urbana have all been announced since April 23, 1965, and that at least eight new CATV operators filed applications for local franchises in central Illinois during the first two weeks of July.

35. A description of CATV growth in the Rio Grande Valley of Texas is given by Mobile Video Tapes, Inc., the licensee of KRVG–TV in Weslaco-Harlingen, Tex. According to Mobile Video Tapes, Weslaco has a 1960 Census population of 15,649 and the population of the Harlingen-San Benito urbanized area is 61,658. It states that J. Walter Thompson Co. (Population and Its Distribution, the United States Markets, 8th ed., 1961), lists the Brownsville-Harlingen-San Benito market (which includes Weslaco) as a Class C market, the 143d market in the United States, with a population of only 151,098. The ARB total net weekly circulation of KRGV, as of March 1964, was only 75,100 homes. CATV franchises have been granted in five towns within its service area and other CATV systems are proposed. The communities with CATV franchises, their populations, and the grade of KRVG coverage are given by Mobile Video Tapes as follows:

Community	1960 Census population	KRGV coverage
Brownsville	48,040	Grade A.
Edinburg	18,706	City Grade.
McAllen	32,728	Grade A.
Mission	14,081	Grade B.
Pharr	14,106	City Grade.

Mobile Video Tapes points out that this "constitutes the heart of the market—84.4 percent of the population shown by J. Walter Thompson for the entire Brownsville-Harlingen-San Benito market."

36. It appears, moreover, that there is significant CATV activity in the vicinity of fairly large cities with multiple channel assignments. The AMST comments (attachment C, tables I A, B, and C) [21] tabulate the CATV systems in operation, franchised or applied for within the Grade A and B contours of existing or potential VHF and UHF stations in 11 areas "believed to be centers of considerable CATV 'activity' ": Bakersfield and Sacramento, Calif.; Orlando and St. Petersburg, Fla; Rockford, Ill.; Evansville and Indianapolis, Ind.; Rochester and Utica, N.Y.; and Columbus and Dayton, Ohio. The extent of CATV penetration is detailed in Tables I A, B, and C. All three give separate figures for Grade A and Grade B contours, for VHF and UHF respectively. Table IA shows the penetration in terms of number of places in which CATV franchises have been granted or applied for. Table IB gives the equivalent data in terms of potential CATV households [22] compared with the total number of households within broadcast contours. Table IC converts the data in IB to percentages of total number of households within the broadcast contours.

37. The analysis shows that in these eleven areas there are approximately 230 places in which a CATV system was operating, franchised or proposed (as of July 8, 1965) within the Grade B contours of existing or potential VHF and UHF stations located in the central community of each of the eleven markets. These 230 places contain nearly 1,900,000 households. In Bakersfield, Calif., an all UHF market, almost two-thirds of the potential UHF audience is already franchised to CATV systems. In Utica, N.Y., the figure is 44 percent. If already submitted or proposed applications result in franchises, a UHF station in Columbus, Ohio, would have CATV's potentially competing for 60 percent of its market and a VHF station for more than half. Existing and pending CATV's in the Indianapolis area involve half the VHF market and about three-fifths of the UHF market. In Sacramento, the CATV potential comes to over 40 percent of the UHF market and nearly half the VHF.

38. There is also widespread CATV activity within major cities. Our attention has been called to the asserted intent of CATV interests to wire up "almost all American cities—small and large" and 85 percent of all television sets—40 million homes.[23] The December 1965 issue of Television Magazine (vol. 22, No. 12) states that franchise applications have been filed in San Francisco, Seattle, Pittsburgh, Baltimore, Fresno, Columbus, Tucson, Birmingham, Providence, and Sacramento. Two of the commenting parties in this proceeding are applicants for CATV franchises in Philadelphia. The comments of Columbia Broadcasting System (CBS) refer to applications for CATV franchises in Albany and Syracuse, N.Y.; Galveston, Tex.; and the grant of a CATV franchise in Wilmington, Del. D. H. Overmyer, permittee of new UHF Station WDHO–TV in Toledo, Ohio, comments that local authorities have granted a CATV franchise for that city since the issuance of the joint notice herein. Toledo has two VHF stations, a UHF educational station, and—according to Storer Broadcasting Co., receives the signals of four Detroit-Windsor VHF stations, off-the-air and without reception difficulty. Telerama, Inc., an applicant for a CATV franchise in Cleveland, has filed comments describing its proposed cable operation for that city which has three VHF stations, a UHF educational station, and applications pending for two new UHF facilities.[24] Taft Broadcasting Co., in a June 1965 petition to deny a microwave application (File No. 6226–C1–P–65) to bring the three New York independent stations to CATV systems in the Wilkes-Barre-Scranton area of Pennsylvania, states that in the last 6 months 90 franchise applications have been filed in 54 communities in Lackawanna and Luzerne Counties. The Scranton-Wilkes-Barre area is served by three UHF stations, providing three full network services.

39. The most factually detailed comments on big-city CATV were submitted by Midwest Television, Inc., licensee of Station KFMB–TV in San Diego, Calif. According to Midwest, CATV is growing with great speed in San Diego area, which is presently served by three VHF stations providing the programs of all three networks.[25] In addition, construction permits are outstanding for two new commercial UHF stations in San Diego and an application is pending for a UHF educational station. Since March 1963, when the first CATV system in the area was franchised, seven additional systems have been franchised. All eight CATV systems are within the Grade A contour of KFMB–TV, which falls within the metropolitan San Diego area; four are located in San Diego itself. While four of the eight systems are not yet operative, two of these are expected to begin operations momentarily. The operating CATV systems, which do not use microwave, carry the signals of all seven Los Angeles commercial VHF stations and carry the local stations without affording nonduplication protection. Midwest has been unable to obtain the current subscriber count, estimated at approximately 10,000 homes in February 1965.[26] However, its engineering personnel recently counted drops in a part of San Diego where CATV had been available for only 3 months. Of the 159 homes in that area, 58 were wired for CATV—and this, Midwest points out, "is an area where all three stations can be satisfactorily received" (Midwest comments, p. 24).

40. The Midwest comments also describe what it considers to be the effect CATV operations of this nature have on the audience of the local network-affili-

[21] Corrections to these tables were supplied in an "Addendum" to the AMST comments submitted on August 12, 1965.

[22] The tables use potential, rather than actual audience; i.e., the total number of households within the broadcast contour, and the total number of households in the community of the CATV.

[23] Address by Milton J. Schapp, "CATV—Past, Present, Future," Dec. 8, 1964, reprinted in Television Digest Special Supplement, vol. 4, No. 50, Dec. 14, 1964, p. 1.

[24] Telerama plans to carry all local stations and two Canadian stations on a full-time basis and to carry on a part-time basis on the remaining channels the signals of network affiliated stations in Detroit, Toledo, Erie (Pa.), and Youngstown and Akron, Ohio. While it does not propose to acquire microwave facilities to bring in Chicago and New York independent stations, Telerama states that if these signals are made available to the Cleveland area by common carrier facilities, "then Telerama may avail itself of the accessibility to such signals." Since Telerama submitted its comments, Cleveland has granted a franchise to Telerama.

[25] Midwest's Station KFMB–TV is a CBS affiliate, KOGO (San Diego) is an NBC affiliate, and the third station, XETV (located in Tijuana, Mexico, just a few miles from San Diego), is an ABC affiliate.

[26] San Diego Telecasters, Inc., permittee of UHF Station KAAR–TV in San Diego, estimated as of Aug. 25, 1965, that there are "more than 15,000 sets now served by cable."

ated stations. Southwest Surveys, an independent research organization, conducted a survey for Midwest in June 1965, interviewing 300 CATV subscribers and 300 nonsubscribers in the San Diego area. Forty-three percent of the CATV subscribers had been subscribers for less than 3 months. Midwest states (comments, p. 9) that during the prime evening hours of 7:30 p.m. to 11 p.m., when most of the programs broadcast by the three San Diego area stations were network programs, the San Diego area stations accounted for 88 percent and 97 percent of the total viewing time of non-CATV subscribers interviewed in two different areas and only 62 percent among cable subscribers. During the hour from 9 p.m. to 10 p.m., Sunday through Wednesday when each program broadcast by each of the San Diego area stations was simultaneously duplicated on CATV by Los Angeles stations, 93 percent of the nonsubscribers saw them on local stations whereas only 77 percent of the cable subscribers did so (pp. 9–10). Of the cable subscribers, 49 percent reported that they viewed a San Diego channel most; 55 percent named a Los Angeles channel. Of the nonsubscribers in two separate areas, San Diego stations were named by 108 percent and 94 percent, respectively, while Los Angeles stations were named by only 5 percent and 11 percent (id., p. 25).[27]

41. With respect to nonnetwork viewers, Midwest states that 25 percent of the CATV subscribers named a Los Angeles independent station as the channel they viewed most and only 1 percent and 2 percent, respectively, of the two groups of nonsubscribers did so. More than 56 percent of the CATV subscribers (as compared to 11 percent of the nonsubscribers) named at least one Los Angeles independent as one of the three stations most viewed (id., p. 26). During the period 5 p.m. to 6 p.m., Monday through Friday, there was no duplication by any Los Angeles station of programs broadcast in San Diego and the cable subscriber could watch any 1 of 10 different programs. Among nonsubscribers interviewed, 95 percent of those who watched television during that hour watched one of the San Diego stations. Among cable subscribers the Los Angles stations accounted for 52 percent and the San Diego stations 48 percent (id., pp. 26–27).

42. Moreover, appended to the comments of Columbia Broadcasting System (CBS), which is opposed to an assertion of jurisdiction, is a further study of CATV prepared by its Office of Economic Analysis. The CBS study points out that there is a time span lag before CATV impact is felt (CBS comments, Exhibit A, p. 27). This is partly because CATV penetration does not occur all at once; growth is gradual. But CBS also states that networks react slowly to changes in station audiences and that it might take 3 to 5 years for a change in an affiliate's audience to be reflected fully in the relative network rate. National spot revenues and local advertising, while reacting more quickly, would still take a considerable time. The study concludes (p. 31) that the "true reasons for the modest impact of CATV thus far are the relatively small amount of penetration that CATV's generally have in any particular market and the considerable length of time necessary for the effects of CATV to work themselves out."[28]

43. Like the Seiden Report, the CBS study bases its discussion of CATV potential and impact on CATV systems operating or franchised as of August 1964. It concludes, therefore, that CATV potential is limited to communities more than 40 miles from three stations providing the service of the three networks (plus some metropolitan area apartment house dwellers), an estimated 6 to 8 million TV homes. However, the study recognizes (p. 14) that CATV "systems are clearly moving closer to transmitting points" and states further (pp. 16–17):

> There is a final caveat that must be made at this point. There has been in the very recent past, and not included in the systems in our study, a group of applications for CATV systems in communities with three more-than-adequate network services which do not appear to be related to apartment house reception problems. Thus, applications for franchises have been made in places like Albany, Syracuse, Galveston, Philadelphia, and Cleveland, and a franchise has just been granted in Wilmington, Del. * * * While these do provide alternative programing, we do not know as yet whether this added factor will be sufficient to make the systems viable. If these systems are established and thrive, it is clear that the potential for community antenna systems far exceeds anything that we have talked about thus far and, in fact, much of the country could ultimately become CATV territory.

44. In view of the rapidly changing circumstances outlined above, we can see no point in conducting a further fact-finding inquiry with respect to nonmicrowave CATV as it has existed in the past. The extensive studies conducted by Dr. Fisher, Dr. Seiden and NCTA in conjunction with Docket Nos. 14895 and 15233,[29] and further studies of CBS and AMST in this proceeding, all concerned nonmicrowave as well as microwave CATV systems. Studies of this nature are out-of-date almost before we have had time to consider them. Moreover, they are of limited value since they cannot measure some of the most important factors we are bound to consider. These include the cumulative future effect of greater penetration by CATV systems franchised or applied for but not yet in operation, the degree of success to be achieved by CATV systems in big cities or other well-served areas, and the effect of the burgeoning CATV activity—if left unregulated—on the decisions of potential applicants and existing licensees as to whether to inaugurate or improve service.[30]

45. What we said in the first report and order in rejecting NCTA's argument that regulatory action should not be taken in the absence of a showing that stations have ceased operation, or are about to cease operation, applies with equal force to its renewal of that argument here.[31] We stated (par. 77):

> NCTA's argument that CATV has not yet caused any widespread demise of existing stations misses the point. As we have pointed out above, it would be clearly contrary to the public interest to defer action until a serious loss of existing and potential service had already occurred, or until existing service had been significantly impaired. Corrective action after the damage has already been done, if not too late, is certainly much more difficult. Further, it is difficult, if not impossible, to attempt to delineate with any precision a factor such as discouragement of entry of potential broadcasters because of CATV competition. In short, we must plan now for the healthy co-existence of CATV and local stations and safeguard the public from future injury. Circumstances have changed since our 1959 report and order, and the likelihood or probability of adverse impact upon potential and existing service has become too substantial to be dismissed. If studies are in conflict and pre-

[27] Percentages total more than 100 percent because some multiple answers were given.

[28] AMST argues that this time lag is not as great as CBS asserts. It states (reply comments, p. 22): "However long before an affiliate's network rate card is affected, advertisers will inevitably drop from network orders those stations which show serious audience losses, whether from CATV or any other cause. That this is the likely sequence is demonstrated by the parallel situation—network radio, which felt the impact of television by sharp decreases in station orders long before those stations' network rates were affected."

[29] See, e.g., pars. 20 and 32 of the first report and order in Docket Nos. 14895 and 15233, and p. 49 of the Seiden Report.

[30] The CBS study further asserts (pp. 27–30) that the effects of a rise in CATV penetration with its depressing effect on station revenues are offset in large degree by the persistent rise in advertising demand for television time. However, as AMST points out, the number of stations sharing the advertising demand is also increasing as new UHF stations stimulated by the all-channel law commence operations. Moreover, annual broadcast expenses are on the average increasing apace with revenues.

[31] While the distant signal procedure adopted in Part II will probably have some effect on the trends we have been here discussing, we think that application of the carriage and nonduplication requirements to all systems is still required in the public interest. First, not only will this end the present unwarranted discrimination between the microwave and nonmicrowave system, but it is called for on the basis of the fair competition ground, discussed in pars. 26–27. Second, as to the economic impact ground we note that in view of recent growth, there are a very substantial number of CATV systems operating on the date of release of this report with the capacity to keep growing to perhaps 50–70 percent of the television homes in their communities, and thus to have a cumulative effect in areas such as those noted in the prior discussion (e.g., pars. 35–37). New systems will continue to come into operation under the interim procedure, and it may be important that the cumulative effect of such systems, after growth to significant figures, be ameliorated to some extent by the carriage and nonduplication requirement. Most important, the distant signal procedure is of interim nature, subject to discontinuation or revision. See par. 150. The carriage and nonduplication rules which we adopt here are not interim—they are our best judgment of what the public interest calls for over an indefinite period.

sent a close question as to the precise extent of the impact, it is not close as to how this uncertainty should be resolved. This is one of those situations in which the public interest requires that conditions conducive to the sound future of television "be assured rather than left uncertain." United States v. Detroit Navigation Co., 326 U.S. 236, 241. This is particularly so, where we have two modes of service, one of which is almost completely dependent on the other for its product. In such circumstances uncertainties should be resolved in favor of ensuring the healthy growth and maintenance of the basic service.

46. In sum, we have concluded in the first report and order in Docket Nos. 14895 and 15233 that the public interest requires that CATV systems carry local stations without duplication for a reasonable period, in order to avoid unfair competitive disadvantage to and prejudicial effect on existing and potential broadcast service. We have concluded herein that we have authority under the present provisions of the Communications Act to extend these requirements to nonmicrowave systems. In view of the rapid surge in CATV growth since this proceeding was initiated, we think that our statutory obligations require us to act now in the areas we have proposed. This will end the present unwarranted distinction between microwave and nonmicrowave systems, and will enable us to make the rules effective before operations are commenced by a large number of CATV proposals presently in the franchise or application stage.

C. Substantive Provisions of the Rules

47. CATV systems, as we recognize in the first report (pars. 43, 48) and here again emphasize, have arisen in response to public need and demand for improved television service and perform valuable public services in this respect. CATV (like other auxiliary television services) makes possible the provision of a variety of program choices, particularly the three full network services, to many persons in areas with no local station and in one and two station markets. CATV systems also afford a means of providing nonnetwork commercial and educational services to many persons in areas with insufficent population to support local broadcast outlets of this nature. CATV systems make important contributions by providing good quality reception of color signals and improving reception of local signals in areas within the predicted contours of local stations where off-the-air reception is inferior or precluded because of terrain, man-made structures or other factors. We do not intend to deprive the public of these important benefits or to restrict the enriched programing selection which CATV makes available. Rather, our goal here is to integrate the CATV service into the national television structure in such a way as to promote maximum television service to all people of the United States (secs. 1 and 303(g) of the Act), both those who are cable viewers and those dependent on off-the-air service. The new rules discussed below are the minimum measures we believe to be essential to insure that CATV continues to perform its valuable supplementary role without unduly damaging or impeding the growth of television broadcast service.

48. To insure effective integration of CATV within a fully developed television service, the new regulations will apply equally to all CATV systems, including those which require microwave licenses and those which receive their signals off the air.[32] We have carefully reexamined the CATV rules currently in effect for microwave-fed systems, and have made some changes. The microwave rules will be revised to reflect the new rules adopted for all systems.

49. In brief, under the new rules, a CATV system will be required, upon request and within the limits of its channel capacity, to carry without material degradation the signals of all local television stations within whose Grade B contours the CATV system is located, in order of priority of signal grade. A CATV system will be required, upon request, to avoid duplication of the programs of local television stations carried on the system during the same day that such programs are broadcast by the local stations. This nonduplication protection, as under the existing rules, will apply to "prime time" network programs (i.e., presented by the network between 6 and 11 p.m., e.t.) only if such programs are presented by the local station entirely within what is locally considered to be "prime time." Nonduplication protection will not be afforded to programs which are carried in black and white by the local station and are available in color from a more distant station on the CATV system. Ad hoc consideration will be given to petitions from local television stations seeking a greater degree of protection than provided by the rules, or from CATV operators seeking a waiver of the rules, and we are adopting procedures to facilitate such petitions. Moreover, the Commission will continue to give full effect to private agreements between CATV operators and local television stations which provide for a different type or degree of protection for the local station than do the Commission's rules.[33]

50. Thus, the carriage requirements made applicable to all CATV systems will be substantially the same as those applied to microwave-served systems by the Commission's first report, except in certain minor respects discussed in paragraphs 74 and 83 below. However, the new nonduplication rules embody two substantial changes from those adopted in the first report. First, the time period during which nonduplication protection must be afforded has been reduced from 15 days before and after local broadcast to the single day of the local broadcast. Second, a new exemption from the nonduplication requirement has been added as to color programs not carried in color by local stations. We shall discuss the nonduplication changes first because they are of a major nature.

[32] Excluded from these rules will be those CATV systems which serve less than 50 subscribers, or which serve only as an apartment house master antenna.

[33] Private agreements will not avoid the necessity for evidentiary hearing for the importation of distant signals into the top 100 markets (Part II, below), though such agreements will be considered in our decision.

1. The Nonduplication Provisions

51. Modification of the nonduplication period: Nonduplication at the same time that a local broadcast is being carried on the cable is clearly called for in the public interest for the reasons discussed above and in the first report. Simultaneous nonduplication protects the bulk of the popular network programing of most network affiliates and does not affect the time that such programing is available to the CATV subscriber. In the first report we further determined that some measure of protection beyond simultaneous nonduplication would also serve the public interest on a number of grounds. We shall not repeat here the reasons set forth in the first report for that determination or for the further judgment that a 15-day before-and-after the period was appropriate.

52. We have reconsidered the latter judgment and have decided to strike a different balance in light of the fact that the rules are now being made applicable to a large number of existing systems and will affect their existing service to the CATV viewing public. The systems which will now operate under the rules for the first time constitute the great bulk of the CATV industry. In addition to all nonmicrowave systems, they include a sizable number of microwave CATVs served pursuant to authorizations granted prior to December 1963 when the interim condition procedure began. We recognize that the imposition of a 15-day before-and-after nonduplication requirement on systems which have not previously operated in this manner would tend to substantially disrupt the viewing habits of the CATV subscribers. As NCTA points out (NCTA comments, Exhibit B, pp. 35–38), there is no question but that large numbers of CATV subscribers have become accustomed to viewing network programs at the time they are presented by the distant affiliates. Although 15-day before-and-after nonduplication was not required where timeliness was important, and all distant city programs deleted under the rules would have been available to the CATV subscriber via the local signal at some time within the total 30-day period, the CATV viewer might not be able to view it on the later date of presentation by the local station for any number of personal reasons.

53. We believe it desirable to avoid disruption to the established viewing habits of the public as much as possible. Moreover, we are seeking to preserve, to the extent practicable, the valuable public contribution of CATV in providing wider access to nationwide programing and a wider selection of programs on any particular day. Balancing all the pertinent considerations, we think that the nonduplication period should be reduced to the same day for existing systems. Not only will this eliminate the

great bulk of delayed nonduplication requests (see par. 125, first report), but it will insure that the program is available to the CATV audience that same day and, in the case of network prime time program, that same evening. While not wholly eliminating any possible change in viewing time on the pertinent day, this revision clearly minimizes any disruptive effect on the CATV viewer. As an incidental benefit, we note that same-day-nonduplication will substantially reduce the areas of possible dispute between broadcasters and CATVs in complying with the rules, and to this extent will facilitate ease of administration.

54. Application of a 15-day before and after nonduplication provision to new systems would not, of course, cause a similar disruption to established viewing habits, since the CATV subscriber would from the beginning receive service in accordance with the rules. It would be possible to "grandfather" existing systems on a same-day nonduplication basis and make 15-day nonduplication effective only as to new systems. But there are a number of countervailing arguments. First, even in the case of the new system, there is disruptive effect to the extent that the CATV subscriber may not be able to view programs from distant stations at the times specified in his TV guide (and may be unable to view them at the later date presented by the local station for any number of reasons). It is our understanding that it is essentially for that reason that some broadcasters, although previosuly entitled under our microwave rules to 15-day before and after nonduplication protection, have requested only simultaneous nonduplication. Second, it is obviously preferable to have one set of rules for all systems and thus to avoid the anomalous situation of millions of CATV subscribers viewing under one set of rules and other millions, often neighbors in close-by communities, subjected to a different set. Under the circumstances, we think it better to provide by rule for same-day nonduplication for all systems, and to safeguard the public interest in the particular instance warranting different treatment pursuant to the ad hoc procedures discussed in paragraph 97 below.

55. We also considered the question of retaining the 15-day before-and-after nonduplication provision for nonnetwork programing. But, as we have previously recognized, and indeed stress in this report (pars. 123, 131 infra), 15 days before and after nonduplication affords, at best, only minimal protection with respect to the presentation by local stations of syndicated and film programing. Such programing is not presented on a nationwide simultaneous or even nearly simultaneous basis. Retention of the 15-day provision for nonnetwork programs alone would serve little effective purpose. Stated differently, the adoption of a uniform "same day" rule will not, in our judgment, significantly affect the protection afforded as to nonnetwork or independent programing. Rather, we have determined that we must look elsewhere if we are to achieve effective relief in this respect. We treat the situation of the independent station in Part II below.[34] As a general approach encompassing all stations, we are proposing to the Congress that it consider the question of extending the rebroadcast concept of section 325(a) to CATV. It may be that regulation of this nature would prove a preferable and more effective means of achieving fair recognition of the exclusivity contracts of the program market place. Here again, we shall consider requests seeking more extensive protection of nonnetwork programing on an ad hoc basis to insure that the public interest is not prejudiced in the unusual situation (although, as stated, we are unaware of any instance where the 15-day period afforded effective relief in this respect).

56. While conflicting considerations are presented, we believe that our resolution constitutes a fair compromise. First, "same day" nonduplication is clearly sufficient to take care of the time zone differential problem; i.e., to preclude a CATV system, which brings programs across either border of the mountain time zone, from duplicating most, if not all, of a local station's network programs an hour or two before or after they are presented locally. Moreover, it will afford the station affiliated with more than one network some leeway in presenting what it regards as the most attractive programs of each for the benefit of the non-CATV audience (and also, the CATV audience—see par. 115, first report) so long as such programs are presented on the same day as the network presentation and prime time programs are broadcast entirely within prime time hours.[35] This will, as stated, minimize any disruption to the CATV subscribers. In addition, we will consider requests by local stations and CATV systems for different treatment on an ad hoc basis, pursuant to the summary procedures discussed in paragraph 97, where possible, or by evidentiary hearing if necessary. Thus, the station which receives its network programming by mail, or the station or system which faces some other unusual problem, can bring its situation to our attention for such relief as may be appropriate in the individual circumstances and warranted by the public interest. Similarly, the CATV system can seek a waiver of the rules. We stress, in addition, that the Commission will continue to give full effect to private agreements between CATV operators and local television stations which provide for a different type or degree of protection for the local station than do the Commission's rules. We believe that the above resolution fairly serves the public interest. If further revisions are needed on the basis of our experience with these new provisions, we shall of course move promptly to inplement such revisions.

57. Our decision to adopt "same day" nonduplication makes appropriate some other revisions in the exclusivity sections of the rules. First, however, we stress those provisions which remain unchanged. We shall retain the provision requiring the local station to present prime time network programing entirely within prime time hours in order to be entitled to nonduplication.[36] Thus, the CATV system need not delete reception of any network program which is scheduled by the network between the hours of 6 and 11 p.m., e.t., but which is broadcast by the station requesting deletion, in whole or in part, outside of the period which would normally be considered prime time for the network programing in the time zone involved. This will insure that such programs are available to the CATV subscribers in maximum viewing hours. We shall also retain the provision that the CATV system need not delete reception of any program as to which time of presentation is of special significance, such as a speech or sporting event, except where the program is being simultaneously broadcast by the local station. And, although it is of greatly reduced significance for "same day" nonduplication, we shall retain the provision that the CATV system need not delete reception of a network program if, in so doing, it would leave available for reception by subscribers, at any time, less than the programs of two networks (including those broadcast by any stations whose signals are being carried and whose program exclusivity is being protected pursuant to the requirements of the rules).

58. However, there no longer appears to be any real necessity for the provisos

[34] With "same day" nonduplication affording substantial protection to the most popular network programing, most network affiliated stations should be viable.

[35] In this connection, we note that the amount of delayed network broadcasting in the median one or two station markets is about 5½ and 11 hours per week, respectively. See par. 108, first report. While this amount is not insignificant and we recognize that there will be some detriment to the public if the local station in the median market curtails delayed broadcasts because of the absence of nonduplication protection, we point out that the amount of delayed broadcasts is not of too large a nature in the median market, and that we would not expect the local station to cease all delayed broadcasts in the absence of delayed nonduplication protection. Moreover, the pending liberalization of our translator policies may result in greater availability of off-the-air service in one and two station markets.

[36] AMST has requested elimination of the exception for prime time programs broadcast outside of prime time hours. AMST urges that this provision is unnecessary because it is normally in the best interests of the station to carry prime time programs in prime hours and the Commission has ample power to remedy any abuse. It is further asserted that there may be instances where a station reasonably desires, and has network consent, to carry such programs at other hours. However, a prior CATV presentation does not preclude the station from repeating the program outside of prime time if it has good reason to do so, and it is unlikely that instances of this nature would arise often enough to make the loss of exclusivity a significant problem. Since the provision is designed to insure that CATV subscribers have prime time programs conveniently available in the hours of maximum viewing, the public interest is best served by its retention.

to §§ 21.712(g), 74.1033(e), and 91.559 (e); i.e., that:

(1) The system is not required to maintain the exclusivity of the network programing of any such station if the system carries the signal(s) of one or more equal or higher priority stations (other than a satellite or parent of the station requesting exclusivity) which substantially duplicates the network programing of the station requesting exclusivity; and

(2) The system is not required to maintain the exclusivity of the nonnetwork programing of any such station if the system carries the signal(s) of one or more equal or higher priority stations (other than a satellite or parent of the station requesting exclusivity) which operates in what are normally and usually considered other markets for purposes of television program distribution.

These provisions were grounded in the 15-day before-and-after nonduplication period which protected network programs delayed substantially beyond the date of network presentation and protected nonnetwork programs for a total of 30 days. In view of "same day" nonduplication, we shall provide simply that higher priority signals carried on the system are entitled to exclusivity against lower priority or more distant signals but not against signals of equal priority.[37]

59. Color duplication: In the first report and order in Docket Nos. 14895 and 15233 we decided that the public interest would be served by some accommodation which would permit a CATV system to duplicate the programs of a local station in color where the station transmits only in black and white (par. 143). However, we did not there determine whether such an exception should apply across the board or whether the CATV system should be required to make a threshold showing that a certain number or percentage of its subscribers possess color receiving sets. Comment on this question was invited in this proceeding.

60. Most of the comments, from broadcast and CATV interests alike, favor permitting color duplication on an across the board basis. No one has supported the proposed alternative of requiring a threshold showing by the CATV system. It is urged that it is in the public interest for color programing to be available to as many persons as possible, and that this should be encouraged by the Commission pursuant to section 303(g) of the Act. The few comments opposed to making an exception for color claim that it is unnecessary. They assert that most stations not already equipped to present network programs in color will acquire such equipment now that all of the networks have commenced a significant degree of color transmission. It is further asserted that the exception would penalize smaller stations lacking financial resources to convert to color.

[37] Though these modifications stem from our action in shortening the nonduplication period, we note that changes of this nature were requested by AMST and ABC under the 15-day before-and-after nonduplication period.

61. In light of the comments, we have decided to permit color duplication of local black and white transmissions without requiring any threshold showing by the CATV system. It may be that most stations will shortly be equipped to present network programs in color. But in that event the broadcasters have no real cause for complaint in the adoption of a provision which will not adversely affect them. We think that the exception is in the direction of encouraging the wider distribution of color programing and that it is consistent with the supplementary role of CATV. Any local station finding itself at a significant disadvantage can install equipment for the transmission of network color programs "at relatively little expense" (comments of American Broadcasting Co.), which would benefit its non-CATV viewing public. Hardship situations may be brought to the Commission for such relief as may be warranted by the station's showing. Accordingly, the rules governing microwave-served CATV's will be amended in this respect and the exception will be incorporated in the rules adopted for all systems. The exception will also apply where a local station is equipped for simultaneous color transmission of network programs, but delays a color program for later presentation on the same day by means of black and white video tapes.

62. Some of the CATV comments urge us to go further and permit duplication of local colorcasts where a CATV system makes a showing that the technical quality of the local signal is substantially inferior to another signal. While we would, of course, consider any such showing on a case-by-case basis, we have no reason to anticipate any widespread problem warranting action by rule. We expect that valid complaints of this nature will be rare. In most instances the technical quality of the local signal should be sufficiently good to permit satisfactory color reception on the cable if the CATV system and the station cooperate in good faith to accomplish this result. We would expect good faith efforts by both to resolve any technical problem before any complaint is made to the Commission.

63. Other changes in the nonduplication provisions suggested by the parties. The comments of NCTA (Exhibit B, pp. 35–38) assert that last minute program changes by the local station require the CATV operator to bear the labor costs of a manually controlled switching device or to punch a new tape for the remainder of the week where an automatic switch is used. While this assertion was made in the context of the delayed nonduplication provision, we think that the broadcaster should afford the CATV sufficient advance notice of nonduplication requests to permit the CATV system to make its program schedule available to subscribers and to set an automatic switching device only once for the entire week. Accordingly, we shall amend §§ 21.712(h), 74.1033(f), and 91.559(f) to require that the station, upon request of the CATV operator, shall give notice under these sections at least 8 days prior to the broadcast to be deleted. Since "same day" nonduplication affects principally network programs, which are ordinarily presented at the same time each week during the network season, this amendment should pose no difficulty for the station.[38] Indeed, in most instances it would appear that such notice could be given at the start of the network season and continued in effect until further notice occasioned by changes in the schedule of the network or the local station.

64. AMST urges that the rules be modified to provide nonduplication protection to local stations which are not carried on the cable—either because no request has been made or because of the limited channel capacity of the system. It states that carriage has no essential relationship to nonduplication and should not be a condition of the latter. We cannot agree. If nonduplication were afforded where the local station is not carried, the CATV subscriber would, in some instances, be greatly inconvenienced and, much more important, in others be deprived of all opportunity to view the programs involved. See paragraph 51, first report. This is not the purpose or effect of the rules as written, nor would it serve the public interest. As set forth in paragraph 68 below, the better procedure where the system's channel capacity is too limited to permit full carriage of the local station is to substitute its programs for the duplicating outside signal. Partial carriage would retain the availability of the programs to CATV subscribers and at the same time afford the station some measure of protection.

65. Other changes in the nonduplication provisions requested by AMST and ABC have been rendered moot by our action in shortening the nonduplication period to 1 day and the modifications we have made in that connection. Accordingly, we shall not discuss their contentions in this respect. The comments with respect to nonduplication of noncommercial educational stations are discussed in a separate section on educational television (section 4 below).

2. The Carriage Provisions

66. We shall, as stated, apply to all CATV systems substantially the same carriage requirements as were adopted for microwave-served systems in the first report.[39] Thus, within the limits of its channel capacity, a CATV system will be required to carry the signals of all commercial and educational television stations within whose Grade B contour the system is located, giving priority: First, to principal community signals; second,

[38] It has come to our attention that the requesting station may have difficulty in giving notice where the CATV does not always carry the same signals. Where a CATV system varies the signals carried, it should provide the local stations with a copy of the CATV schedule in sufficient time to permit the station to give notice of the programs to be deleted.

[39] There are, however, changes stemming from our resolution of the translator question (sec. 3 below).

to Grade A signals; and third, to Grade B signals. The CATV system need not carry the signal of any station, if (1) that station's network programing is substantially duplicated by one or more stations of higher priority and (2) carrying it would, because of limited channel capacity, prevent the system from carrying the signal of an independent commercial station or a noncommercial educational station. Moreover, in cases where (1) there are two or more signals of equal priority which substantially duplicate each other and (2) carrying all such signals would, because of limited channel capacity, prevent the system from carrying the signal of an independent commercial station or a noncommercial educational station, the system need not carry all such substantially duplicating signals, but may select among them to the extent necessary to preserve its ability to carry the signals of independent commercial or noncommercial educational stations. Where a signal is required to be carried, it shall be carried without material degradation in quality, and shall be carried in full except to the extent that nonduplication of higher priority signals may be required under the rules. Upon request of the local station, the signal shall be carried on the system on the channel on which the station in transmitting (where practicable without material degradation) and on no more than one channel. Where a system is not carrying the signal of a Grade B or higher priority station, it shall offer and maintain for each subscriber a switching device to allow the subscriber to choose between cable and noncable reception, unless the subscriber indicates in writing that he does not desire this device.

67. Modifications requested by the parties. Some of the parties have requested changes in these provisions. Thus, NCTA urges that CATV subscribers see no reason why out-of-State stations should be regarded as local. It asserts that CATV systems should have the option to carry more distant signals originating within the same State in preference to out-of-State stations placing a Grade B signal over the community. We agree that there may well be instances where the programing of stations located within the State would be of greater interest than those of nearer, but out-of-State, stations, e.g., coverage of political elections and other public affairs of statewide concern. We recognize also that there may be instances where out-of-State stations located in another State are of greater community interest than the geographically nearer out-of-State stations because of closer community ties with the third State. Considerations of this nature will be accorded substantial weight as a basis for waiver of the carriage provisions.

68. In this connection, we emphasize that we intend to make every effort, consistent with the public interest, to avoid disrupting existing service to the public in applying the carriage provisions of the rules to systems now in operation.[40] Where, because of limited channel capacity, a CATV system cannot carry all Grade B signals without dropping a more distant signal now being carried, we shall entertain a request for waiver of the rules pursuant to the summary procedures discussed in paragraph 97 below and upon the basis of the showing specified in paragraphs 104, 106. In appropriate circumstances, waivers will be granted, which will permit the system to continue to carry the distant signal and to substitute the nearer signal only where simultaneous duplication would occur. Thus, upon such waivers, the CATV viewers would continue to receive all programs to which they were accustomed, via the more distant signal when the programs are different and via the local signal when the programs are the same. New systems can commence operation with a channel capacity sufficient to carry both the local and the distant signals; indeed, most new systems now commence operation with 12 channel capacity.

69. Sections 21.712(f)(2), 74.1033(d)(2), and 91.559(d)(2) presently provide that where a signal is required to be carried, it "shall, upon request of the station licensee or permittee, be carried on the system on the channel on which the station is transmitting (where practicable without material degradation)." WJAC, Inc., and WKBH Television, Inc., urge that carriage on channel should be a matter for the station's choice. According to WJAC, the station should be entitled both to insist that its signal be carried on another channel, and to select the channel of a lower priority or nonlocal station. AMST claims, on the other hand, that carriage on channel is extremely important and should be mandatory unless the CATV makes a compelling showing that this is not technically feasible without degradation. It states that the CATV should be required to take all reasonable steps to eliminate material degradation which may result from the CATV equipment used or inadequate installations.

70. Since §§ 21.712(f)(1), 74.1033(d)(1), and 91.559(d)(1) already provide that the "signal shall be carried without material degradation in quality (within the limitations imposed by the technical state of the art)," we do not think that any change in subsection (2) is called for. The requirement for on-channel carriage is only operative upon request of the station licensee or permittee. If this results in material degradation, the station can request carriage on another channel. Moreover, if the channel capacity of the system is such that some signal must suffer material degradation, the inferior signal obviously should not be that of a higher priority station.

[40] As in the case of our present policy with respect to microwave systems, carriage will not be required where a sufficient showing is made that a predicted signal is not in fact present in the community, or that a good signal is not obtainable because of technical deficiencies on the part of the station.

First report and order in Docket Nos. 14895 and 15233, paragraph 135. However, no reason appears why it is necessary for the station itself to select the alternative channel. So long as the requirements of the rules are met, the CATV operator should be free to decide how the channels on its cable are to be utilized.

71. AMST further asserts that the CATV system should not have complete discretion under §§ 21.712(d)(2), 74.1033(b)(2), and 91.559(b)(2) to select among substantially duplicating signals of equal grade where noncarriage of one or more is necessary to preserve its ability to carry the signals of independent commercial or noncommercial, educational stations. It urges that the rule should be modified to set forth reasonable standards for selection, such as the respective distances of the stations from the community, relative signal strength, respective audiences in the community—as measured by audience surveys, terrain considerations and the like. We recognized in the first report and order in Docket Nos. 14895 and 15233, paragraph 91, that leaving the selection to the CATV's discretion makes possible "discrimination between local signals in some instances." We further stated that we would closely examine complaints of abuse, particularly where the CATV operator has an ownership or other interest in one of the duplicating channels. We shall also give particular consideration to any allegation that the station not carried is one with closer community ties. The criteria suggested by AMST would not do away with the necessity for case-by-case resolution of complaints. AMST concedes (comments, p. 20) that any criteria for determining priority should not be inflexible and that an opportunity should still be provided for the submission of other data to the Commission. In the circumstances, it seems preferable to retain the rule in its present form until experience in its administration demonstrates what refinements might be needed or appropriate.

72. AMST also claims that exclusion of nearby network-affiliated stations in order to bring in distant independent stations which do not place a Grade B signal over the community of the CATV, should not be permitted since "this would drastically affect the normal off-the-air competitive pattern of television service" (AMST comments, pp. 20–21). This provision is admittedly a "compromise approach," recognizing both that a CATV system owes its primary duty to the stations that are closest and place the best signal over its community, and also that carriage of nonnetwork signals may contribute to the diversity of its service (first report and order in Docket Nos. 14895 and 15233, par. 89). The general questions of whether there should be some limit on the distance and number of nonlocal signals brought in, as well as the matter of "leap-frogging," are being considered in Part II of this proceeding. Pending resolution of these matters, we shall retain the rule in its present form.

73. Next, AMST asserts that the installation of a switching device should be mandatory in all cases, whether or not the local signal is carried, so that the subscriber will not be foreclosed from off-the-air service where the cable system is inoperative or not operating properly. It is further urged that no exception should be made when the subscriber indicates in writing that he does not desire a switch, since the requirement could easily be avoided by a "small-print" waiver in the subscription contract. While these suggestions may have some merit, we do not think they warrant a revision of the rules. The rules are designed to protect local stations in areas which are crucial and essential to preserve and encourage service to the public. For the reasons stated in par. 51 of the first report, particularly that going to "sheer inconvenience of switching * * *," we do not view this area as one of great significance, requiring further revision.

74. A further change suggested by AMST does, however, appear to warrant modification of the rules. Sections 21.712 (d) (3), 74.1033(b) (3), and 91.559(b) (3) now provide that where a CATV system operates within the Grade B or higher priority contour of both a satellite station and its parent, carriage of one will relieve the system of any obligation to carry the other. AMST points out that this would allow a CATV system in, or very near to, the same community as the satellite, to carry only the parent station, causing the satellite to lose audience for which it may be originating some local programing and reducing its incentive to originate programs. It urges that satellites should be treated like any other station in accordance with the prescribed priorities. Since satellites operate on assigned channels and possess the potential to develop into regular stations, there is a strong public interest in encouraging them to do so. Accordingly, §§ 21.712 (d) (3) and (g) (3), 74.1033 (b) (3) and (e) (3), and 91.559 (b) (3) and (e) (3), together with the note to those sections, will be deleted.

75. And, finally,[41] AMST suggests that CATV's be required to refrain from deleting or altering any portion (including advertising) of signals carried pursuant to the rules. Such a requirement is implicit in the carriage provisions and we would so rule upon complaint. The addition of an explicit provision does not appear necessary in the absence of some evidence of abuse. In this connection, we note that it is asserted in the comments of NCTA that some broadcasters who have requested systems to refrain from advance duplication of delayed broadcasts, have later presented only a portion of the program. Since the CATV system is relying exclusively upon the signal of the local station to bring the program to its subscribers, the station has an obligation to present in full any program for which nonduplication is requested. Again, upon complaint we would rule accordingly. See also paragraph 158, first report. Moreover, "same day" nonduplication will greatly reduce the likelihood of any incidents of this nature.

76. Accordingly, apart from the provisions relating to satellites and the changes occasioned by our disposition of the translator questions (sec. 3 below), the carriage requirements of the new rules will be the same as the provisions now governing microwave-served systems.

3. Translators

77. Part I of the notice in this proceeding (par. 36) requested comments on two questions concerning translators: (1) Whether CATV's should be required to carry and not duplicate the signals of station-owned translators operating beyond the parent station's Grade B contour,[42] and (2) whether translators should themselves be precluded from duplicating the programs of local stations.

78. With respect to the first question, the parties have expressed diverse views. The CATV interests and some of the broadcasters argue against extending any protection to translators outside the Grade B contour because such translators are operating outside the normal service area of the parent station, do not provide a local service or possess the potential for developing into regular local stations, and are relatively inexpensive to construct and operate. It is further asserted that translators should not be protected because they may impede the establishment of local stations.

79. AMST, Storer Broadcasting Co., NAEB, and the Farm Bureau urge, on the other hand, that all translators (including those not station owned) should be carried in order to provide an incentive for the establishment of translators. Translators, they claim, should be encouraged because their service is received off-the-air free and covers a wider area than cable service. They would exempt translators from the carriage requirement where: (1) The CATV system is carrying the translator's parent station, (2) the CATV system is within the Grade B contour of a station whose programing is substantially duplicated by the translator, or (3) the translator is supplying programing which substantially duplicates that of another translator whose originating station is closer. Nonduplication protection is not sought for the asserted reason that translators do not provide a local service or possess potential for developing into regular local stations.

80. We share the view that the public interest is served by encouraging expanded use of translators to bring television service to persons in rural areas and communities not now receiving adequate local television broadcast service. Apart from the fact that translator signals are received free and reach persons outside the urbanized areas served by CATV's, one of the major recommendations of the Seiden Report was that increased consideration be given to the expanded use of translators. The report states (p. 22):

> Consideration should be given to the use of translators as a tool of structural policy. They require a substantially smaller investment than CATV and are compact, highly mobile, and can be sold in the secondary market. In general they provide the flexibility necessary in an industry in which structural policy must be kept free to adapt to technological and demographic change. Translators are ideally suited as a temporary communications medium, and their use should be required of broadcast licensees in fulfilling their obligations to the public by bringing their signal to all homes in their coverage area.

The report also recommends increased use of translators to broaden the coverage of UHF stations (p. 90).

81. We have already taken a step in this direction in the report and order in Docket No. 15858, issued on July 9, 1965, amending the rules to permit 100 watt VHF translators on any channel listed in the table of assignments unoccupied by a regular television station or satellite. The rules were also amended to permit 100 watt UHF translators on all unoccupied UHF channels in the table of assignments in lieu of the previous limitation to the upper 14 channels. In addition, we have recently proposed to permit the use of microwave frequencies to relay programs to translators (notice of proposed rule making in Docket No. 16424, FCC 66-41).

82. In line with this policy, we think that CATV systems should, upon request, carry the signals of commercial and educational translators operating in the community of the system with 100 watt or higher power, where the system has the channel capacity to do so. Since noncarriage may effectively block the translator from access to CATV subscribers (par. 51 of the first report), the inability to reach the central core of the community may well destroy the incentive to establish translator service for nonsubscribers in the community and persons in the surrounding areas. Moreover, we think that "same day" nonduplication should also be afforded to translators carried on the system. Translators operating with 100-watt or higher power are properly distinguishable from other translators since they have greater potential for development into stations, and it is particularly important that such development not be impeded by CATV operations.

83. Accordingly, we shall add a fourth priority to the three already listed in the

[41] AMST also asks that the definition of substantially duplicating network programing (§§ 21.710(f), 74.1001(e) (6), and 91.557 (f)) be modified to apply only to a situation where two or more stations are primary affiliates of the same network. While such a definition might have been equally acceptable as an original matter, we do not think that any difference between the two is significant enough to warrant redoing the rules at this point. An additional proposal of AMST that the substantially duplicated concept be retained only for purposes of carriage has in effect been granted in view of the matters discussed in par. 58 above.

[42] Under the rules adopted in Docket Nos. 14895 and 15233, station-owned translators located within the Grade B contour are treated as extensions of the originating station (§§ 21.710(b), 74.1001(e) (2), and 91.557 (b)). Such translators will be treated the same under the new rules.

carriage provisions of the rules. Fourth, all commercial and noncommercial educational translator stations operating in the community of the system with 100 watt or higher power. As requested in the comments, exceptions will be added to exempt CATV's from the translator carriage requirement where: (1) The CATV system is carrying the originating station, or (2) the CATV system is within the Grade B contour of a station carried on the system whose programing is substantially duplicated by the translator. The provisions of the program exclusivity sections will also be appropriately amended to require "same day" nonduplication upon request of a translator station carried on the system.

84. With respect to the second question, whether translators should be required to refrain from duplicating local stations, our present policies and rules are as follows: Pending the outcome of this proceeding, we have been following a policy of conditioning UHF and VHF translator grants with the requirement that the translator, upon request of any station within whose Grade A contour the translator operates, refrain from duplicating the station's programs either simultaneously or within 15 days. Lee Co. TV, Inc., FCC 65–483, 5 Pike and Fischer, R.R. 2d 257; report and order in Docket No. 15858, paragraph 12. Under section 74.732(e)(1) of the rules, the only station-owned VHF translators authorized outside the Grade B contour of the parent station are high power (100 watt) VHF translators operating on assignments in the table of assignments. Moreover, § 74.732(e)(2) of the rules provides that a station-owned VHF translator which is intended to provide reception within the Grade A contour of another station will not be authorized if there is any duplication, unless the translator is intended to improve reception within the principal city contour of the parent station. However, we have waived the provisions of § 74.732(e)(1) and (2) where a nonduplication condition was imposed.

85. Our translator rules and policies are currently in a state of flux. Part II of this proceeding (notice, pars. 61, 64) proposes a reexamination of all of our rules and policies relating to auxiliary services to see if they are holding back or encouraging a variety of off-the-air services. A number of measures were proposed in the comments in Docket No. 14848, which were deemed beyond the scope of that proceeding but may be pertinent to this reexamination. It was suggested that the multiple ownership and duopoly rules be amended to allow potential 100 watt translator operators to convert these to regular stations and to encourage television station licensees to apply for them. Other suggestions included proposals for increased power for existing translators on other channels; removing the restriction in § 74.732(e)(1) on the use of VHF translators by television station licensees beyond their Grade B contour; permitting translators to be used as relay stations (only) where the need exists; permitting multiple RF amplifiers for UHF as well as VHF translators; and permitting UHF stations to use VHF translators within their Grade B contours. Moreover, AMST has recently filed a petition for a comprehensive, affirmative translator program which is being considered as a counter proposal in Docket No. 14229, and will also be considered in our resolution of basic translator policies in Part II of this proceeding.

86. We are not in a position to resolve these questions now. Moreover, we still lack sufficient information to determine the extent to which the rebroadcast consent provisions of section 325(a) may in practice limit duplication by translators.[43] In addition, if translators were required by rule to refrain from duplication within the Grade B contours of regular stations, a question would be presented as to whether the provisions of § 74.732(e)(1) and (2) continue to serve a useful purpose or should be amended. It would be contrary to the public interest to delay a resolution of other portions of Part I of this proceeding pending a thorough reexamination of the translator rules and policies. Nor does it appear advisable to undertake a partial revision of the translator rules at this point merely in order to attempt to equalize the position of translators and CATV's. In the circumstances, we think it best to defer rulemaking action until more basic translator policies have been established.

86a. In the meantime, we will continue to grant waivers of § 74.732(e)(1) and (2) in appropriate instances, and will condition station-owned VHF translator grants with a requirement of "same day" nonduplication within the Grade A contour. In view of our policy of encouraging UHF, we will not impose any nonduplication condition on UHF translator grants for facilities to operate in an all-VHF area. Nor do we believe it appropriate to follow any general policy of requiring a nonduplication condition where the translator applicant is not a broadcast licensee, e.g., a community sponsored translator. It would appear unlikely that such a condition is needed in, or would serve, the public interest. The rebroadcast provisions of section 325(a) may work with greater efficacy in the case of translators not owned by broadcast licensees. Further, the amount of duplication in this type of situation is not likely to be of a substantial nature, since local residents are clearly not apt to undertake the expense and inconvenience of translator operations supported by local assessments or donations unless a substantially different program service is being made available. In these circumstances, we do not think it desirable as a general policy to place any significant barrier, not urgently needed, to the development of such community-type translators. We shall, of course, consider whether additional requirements are appropriate, either upon request or on our own evaluation of a particular situation, and will make all translator grants subject to the outcome of Part II of this proceeding. We will also take into account, where warranted in individual situations, the possible discriminatory effect of our interim translator policy upon any existing CATV system competing with the translator.

4. Educational Television Stations

87. The rules adopted in Docket Nos. 14,895 and 15,233 require the carriage of noncommercial educational stations (ETV), but do not require CATV's to refrain from duplicating their programs. We followed this course because those proceedings were primarily concerned with commercial stations and many of the considerations discussed in the first report and order did not appear to be applicable to ETV. The notice herein recognized, however, that carriage alone might not be sufficient to promote the sound growth of local educational stations. Information was requested in this proceeding as to the nature of any further problems of ETV arising from CATV operations and what Commission action might be appropriate.

88. Other than educational interests, most of those commenting on this subject were against extending any nonduplication protection to ETV, for the asserted reason that the widest possible dissemination of educational material is in the public interest. It is further asserted that CATV competition has no economic impact on ETV because it operates on a nonprofit basis. National Educational Television (NET), the National Association of Educational Broadcasters (NAEB), and Eastern Educational Network (EEN) take a sharply different view in their more extensive comments. They claim that local educational stations, though different from commercial stations, have an even greater need for nonduplication and interim protection because CATV undermines the local financial support and other local interest which is vital to ETV operations. In this they are supported by American Broadcasting Co., AMST, and labor unions representing employees in the broadcast, CATV, and associated talent industries.

89. EEN and NAEB stress the importance of local financial support to educational stations. Although Federal grants-in-aid under Public Law 87–477 are available for the construction of educational facilities, the operations of such stations are almost entirely dependent

[43] Although the notice requested information on the extent to which networks and other program suppliers, through contracts or otherwise, affirmatively restrict duplication by translators, no party except National Broadcasting Co. commented on this subject. NBC states that since 1960 it has followed a general policy of granting consent for rebroadcast of its programs provided that the translator is closer to its originating station than to any other NBC affiliate. In a few recent instances, NBC has given rebroadcast consent where the translator operated in an area served by an NBC affiliate, but only for NBC programs which were not broadcast by the local station. See also, par. 53 of the first report and order; National Broadcasting Co., 20 Pike & Fischer, R.R. 1013; Millers River Translators, Inc., FCC 63–504, 25 R.R. 516, 518, affirmed in Springfield Television Broadcasting Corp. v. FCC, 328 F. 2d 186 (C.A.D.C.).

upon local financial support. Operating income is derived primarily from (a) schools and universities, (b) local and State governments, and (c) contributions and "subscriptions" from the general public and donations by local industries and businesses. Members of the public and local businesses will have little or no incentive to support the local station if ETV is made available on the cable by CATV's importation of outside educational stations. As EEN puts it (comments, p. 12): "It is wholly unrealistic to expect that the public will be willing to pay twice for educational service—to subscribe to CATV and to 'subscribe' to local ETV." Diversion of funds provided by local and area educational institutions and local and State governments for in-school television would be even more serious, since these sources generally provide over one-half of the financial support for local educational stations.[44] If a distant ETV signal is available on the cable, and can be fitted into local schedules of instruction, local schools and local and State governments would be much more unlikely to provide the financial support and other interest necessary to start a local educational broadcast service. This would be particularly the case where the CATV offers to wire the urban schools "free." Unlike the local educational station, the CATV is in a position to make such an offer because it does not pay for programs or maintain expensive facilities for local program origination and it can recoup the cost of free school service through subscription fees charged to the general public.

90. Should CATV activity within urbanized areas siphon off sufficient local financial support to preclude the establishment of a local ETV station, the loss would be keenly felt by the public. The existence and viability of local educational broadcast outlets has special significance for ETV because the educational process is geared to local conditions and needs. Local ETV stations are more than mere facilities for delivering educational programs. They are an integral part of the educational and cultural life of a community and area. This is particularly true where ETV is used for in-school instruction. ETV must plan, prepare, and schedule educational programing on the basis of individual school and community needs, whether the basic program material is produced by the station itself or outside sources. The station also provides study guides for use by the teachers in the schools. CATV cannot effectively provide this carefully planned and prepared service by indiscriminately importing signals from distant educational stations located in cities with different needs and interests.

91. Moreover, local educational stations serve not only the schools and populations in the immediate community; they provide service to the surrounding rural area not reached by CATV. NAEB points out (comments, p. 2):

> Indeed, it is the rural area with limited budgets, facilities and pupil concentration which has the most pressing need for the teaching resources of educational television. The specialized language, art, music or science teacher who cannot be supported by a rural school system can, nevertheless, be enjoyed through the pooled resources of educational television.

In this connection we note also comments filed by the American Farm Bureau Federation, National Farmers Union & National Grange stating that rural residents, who often are relatively remote from the entertainment attractions of the city, probably more than other groups of citizens in the country, rely especially on radio and television as a major source of entertainment and information.[45]

92. Accordingly, the educational interests urge that ETV stations be granted nonduplication protection for a period either the same as or much longer than that accorded to commercial stations.[46] Moreover, both NAEB and EEN urge the adoption of procedures to protect communities with educational reservations which have not yet been activated. NAEB requests that the CATV be required to notify local and area school authorities and ETV interests of its proposal to bring in a distant ETV signal. In this way, NAEB states, local ETV interests would be alerted and could bring the matter to the Commission's attention for whatever action or conditions appeared warranted in the circumstances. EEN urges the adoption of interim procedures similar to those proposed for CATV operations in major markets in paragraphs 49 and 50 of the notice.

93. The considerations put forth by the ETV interests are not answered by simply stating that the public interest is served by the widest dissemination of educational material. If CATV operations should prejudice the establishment of new ETV stations on the unused reserved assignments or prevent existing stations from realizing their full potential, the result would be a narrowing of the distribution of educational material—a loss hitting hardest persons residing in rural areas and those unable to afford CATV fees. As in the case of commercial stations, CATV's proper role is to supplement, rather than to supplant, local educational broadcast service. The national policy of encouraging the full development and expansion of ETV is reflected in the grants-in-aid legislation (Public Law 87-477) and has long been a matter of deep concern to the Commission (sixth report and order, pars. 33-49). It would be plainly inconsistent with that policy to accord educational stations less protection than commercial stations if there is any real likelihood of prejudice flowing from CATV importation of outside ETV signals. Considering the continuous financial struggle of ETV and its dependence upon local financial support and interest, we think that the possibility of adverse effect is sufficiently strong to warrant some special protection for ETV.

94. In view of our decision to adopt "same day" nonduplication for commercial stations and since it is asserted that effective nonduplication protection for ETV would require a much longer period, we do not think it appropriate to adopt 15-day before-and-after nonduplication for ETV, as requested by NAEB and ABC. There is no agreement among the educational interests as to what time period would be appropriate, and even an extensive nonduplication period would not solve the problem of achieving adequate operational funds for existing ETV stations. We believe that more effective relief to ETV can be provided by the approach discussed in the succeeding paragraph, than by delayed nonduplication periods such as 15 days before-and-after. Therefore, while recognizing that some measure other than nonduplication may be more suitable for ETV, we shall amend the exclusivity provisions to include educational stations. The rules will thus apply equally to all stations in line with our conclusion (par. 54 above) that they should be the same for all systems. We will, of course, be alert to guard against the possibility that CATV may pose a more acute problem for ETV than presently appears, and would not hesitate to amend the rules should this subsequently prove necessary. ETV interests have indicated their intention to keep us apprised of any worsening developments and are encouraged to do so.

95. Perhaps the most troublesome problem raised by the ETV comments is the possibility that CATV, by bringing outside educational signals into communities where educational assignments have not yet been activated, will siphon off enough local support to preclude the establishment of an educational station. The policy of reserving channels for educational stations is in recognition of the fact that some time may elapse before such stations come into being. While the grants-in-aid legislation has speeded up the process in many areas,[47] the reservations still serve a needed purpose which should not be undercut. CATV provides a valuable service to schools and other subscribers by bringing in ETV which is not yet locally available. But this should not be at the expense of preventing a local service from ever being established. Accordingly, we shall adopt the suggestion of NAEB that local and area ETV interests and school author-

[44] "The Financing of Educational Television Stations," report of a study conducted by Educational Television Stations, a division of the National Association of Educational Broadcasters, p. 19 (1965).

[45] Apart from ETV, it is stated that rural residents rely especially on local broadcasts giving agricultural information, weather conditions (flood, frost, etc.), pest hazards and current market conditions.

[46] The longer period is sought because of the block distribution process for the NET scheduled service and distribution patterns of regional educational networks like EEN.

[47] The number of educational TV applicants in UHF (where most of the unused educational reservations are) has increased from five at the beginning of 1962 to 30 as of the end of 1965; during this period 34 more UHF eduactional stations went on the air.

ities receive advance notice of CATV proposals to bring in outside ETV signals. The attached rules (Appendix D) require the CATV system to give notice of its proposal to bring in a distant ETV signal, at least 30 days prior to commencing service, to the local superintendents of schools and to the area and state educational television agencies (if any). This will enable ETV interests in the area to make objection to the CATV system where a local station is contemplated. Where a local ETV station is reasonably imminent and objection is made to the Commission, we would not ordinarily approve importation of the distant ETV signal unless it has been established after appropriate proceedings that this would not prejudice the establishment or maintenance of a local ETV service.

96. And, finally, it is asserted by NET and NAEB that, where an educational signal is carried on a CATV on a channel partially used for commercial signals, the placement of commercial announcements adjacent to educational material carried on CATV jeopardizes the public image of ETV and prejudices its position with program suppliers and copyright owners who insist upon noncommercial presentation. However, we do not think that a sufficient basis has been shown for the relief requested; i.e., prohibiting commercial announcements adjacent to educational programing or requiring CATV's to devote channels exclusively to educational programing. We cannot undertake to preserve ETV or commercial stations harmless from all conceivable prejudice no matter how slight. Moreover, we are reluctant to interfere with CATV operations any more than necessary in the public interest or to impose requirements not shown to be essential. CATV systems with limited channel capacity and those carrying a large number of commercial signals might find it difficult to devote channels exclusively to ETV. CATV's may also wish to use educational signals to fill in portions of commercial signals which cannot be carried because of the nonduplication requirements. Moreover, since educational stations normally do not have as long a broadcast day as commercial stations, the CATV system may wish to provide its subscribers with other material during the time that the educational station is not broadcasting. In view of the station identification announcements made during the course of the educational programing, it seems to us that the prejudice to the originating ETV station, if any, would be minimal.

D. PROCEDURAL MATTERS

1. Ad Hoc Procedures

97. It has been suggested in the comments that the Commission should adopt specific rules providing for summary, nonhearing, procedures to handle requests for waiver of the CATV rules or for different treatment or affirmative relief. We think the suggestion has merit. The general provision for waiver of any rule (§ 1.3 of the rules) does not afford an adequate procedure for seeking additional affirmative relief or different treatment. Moreover, such procedures would be useful to handle requests for rulings on complaints or disputes. We recognize that to hold hearings upon each such request relating to carriage, nonduplication and ETV, would be time consuming and burdensome to the CATV systems and stations involved, particularly those in smaller communities. In addition, while such procedures will not apply to the matter of distant signals in the top 100 markets, for which a showing made in evidentiary hearing is required (see par. 141 below), they could be utilized in many instances to resolve distant signal questions in the smaller markets.

98. Accordingly, we have undertaken in § 74.1109 of the attached rules to devise flexible and fair procedures which will generally permit expeditious processing of such requests. The procedures require a written petition with notice to interested persons and afford an opportunity for submission of comments or opposition to any request and for reply. Upon good cause shown, the Commission may shorten the times specified in the rules for the filing of opposition or reply comments. The petition and all other pleadings filed by the petitioner or interested persons must contain a detailed full showing, supported by affidavit, of any facts or considerations relied upon. In the case of complaints or disputes, the steps taken by the parties to resolve their problem must also be set forth. The Commission will, where possible, promptly dispose of the matter on the basis of such written submissions. However, additional procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects, may be specified by the Commission if they appear necessary or appropriate after consideration of the pleadings.[48] In the event that the petition involves new service to CATV subscribers, the Commission will expeditiously rule on the matter, either in whole or to the extent of determining whether there should be a stay or other temporary relief pending such additional procedures as may be required (see par. 100 below).

2. Information To Be Filed With the Commission by Existing CATV Systems; Notification by New CATV Operations

99. Pursuant to our authority under section 403 of the Communications Act, all existing CATV operators will be required to submit to the Commission, within 30 days after the effective date of our order herein, the following information with respect to each of their CATV systems: (a) The names, addresses, and business interests of all officers, directors, and persons having substantial legal or beneficial ownership interests in each system;[49] (b) the number of subscribers to each system both currently and as of February 15, 1966; (c) the television stations carried on each system; and (d) the extent of any existing or proposed program origination by each CATV system. Any CATV system which is located within the predicted Grade A contour of a television station in the top 100 television markets (as ranked by ARB on the basis of net weekly circulation of the largest station in the market) and which carries the signal of a distant station(s) will also be required to submit a map showing the location of its cable lines being used to serve subscribers on February 15, 1966.[50] It is not practicable to apply the notification provisions set forth below to the present operations of existing systems, and there is no comprehensive or accurate listing of CATV systems available to apprise television station licensees or permittees of all existing CATV operations within their Grade B contours. Indeed, we have noted that while the recent growth of CATV is of an impressive nature, there are conflicting estimates as to the precise dimensions of that very substantial growth. The information obtained will assist the Congress in its consideration of the Commission's legislative proposals in the CATV field, and the Commission in its consideration of matters in Part II of the notice and petitions described in paragraph 149 below.

100. New CATV systems will be required to notify the licensee or permittee of any television broadcast station within whose predicted Grade B contour the system will operate and the licensee or permittee of any 100 watt or higher power translator located in the community of the system, with a copy to the Commission, concerning the proposed operation within 60 days after obtaining a franchise or entering into a lease or other arrangement to use facilities. In no event may new service be commenced until 30 days after notice has been given. The notice shall include the name and address of the system, identification of the community to be served, the television stations to be distributed, and the estimated time for the commencement of operations. Similar notification will be required by existing systems which propose to add new distant signals (at least 30 days prior to commencing service) or to extend lines into obviously new geographic areas (within 60 days after obtaining a franchise or entering into a lease or other arrangement to use facilities or at least 30 days prior to commencing service where no new local au-

[48] Since petitions under the ad hoc procedures may involve the resolution of controversial issues which in basic fairness should be determined on the pleadings of the parties, we shall amend the ex parte rules to make them applicable to proceedings under § 74.1109, as well as to proceedings under §74.1107. The principles discussed in par. 9 of the report and order in Docket No. 15381, FCC 65-598, 1 FCC 2d 49, will also apply.

[49] In stating the ownership interests in a corporation which has more than 50 voting stockholders, only those stockholders need be considered who are officers or directors or who directly or indirectly own 1 percent or more of the outstanding voting stock.

[50] Existing systems in the markets below 100 may subsequently be required to submit a map showing the location of lines as of a specific date in connection with any petition for ad hoc consideration of a geographic extension into new areas.

thorization or contractual arrangement is required). In addition, as already indicated, notice to local and area educational authorities and ETV interests will be required at least 30 days prior to commencing service where carriage of a distant ETV signal is proposed. Such notification will afford the local television stations and other interested persons an opportunity to request carriage and nonduplication under the rules or to petition the Commission for different requirements, before service is commenced and thus avoid disruption to the public. Where a petition for ad hoc consideration is filed with the Commission by any station, CATV system, or other interested person within 30 days after notice, new systems and existing systems proposing to add new distant signals shall not commence new service until after the Commission's ruling on the petition or on the interlocutory question of temporary relief pending further procedures.[51] In the event that an evidentiary hearing is required, the question of whether there should be a stay or other temporary relief pending the hearing will be expeditiously resolved prior to the hearing on the basis of the pleadings of the parties and such additional written submissions as the Commission may request.

3. Form and Enforcement of the New Rules

101. Aside from the obvious distinction that nonmicrowave CATV's do not file applications for licenses with the Commission or use licensed facilities, no special problems of substance or procedure in making the carriage and nonduplication requirements applicable to them have been called to our attention and none is apparent to us. While the substantive requirements will therefore be the same for all systems, some differences in form or procedure are necessary in the case of the nonmicrowave CATV's. First, the obligations will be imposed directly on the CATV system itself, rather than taking the form of conditions on microwave authorizations. Second, enforcement will be through the cease and desist procedures set forth in section 312 (b) and (c), or pursuant to section 502, of the Act and will not include other sanctions applicable to licensees. And, third, some change is required in the provisions requiring notification to all licensees or permittees of television stations placing a Grade B or better signal over the community of the CATV system that a microwave application has been filed or a request has been made of a common carrier for microwave service. (See sec. 2 above.)

4. Retention of the Microwave Rules

102. It is urged by American Telephone & Telegraph Co. and by United States Independent Telephone Association (both in comments in Docket No. 15971 and in its petition for reconsideration of Docket Nos. 14895 and 15233) that the rules governing microwave grants should be deleted when the obligations are imposed on CATV systems directly. We think it best to retain the rules conditioning microwave grants (as revised herein) in their present form for a while longer, until CATV's generally are operating in accordance with the new rules. Pending such compliance, we cannot make the requisite public interest finding for the issuance of the microwave licensee in the absence of a showing that the facilities will be used in accordance with the conditions. Moreover, the requests of AT&T and USITA are primarily grounded in the alleged burden to the common carriers, which will be substantially alleviated in this interim period by the revisions made in the memorandum opinion and order on reconsideration in Docket Nos. 14895 and 15233, 1 FCC 2d 524. However, once widespread CATV compliance with the new rules has been achieved, some modification of the microwave rules would clearly appear to be appropriate and we shall take action toward this end as soon as it is possible to do so.

5. Transition Period

103. In the first report and order (par. 161) and in the notice (par. 34), we stated that we would consider in this proceeding the question of whether there should be some kind of transition period before the carriage provisions are made fully applicable to microwave and nonmicrowave systems with limited channel capacity. To obtain relevant information, the Commission mailed a questionnaire to every known CATV operator. The questions were designed to elicit specific information with respect to the effective channel capacity of each system, the local television signals which might fall within the carriage provisions of the rules, and the number of channels in use for nonlocal television signals or other purposes. Responses were received from 1031 CATV's, of which 250 were microwave-served and 781 were nonmicrowave.

104. Upon analysis of the responses, it appeared that less than 20 percent of the microwave systems were not in compliance with the carriage provisions, and half of these either had the unused channel capacity to come into compliance, or, in view of plans to expand the system, would shortly be able to comply. Less than 10 percent of the microwave systems could not comply with the rules without having to drop one or more signals currently carried. Accordingly, the Commission, on December 8, 1965, determined that there was no need to afford microwave-served systems a general delay in the application of the rules relating to carriage, and notified all common carrier and Business Radio Service licensees serving CATV's that the rules would be effective on and after February 1, 1966, to renewal applications. We further advised such licensees that the renewal application should contain a request for waiver of the rules relating to carriage, if a waiver were desired, together with the following showing:

> The request for waiver should include the petition by the CATV system that the microwave licensee seek the waiver from the Commission; and the system should include a statement that it has served a copy of that petition on any television station to be affected. The request for waiver should demonstrate the hardship to the CATV system, the disruption of service to the customers of the CATV system which would result from immediate compliance with the carriage requirements, the need for the particular length of time for which the waiver is requested, and the future plans to come into compliance. Finally, the request should state whether substitution of the local station's signal on a simultaneous-only basis will be afforded during the period for which any waiver is granted where the local station is not now carried and its programing is duplicated by a more distant signal. See Black Hills Video Corp., 6 Pike & Fischer, R.R. 2d 199, at 201 (par. 9).

105. With respect to the 781 nonmicrowave systems who responded to the questionnaire, it appears that 605 are already in compliance with the carriage requirements of the rules. An additional 87 systems have sufficient unused channel capacity, or are expanding their capacity, and would be able to comply without having to drop any presently carried television signal. Two systems might have to utilize a channel presently carrying FM radio and CATV originated programing, and 10 systems furnished insufficient information for any conclusion as to their situation. There remain 77 systems which would have to drop one or more television signals presently carried in order to add one or more television signals required to be carried by the rules.

106. Thus, as in the case of microwave systems, it appears that only a comparatively small percentage of the nonmicrowave systems could not comply with the carriage provisions without substituting a local for a more distant signal. In the circumstances, we believe that there is no need to provide for a general transition period by rule. The problems of individual systems will be considered on a case-by-case basis, upon a request for waiver making the same showing applicable to microwave systems. Accordingly, the rules will apply immediately to all new CATV systems commencing operations on or after their effective date, and will apply 60 days thereafter to existing systems unless a request for waiver has been filed with the Commission. Our aim is to allow an orderly transition period for the relatively small number of systems with limited channel capacity whose viability might be jeopardized by immediate application of the rules, or where existing service to CATV subscribers would be unduly disrupted (as against the Black Hills type of protection (6 R.R. 2d 199, at 201 (par. 9)) during the appropriate transition period).

107. The foregoing discussion of the apparent situation with respect to carriage does not take account of 100-watt translators operating in the community of the CATV. Our decision (pars. 82, 83 above) to accord high power translators fourth priority may raise some ad-

[51] The matter of extension of lines into new geographical areas by existing systems in top 100 markets is discussed in par. 149 below. As already indicated, the ad hoc procedures do not apply to new service involving distant signals in the top 100 markets or obviate the need for evidentiary hearing as set forth in pars. 141–143 below.

ditional channel capacity problems. While this new provision will have the same effective date, waivers may be sought by microwave and nonmicrowave systems either within the 60-day period or upon receipt of any request for translator carriage which gives rise to some problem.

6. Copyright Suits

108. Finally, we shall make brief mention of the copyright matter because, despite our plain statements in paragraph 159 of the first report, there would still appear to be some confusion on the part of some persons as to the effect of our carriage and nonduplication rules upon the pending copyright disputes. We have stated that our decision is not intended to affect in any way the pending copyright suits, involving as they do matters entirely beyond our jurisdiction. We have simply taken into account the existing practices of CATV systems and the present inability of program suppliers to control the availability of their programs via CATV. Thus, the fact that we have given the local station the right to have its signal carried over the CATV system (and not duplicated for a reasonable period), affords no defense to that system in a copyright suit. The station cannot bestow broadcast or transmission rights to programing which it does not own(or as to which it has not obtained a license to do so). See report on rebroadcasting rules, 1 (part 3) Pike and Fischer, R.R. 91:1133, 1134, 1137, where we stated in connection with rebroadcast rights under section 325(a), that the section "may no longer accurately reflect present conditions" since most programs were not owned by the originating station who could not therefore legally grant the rebroadcast permission sought. In short, if the copyright suits are decided adversely to the CATV industry, we may, as stated in the first report, have to revise our rules.[51a] We have acted now in light of the present copyright situation, which would appear likely to obtain for some substantial period of time, and without the slightest intent of affecting the determinations to be made in the pending suits.

CONCLUSION AS TO PART I

109. The foregoing are the rules which we believe to be appropriate for all CATV systems at this time. We believe that they represent a fair balancing of the competing interests, and properly accommodate both industries and thus, the public interest "in the larger and more effective use of radio" (sec. 303(g)). We recognize further revision may be called for as we gain experience in their implementation. This docket (15971) remains open with this report designated as the second report, and we shall revise the rules, as the public interest requires, in our consideration of Part II or upon the basis of new information or experience (and, if appropriate, after giving notice of such proposed revisions). Finally, as in the case of all rules, we shall give further guidance through the medium of rulings directed to specific situations.

110. In light of the foregoing, we find that the public interest would be served by modification of the rules previously promulgated for microwave-served CATV systems and the adoption of rules governing all CATV systems, as set forth in the attached Appendix D. Authority for the rules adopted herein is contained in sections 1, 2(a), 3(a), 4 (i) and (j), 303, 307(b), 308, 309, 310, 319, and 403 of the Communications Act of 1934, as amended.

PART II. MAJOR MARKET, DISTANT STATIONS POLICY—PAR. 49–50 OF THE NOTICE

A. THE NOTICE; COMMENTS

111. In the notice, we stated (par. 49, 1 FCC 2d at p. 471):

> * * * pending the outcome of this proceeding, applications for microwave facilities to be used to relay the signal of any television station to a CATV system in a community with four or more commercial channel assignments and three or more stations in operation (or with at least two stations in operation and one or more stations authorized or applied for) must be accompanied by a clear and full showing that in the particular circumstances a grant would not pose a substantial threat to the area. A like showing must be made in applications for microwave facilities to serve a CATV system in a community where, because of its proximity to another community (or communities) having three or more existing commercial stations (e.g., within the Grade B contour of such three or more commercial stations), any new UHF television station would be independent in operation.

In paragraph 50, we specifically invited comment:

> * * * on whether the foregoing course of action as to applications before the Commission should be extended to the nonmicrowave CATV system in the same type of situation (e.g., through a rule which would prohibit the extension of the signal of any television station beyond its Grade B contour into a community with the situation described above (par. 49), without there having been a clear and compelling showing that in the particular circumstances there is no threat to the development or maintenance of independent UHF service in the community.

112. We have considered the comments received on this important aspect. A summary of some of the comments is set out in Appendix B.

B. EVALUATION

113. The discussion in Appendix B gives some of the highlights of the comments submitted on this aspect. The more detailed showings have, however, been considered, and will be referred to in the ensuing discussion. While these showings are pertinent, particularly with respect to the trends which are so important to our evaluation, they do not supply definitive answers to the problems before us; rather, they serve to point up the problems and, in the circumstances, to the procedures called for. We shall develop the underlying considerations at some length, and even with some repetition of the discussion in Part I, because of the great importance of the matter. There are two central grounds for our action—(1) an economic impact ground, based on the trends in the CATV and UHF fields, and (2) a fair competition ground, based on the patently anomalous conditions under which the broadcasting and the CATV industries compete.

1. The Economic Impact Ground

114. The UHF trend: As stated in our notice, we are at a watershed in the development of UHF broadcasting. UHF broadcasting generally suffered a very serious setback in the 1950's and limped along until the passage of the all-channel receiver legislation. In enacting this "unique" legislation in 1962, Congress made the judgment that development of UHF "is not only the best but the only practicable way of achieving an adequate commercial and educational system in the United States" (H. Rept. No. 1559, 87th Cong., 2d sess., p. 4; S. Rept. No. 1526, 87th Cong., 2d sess., p. 7). Such a system would "permit all communities of appreciable size to have at least one television station as an outlet for local self-expression," provide "at least three competitive facilities in all medium-sized communities," and make provision "for at least four commercial stations in all large centers of population" (H. Rept. at p. 3). Such a fourth station might make possible a fourth national network or the formation of "FM-type networks" in television, and also would be "valuable particularly for local programing and self-expression"—an important need in many markets "because all of the available stations are network affiliates" (H. Rept. at p. 3; S. Rept. at p. 4). Thus, as shown by the above and the compulsory sale of all-channel sets at the rate of over 9,000,000 a year, Congress and the American public have staked a great deal on the development of UHF.

115. As we pointed out in the notice and our prior discussion, there is every present indication that the all-channel set requirement is having its desired effect, with greatly increased interest in UHF, particularly in the many applications filed for the larger cities. Thus, from the beginning of 1962 to the end of 1965, the number of UHF commercial stations on the air increased from 85 to 100, and, most significant as an indication of the trend, the number of applications pending (with multiple applications for the same channel counted once) increased from 19 to 80. There are now indications of the beginning of a fourth network or of an "FM-type" network, involving UHF and VHF stations in some major markets. With this increased ferment in UHF, we believe that the next few years will supply the critical answer to whether the congressional goal of a truly nationwide television system employing both UHF and VHF on an effective intermixed basis will be achieved. (See H. Rept. at p. 7; S. Rept. at p. 6.)

116. The CATV trend: The CATV trend is even more pronounced, and has already been noted in our first report, paragraph 65, 38 FCC at p. 709, and in the prior discussion (pars. 31–33). As stated, the

[51a] And, of course, stations will have to take into account the effect of any copyright decision in making requests for carriage under the present rules.

CATV growth has been explosive and gives every indication of continuing its phenomenal spurt. In 1959, there were about 550 CATV systems, in 1965 at the time of the first report, there were about 1,300 CATV systems, and today—less than a year later—it is estimated that there are 1,565 (Television Digest, Dec. 27, 1965, at p. 3). Further, there are 1,026 CATV franchises which have been recently granted but are not yet operating (ibid.). The number of applications for franchises is even larger—an estimated 1,958.[52] Clearly, there is considerable substance to the statement of the official of one of the largest CATV groups, quoted in our notice (par. 39, 1 FCC 2d at p. 468):

> The competition for CATV franchises is unparalleled in the history of American communications. It exceeds even the pell-mell scramble for television broadcasting permits that occurred throughout the United States in the first few months after the long television freeze in the late forties and fifties. We learned that new CATV systems are being sought or authorized at the rate of one a day. * * *

117. Equally important is the changing nature of the CATV operation. In 1959, the average CATV provided three signals to its subscribers; in 1965 the majority provided five or more signals (par. 65, first report), and the average system built today has 12-channel capacity.[53] There are now 20-channel systems proposed (e.g., the Jerrold proposal in Philadelphia), with industry leaders predicting that in the next 5 years "improved technology will have made the 20-channel CATVs commonplace. * * *" (Television Magazine, Dec. 1965, p. 31). There is greatly increased use of microwave facilities (i.e., from 50 systems using microwave in 1959 to 250 in early 1965 to about 450 today). The distance which signals are taken has also increased greatly (to over 665 miles). Finally, the CATV industry has shifted its attention to the larger communities, and CATV franchises have been granted or are being sought in such cities as Philadelphia, Toledo, Cleveland, San Diego, Dayton, Baltimore, Syracuse, Albany, Sacramento, Pittsburgh, Birmingham, and Fort Wayne. To quote again the large CATV group (par. 39 of the notice):

> First, and of overriding importance, is the shift of CATV strength to a new locus. The centers of the most intense CATV development now are the very large cities. In the past our attention was focused on the smaller markets and in these we reached about 2 percent of the Nation's television population.
>
> But today we are in the throes of spirited competition for the development of cities such as New York, Philadelphia, Cleveland, Birmingham, Syracuse, Rochester, Wilmington, Norfolk, the entire State of Connecticut, and entire counties such as the 37 cities of Camden County, N.J., all of Montgomery and Chester Counties, Pa., etc. * * *.

The CATV applicant believes that it can be successful in such cities because it will bring better reception (particularly to the color) and, most important, the programing of important independents (e.g., the three New York independents to Philadelphia).

118. It is apparent that these two trends (UHF and CATV) raise a serious question. Both CATV and UHF broadcasting, for example, are entering the larger markets, most often in an effort to bring programing that is not now available in these markets. There are at least 163 communities or areas with UHF stations operating, authorized or applied for, which also have CATV activity. In 68 such communities or areas, there are already operating CATV systems; 29 have CATV systems franchised but not operating, and 66 have CATV applications pending. In the notice, we set out as an example the Philadelphia area, where there are now three commercial UHF stations on the air (and another one authorized) and there are several well financed CATV applicants seeking to bring in the signals of the three New York independents. The most critical question posed in how these two trends mesh in the ensuing years.

119. We have studied the comments carefully in this respect. While they give some indications (see par. 122, infra), the answer remains uncertain. On the one hand, the NCTA, relying largely on the Seiden Report, contends that CATV in a large community such as Philadelphia can have little effect on the healthy existence of UHF stations; that if anything, CATV will aid these stations by bringing them into homes where they might not otherwise be received. But we believe that this contention has significant defects.[54] In any event, it would appear that a crucial consideration is whether the Seiden Report is correct in its belief that in the large cities, it "is not clear as to what these CATV promoters will offer that makes them think that they gain substantial numbers of subscribers in such areas" (Seiden Rept., p. 84). In his judgment, "potential CATV markets are those areas lying 40 or more miles distance from three full network signals. * * *" (Id. at p. 83.)

120. But very important segments of the CATV industry do not agree with the Seiden Report. They are proposing to invest very large sums of money (including amounts such as $40,000,000) in their belief that CATV, employing 12, 20, or even greater capacity systems, can gain very substantial audiences in these large markets. The leaders of such important CATV groups as Jerrold or Teleprompter believe that "almost all American cities—small and large—will be wired for television * * *" and, in the words of the top official of Teleprompter, "within the next decade, 85 percent of all television sets in the United States may be receiving their programs by cable rather than over the air" (Television Magazine, December 1965, p. 30). Another experienced CATV operator estimated more conservatively that CATV may reach 30 to 35 million households within the next decade (Broadcasting Magazine, July 26, 1965, p. 31).

121. We do not accept the above statements as necessarily correct, any more than we accept Dr. Seiden's assertion to the contrary. The plain fact is that on the record before us, it is not possible to give a definitive answer to the future

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[52] As noted, the estimates as to franchises granted and applications vary. See paragraphs 31, 116, supra. NCTA reported recently that 1,500 applications for CATV permits had been filed in the last 12 months and that 1,200 were pending (N.Y. Times, Dec. 19, 1965). By any estimate (e.g., TV Digest, AMST, NCTA), the figures are impressively large.

[53] In its reply comments (p. 18), AMST asserts that of 54 systems for which data was available and which began operations in 1965 (through July of 1965), only 5 were 5-channel systems; 44, or 81.5 percent were of 12-channel capacity.

[54] The Seiden Report assumed "an optimum" of 50 percent penetration of the Philadelphia market by the CATV (but see pars. 120–123 as to the "optimum" CATV penetration), and then, based on the fact that the three New York independent stations account for 9 percent of the TV homes during prime time, arrived at the conclusion that there would be a diversion from the Philadelphia UHF stations due to CATV of only 61,450 homes out of 1.3 million TV homes in metropolitan Philadelphia (report, pp. 84–86). As already noted (note 19, notice) the report measures the diversion as against the total Philadelphia audience, plainly ignoring the very facts upon which the analysis is based. The point is that whatever criterion is used to measure CATV impact, the same criterion should be used to measure the audience UHF would have without CATV. If, therefore, it is assumed that 9 percent of the CATV subscriber homes would, on the average, be watching the three New York independent stations and would therefore be diverted from the three Philadelphia UHF stations, the resultant figure—61,450 homes—should be related not to the 1.3 million TV homes in metropolitan Philadelphia, but rather to the average number of homes in metropolitan Philadelphia that would be viewing the three UHF stations if there were no CATV. The audience for nonnetwork programing in Philadelphia is certainly no greater than in New York (and indeed would undoubtedly be much smaller in the beginning). If, therefore, 9 percent of the TV homes during prime time were assumed to be the number which, on the average, would be watching the three Philadelphia UHF stations, this would result in a total average audience of less than 120,000 homes against which the impact of a loss of more than 60,000 homes should be measured rather than against 1.3 million TV homes. In short, the Philadelphia audience which would be attracted to the New York independent stations is a very important part of the audience at which any independent Philadelphia UHF station must aim—a critical point ignored by the Seiden Report.

We would also point out several other factors: (i) The potential effect on the UHF independent becomes even more serious when markets smaller than Philadelphia are considered (see footnote 57); (ii) it is unrealistic to assume that UHF independents in such markets will have the financial base to bid for and obtain the same amount of expensive nonnetwork film program as the New York VHF independents, with their much larger population base, and thus, the CATV audience for nonnetwork programing may well not be divided equally between the UHF independents and the distant VHF ones; and (iii) the 20-channel system would permit the importation of the New York network stations which would also contribute to diversion of audience during the 30–45 percent of time these stations are presenting nonnetwork fare.

growth of CATV—to whether it will achieve very substantial penetration in the major markets and, correspondingly, to what its impact will be upon UHF developments in these markets.[55]

122. Indications in the materials before us would appear to indicate substantial growth and substantial impact by CATV in the large markets. Thus, Midwest Television, the licensee of a San Diego station, submitted a study made by an independent research organization in late June 1965, of the San Diego area, the 51st market (ARB ranking on net weekly circulation), with three VHF stations and CATV systems which carry these stations and all seven Los Angeles VHF stations without nonduplication treatment. The study indicated that the CATV systems, with a present total of roughly 10,000, are adding subscribers at a rapid rate. Thus, in one section where CATV had been available for only 3 months, more than 36 percent of the homes had already been wired for CATV; as of late June, 43 percent of the CATV subscribers interviewed had been subscribers for less than 3 months (Midwest comments, Docket Nos. 15971, 14895, and 15233, pp. 24, 28). But this study is oviously too fragmentary to be conclusive on this important question. The study also indicates very considerable impact upon the local stations. See paragraphs 40–41, supra.[56]

123. There is no doubt as to the seriousness of the question posed. The new UHF stations face a difficult road; we would expect, with the passage of time and thus the buildup of all-channel sets, and related endeavors, that these new operations would be successful. But if a CATV, with 12 or 20 channel capacity, can obtain very substantial numbers of subscribers in these same markets (by which we mean percentages of 50 percent or over), the UHF stations might face a very difficult hurdle. The audience for nonnetwork stations is limited (about a 10 percent share in most markets in the prime time) and this limited audience might be greatly reduced since very substantial numbers of people interested in viewing the nonnetwork programing would be watching the distant independents (e.g., those of New York or Los Angeles). We think this follows as a matter of commonsense, since these established big city VHF independents certainly have the ability to bid for and acquire the expensive, attractive nonnetwork programing. Any gain in better reception of the UHF signals might be far outweighed by the splintering of the limited audience for independent programing. The UHF stations will in any event gain a very substantial audience in these markets, through the operation of the all-channel receiver law. While the CATV might bring them a little sooner or with somewhat better reception into some TV homes, it would appear to do so at the cost of fragmenting greatly the limited audience interested in viewing nonnetwork programing in the prime listening hours. See note 54, analyzing the Philadelphia situation on the basis of a 50 percent CATV penetration.[57] As pointed out, the noduplication provision would afford virtually no relief, since nonnetwork programing is not distributed on anything like a simultaneous nationwide basis.[58] The rise in advertising demand for television time is also pertinent to this question; as noted (footnote 30), there are countervailing considerations which, at the least, require that this fact be considered in the context of the particular situation (e.g., in Philadelphia there are three and possibly four new stations to share the increased advertiser demand). Finally, we point out that it is not just a matter of causing the demise of the independent UHF stations; if these stations' revenues are substantially reduced because of such CATV activity, so that they do not have the financial base to program effectively, the result is still a detriment to the public interest "in the larger and more effective use of radio" (Communications Act, sec. 303(g)). In short, the problem posed is whether, if CATV succeeds greatly—for example, to the 50 to 85 percent figure predicted by its optimistic proponents—there is correspondingly a grave danger to UHF broadcasting.

124. It has been urged that we simply ignore the problem and let events in the major markets decide between CATV and the UHF broadcast stations. But for reasons already developed, such a course would be inconsistent with our statutory responsibilities and might lead to results inconsistent with public interest in a number of respects:

(i) CATV does not now serve the rural areas, and it has not been established that it can practically do so. If CATV were to undermine the healthy development of UHF, it would mean that people in the urban or more built-up areas would be getting additional service at the expense of those in the rural areas; we think that such a result is patently inconsistent with the public interest and the Act's goals.

(ii) CATV is a form of Pay-TV, in the sense that one must pay to obtain the television service. There are substantial numbers of people who either cannot afford to or do not wish to pay for television.[59] If then the CATV blocks development of UHF broadcasting, it would again mean that some people would be getting additional service at the expense of those who cannot afford or are unwilling to pay for such service.

(iii) Most important, CATV does not serve as an outlet for local self-expression. It does not present local discussions, the local ministers or educators, the local political candidates, etc. If events in the major markets should establish that CATV has prevented the healthy maintenance of UHF broadcasting, it would mean that, for example, New York independents would have been substituted for Philadelphia independents. We think that would be contrary to sound allocation principles, long established in section 307(b) of the Act. It would be a clear frustration of the congressional purpose recently stated of making available in areas such as Philadelphia additional broadcast stations to meet the "important needs" for "local programing and self-expression" (par. 41, notice). It would also undermine the goal of a fourth national network built upon these additional stations (par. 41, notice).

125. If the New York independents sought translators to place their signals over the Philadelphia area, it could not seriously be argued that we should grant such applications on the ground that while they may be destructive of congressionally established goals, events in the market place should be allowed to give

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[55] As stated, the CBS study indicated that it had not included "* * * a group of applications for CATV systems in communities with three more than adequate services [e.g., * * * applications for franchises * * * in places like Albany, Syracuse, Galveston, Philadelphia, and Cleveland * * *]. If these systems are established and thrive, it is clear that the potential for community antenna systems far exceeds anything that we have talked about thus far and, in fact, much of the country could ultimately become CATV territory." (CBS comments, Exhibit A, pp. 16–17.) Thus, CBS focus was on the old or "traditional" CATV and not the new developing trend in the industry.

[56] To the same effect, see the address of Mr. George Blechta of Nielsen at the July 1965 NCTA Convention, where Mr. Blechta referred to an eastern television market "where the sample indicated that one-third of the viewers are CATV subscribers and that the local stations have a combined share of audience of 85 percent among non-CATV homes in contrast to a share of 'less than one-half' among CATV homes." (Sponsor Magazine, July 26, 1965, p. 14.)

[57] Further, Philadelphia is the fourth largest market in the country. But in smaller, even though still major, markets, similar analyses raise even more serious question. Thus, in the Sacramento-Stockton market (the 27th in ARB ranking) having 300,400 TV homes in the metropolitan area, 63 percent or about 189,000 metropolitan area homes on the average are watching television in prime time; without CATV, the UHF would do well to get a prime time audience of 15,000 homes. While this audience, on the basis of our experience, would normally appear sufficient to support operation, obviously, significant diversion of the audience by CATV could be a serious matter. Yet CATV systems could bring in the VHF independents from San Francisco and, as we understand, from Los Angeles also. This example, dealing with a major market, could be multiplied many times.

[58] Nor would extension of the UHF station's signal beyond its Grade B contour by CATV systems compensate for fragmentation within that contour by CATV systems having very substantial penetration. We note that CATV systems tend to bring in the distant big city independents (since such stations constitute a better sales point in obtaining subscribers) rather than the new UHF stations. In any event, an independent's source of revenue is the local and national spot business, as to which the metropolitan area rating plays a very significant role. As shown by the above discussion, that rating could be seriously affected in the event of very substantial CATV penetration.

[59] Thus, even the CATV industry estimates that on an industrywide basis CATV systems now in existence have achieved about 55 percent level of the total number of TV homes in the markets served, and that this figure will ultimately rise to 70 percent (Television Magazine, December 1965, p. 30).

the answer. The matter is not really different here. The Commission has jurisdiction to "establish areas or zones to be served by any station" (303(h)), to make a "fair and equitable distribution of facilities among the several States and communities (sec. 307(b)), and "to perform any and all acts, make such rules and regulations and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions" (4(i)). If then we sit back, even though we have the jurisdiction, the authority and the responsibility to carry out the congressional policies, and do not thoroughly explore the serious question posed, we would be simply abdicating our responsibility "to promote the larger and more effective use of radio in the public interest" (sec. 303(g)).

126. To summarize, we have reached no final conclusion in this area—i.e., the effect of CATV development in the major market on UHF broadcasting. But we have concluded that there is a substantial problem of great significance to the public interest, which must be thoroughly explored. A critical consideration would appear to be the question of CATV's growth in the major market, since (i) if that growth is of a high order, its impact on UHF development may be most serious; and (ii) based on present considerations, the latter consequence will not serve "the public interest in the larger and more effective use of radio." In view of these conclusions, we think that our course of action is clear. We must thoroughly examine the question of CATV entry into the major markets, and authorize such entry only upon a hearing record giving reasonable assurance that the consequences of such entry will not thwart the achievement of the congressional goals. We cannot sit back and let CATV move signals about as it wishes, and then if the answer some years from now is that CATV can and does undermine the development of UHF, simply say, "Oh well, so sorry that we didn't look into the matter."

127. We have focused in the above discussion on the independent UHF station. But as interested parties such as Storer have stated, there is also a problem with respect to the new UHF station in a market with two VHF stations. The UHF station does not necessarily obtain a full line of network programing in such markets; either initially or for a considerable period of time, it may be dependent to a very substantial extent on nonnetwork fare. Further, several parties have expressed the fear that because of CATV, such new UHF stations will not be able to obtain a primary network affiliation. Finally, we note that to a significant degree, whether rightly or wrongly, CATV penetration would appear to have a discouraging effect on entry of new UHF stations (or on the substantial expenditures which must be made for the high tower and power necessary for an effective operation). Permittees of several new stations have set out their fears of the consequence of CATV importation of distant stations from New York, Los Angeles, etc. To give but two examples,

(i) The permittee of the new UHF station in Sacramento has informed the Sacramento City Council that the importation of outside signals from San Francisco-Oakland and Los Angeles, as proposed, would make it impossible for the UHF station to survive (joint comments, p. 15).

(ii) "[Regardless of whether Jerrold's proposed Jacksonville CATV system will be subject to carriage and nonduplication], it is your permittee's belief that should Jerrold introduce through its proposed system the programs of the three television networks, it will be impossible for WJKS–TV to obtain the network affiliation required for its survival." (Statement of Rust Craft Broadcasting Co., permittee of UHF Station WJKS–TV, Jacksonville, Fla.; AMST comments, p. 71.)

The above examples are not cited at this point for the correctness of the attitude taken toward CATV penetration in the particular situation, but rather for the attitude.[60] We think it important, in view of the critical period facing UHF, that the UHF entrepreneur be given a forum for thorough exploration of this serious problem.

128. The contentions of some of the parties with respect to Pay-TV are also pertinent here. Several parties (e.g., ABC, Westinghouse AMST) have stated that CATV, particularly if it succeeds in the major cities, can readily branch out into Pay-TV (for example, by providing that one channel will be "original" programing available only for a specific additional charge—a form of Pay-TV somewhat akin to the Bartlesville experiment in 1957–58). The parties assert that whether or not Pay-TV is desirable, it should be initiated only after full consideration in an appropriate proceeding and not "come in the back door" through CATV operations and profits based on the sale of the broadcast industry's product.

129. Whether a form of Pay-TV operation will result from CATV is uncertain and would appear to depend again very largely upon the growth factor, particularly in the larger cities which would naturally be the backbone of any wire Pay-TV operation. But we would agree that in the circumstances its authorization should stem from the Commission (or the Congress), after appropriate proceedings. For, what is involved is not the strictly wire Pay–TV proposals such as recently attempted in California. A hybrid CATV-Pay-TV operation would be based, in an integral and substantial fashion, on use of broadcast signals (to provide the economic base for the Pay-TV "frosting"), and such use of broadcast signals should be allowed only if it is found to be in the public interest. We have petitions now under consideration, which seek the authorization of Pay-TV on a regular basis using broadcast facilities, perhaps only in the UHF portion of the spectrum. It is clear that until resolution of the very important policy issues, Pay-TV operations based in substantial part on use of broadcast signals is inappropriate. Since here again the critical factor is the growth of CATV in the larger cities, we think that this is added reason for the policy and procedure we have adopted, since that procedure will be especially applicable to such cities. We intend to explore thoroughly the relationship, if any, of proposed CATV operating in the larger markets and the development of pay television in that market. This is a matter which is also involved in Part II of this proceeding, and will be the subject of a specific legislative recommendation of the Commission. See paragraph 153, infra.

130. We believe that the foregoing discussion, showing the serious question posed by the potential effect of very substantial CATV development upon UHF development and the possible adverse consequences to the public interest, demonstrates the need for the major market, distant signals policy which we have adopted. Before discussing that policy (see pt. 3, infra), we shall turn to a second ground which also, in our judgment, supports the need for the policy.

2. Fair Competition

131. We have previously discussed this "fair competition" ground in connection with the nonduplication requirement. See first report, paragraphs 52–57, 28 FCC 683, 703–706. That discussion, which will not be fully repeated, is pertinent here. As shown, the CATV industry is growing at a tremendous pace, with a changing nature (entry into major markets, with 12- or 20-channel systems, bringing the signals of big city independents such as those of New York and Los Angeles). If the CATV should achieve substantial penetration of these communities (50 percent or over), the result might be most serious for the new UHF independents in these same areas. This points up a critical consideration—that the nonduplication requirement will be of virtually no assistance, since what is involved is the establishment and healthy maintenance of independent stations, and nonnetwork syndicated or film programing is not distributed on a simultaneous nationwide basis. We therefore shall reexamine the fair competition considerations in the context of the present problem—the CATV and UHF trends and the need to develop a policy or procedure because of these trends.

132. A television station normally obtains the right to exhibit nonnetwork programs by outright payments to program suppliers, from whom the station usually secures the exclusive right to exhibit the programs within a particular geographical area and for a particular length of time. This exclusivity reflects the judgment that presentation by others of a program such as a feature film within the station's market within some period of time obviously reduces the audience and the value of the program to the station. As we noted, the amount and kind of exclusivity that can be cre-

[60] We note also that the contrary opinion has been expressed by some new UHF entrepreneurs (namely, that CATV operation will aid, rather than hurt them).

ated is restricted by the antitrust laws. But those laws permit the creation of substantial exclusivity as a normal incident of the program distribution process, and this exclusivity is maintained, in large part, through the operation of section 325 of the Communications Act, which forbids the rebroadcasting of any station's signal without the consent of the originating station.

133. We have pointed out how the CATV system presently stands outside of the above program distribution process (pars. 54–55, first report, 38 FCC at p. 704):

> [The CATV] has not been found subject to the requirements of section 325. [footnote omitted] It does not compete for network affiliation, nor for access to syndicated programs, feature films or sports events. It is not concerned with bidding against competing broadcasters for the right to exhibit these programs nor with bargaining with program suppliers for time and territorial exclusivity. Moreover, because the distant station whose signal is carried has no control over the CATV's use of its signal, the question of whether a program should be exhibited through CATV facilities in any particular market cannot be the subject of bargaining or agreement between the distant station and the program supplier—although the question of whether the same program should be rebroadcast in that market by a television station or a translator can be, and often is, the subject of such bargaining and agreement.
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> This is not the usual competitive situation. The CATV system and the local broadcaster provide the public with access to the same basic product—the programs created or sold for distribution through broadcasting stations. The broadcaster, however, must himself obtain access to the product in the program distribution market, with its various restrictions and conditions. The CATV operator need not enter this market at all.

134. The anomalies which result from this situation are even more marked in the case of the independent station, particularly in light of the recent CATV trend. Procuring attractive programing which will interest viewers is, of course, the most vital concern of the new UHF independents. For example, such stations may bid for and obtain exclusive rights to an attractive feature film package. No other station in the same market could show these films—but a CATV system, which never entered the bidding, might well bring in these same films from a distant market. If the CATV reaches very significant proportions—50 percent or more, the result is the loss of the exclusive right for which so much was paid and upon which so much may have been staked. And here we stress again that without the financial sustenance from entertainment programs, a station has no adequate economic base to serve as an outlet for local expression for all the people in its service area.

135. When the situation is viewed on an overall basis, rather than from the viewpoint of individual programs, the result is equally anomalous. The CATV seeks to secure as great a number of subscribers as possible in these major markets, aiming for a figure well over 50 percent if possible. Since the people in these markets have three full network services, it seeks to attract such a large number of subscribers, in large part, by bringing in the independent pyrogramming of distant big city stations such as the New York or Los Angeles independents. And it obtains such programing by simply paying a common carrier to bring to it the signals of these distant stations (or by itself erecting a tall antenna on an appropriate high elevation to receive the signals and then relay them with suitable amplification along the way to the subscriber). The new UHF station also seeks to attract as wide an audience as possible in these same markets by bringing in attractive nonnetwork programing. But the UHF station cannot, either by means of a common carrier, its own microwave relay, or a tall antenna, decide that the best way to obtain such programing is simply to bring in, in whole or in part, the programing of the New York independents. The established distribution process, given congressional recognition in section 325 (a), proscribes such conduct. See letter to Mr. Martin E. Firestone, dated December 16, 1965, FCC 65–1107.[61] Both the broadcaster and the CATV thus have the same objective—providing as large a segment of the public as possible in these major markets with access to nonnetwork programs. The question therefore arises why the CATV should operate under one set of competitive rules and the broadcaster under an entirely different set. On its face, this competitive situation would appear to be a most unfair one.

136. Illustrations in the sports area further point up this anomalous situation and are particularly pertinent in view of the importance of sports programing, both to the CATV and broadcasting. The broadcast station (or its network) bids for the rights to exhibit sports programing (see, e.g., $37.6 million bid for CBS for the 2-year right to show NFL football games; Broadcasting Magazine, Jan. 3, 1965, p. 124); even then, those rights are at times circumscribed by blackout requirements (during home games), and other conditions permitted by Congress or the antitrust laws. See, e.g., Public Law 87–331. The broadcaster must operate in accordance with these established industry conditions. But the same sports program that is unavailable to the broadcast station is presently made available to the station's audience by CATV systems. In the words of the President and General Manager of Wisconsin Valley Television Corp. (AMST comments, attachment B, p. 10, quoting the House CATV hearings on H.R. 7715, p. 415):

> Another serious problem: In Wausau, Wis., because of our proximity to Green Bay, WSAU–TV is blacked out of the Green Bay Packers football games. This I can understand on behalf of the National Football League and the Green Bay Packers. * * * I'm not allowed to carry the games. Any cable system can reach to any area and get these games—some via microwave. Then these games can be moved into WSAU–TV's area. Can our station sit on a Sunday without the football game, while the cable system is running big ads in the local newspaper; "Get total television on Cable Television."
>
> Now I would like to deliver total television but because of laws and rules and regulations, I'm not able to give total television. The cable system, with no laws, no rules, no regulations, can deliver to my audience, by FCC definition of tower height and power, much more television than I can deliver to them because of the stricture that I must operate under. * * *

137. The answer is sometimes given that the CATV system is simply a master TV antenna, and therefore on this ground should be allowed such different competitive conditions. But this answer does not withstand analysis. A CATV system which proposes to employ microwave to bring in signals four or five hundred miles away is not a master TV antenna service. It cannot seriously be argued that CATV proposals to bring the New York Independents to Dayton or Los Angeles independents to Dallas-Fort Worth represent master TV antenna arrangements. Nor, whatever its validity in many instances, can the argument appropriately be made when a very tall antenna is employed on a high elevation, with many miles of cable and electronic gear to distribute the distant signals. In any event, the question remains: If the distant signal is freely available for use in the area, as the CATV argues, why is it not just as freely available for use by the broadcast stations in the area (e.g., through a tall antenna on a high elevation). Clearly, however, it is inconsistent with all notions of propriety to say that a Philadelphia or Baltimore UHF station may make whatever use it desires, without permission or payment of the programing carried over the New York independents. See section 325(a), and its legislative history. The result of such "freedom of access" would be gross inequity and chaos.[62]

138. Here again we have reached no final determination but rather have concluded that this is a question warranting thorough exploration in the hearing process. It may be that whatever the

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[61] As another example, in 1965, Station KWOA desired to rebroadcast the signal of Station WCCO, to present the play-by-play broadcasts of the Minnesota Twins' baseball games. Station WCCO refused rebroadcast consent, largely because it placed a good signal into the area in question. This Commission determined that in view of WCCO's response and the particular circumstances, no action was called for. See letter to Mr. James J. Wychor, dated July 22, 1965.

[62] The answer that the CATV does not have a "free ride" in view of the cost of the cable system, misses the point, since the cost of the disseminating system is no basis for exemption from observance of the fundamental distribution process by which the program product is obtained. Both the CATV and the UHF station have substantial costs of construction maintenance, and operation. Thus, the most recent UHF station in Chicago, Ill., had a construction cost of about $3,000,000, with substantial estimated yearly operating expenses, including those sums allocated to programing costs. The UHF station cannot appropriate the programing of the New York independents, without consent or payment, no matter what its costs are.

disparate conditions for operation, there is no need for concern because the CATV will not significantly affect the development or healthy maintenance of UHF television broadcast service. But as stated we cannot make that determination on the record now before us. It follows that on this ground also, there is need for a procedure pegged to full exploration of the issue in the context of an evidentiary hearing.

3. The Major Market, Distant Signal Policy and Procedure

139. We have previously found that CATV can make an important contribution to the public interest, and we adhere to that judgment. CATV, along with other auxiliary services, has made a significant contribution to meeting the public demand for television service in areas to small in population to support a local station or too remote in distance or isolated by terrain to receive regular or good off-the-air reception. It has also contributed to meeting the public's demand for good reception of multiple program choices, particularly the three full network services. In thus contributing to the realization of some of the most important goals which have governed our allocations planning, CATV has clearly served the public interest "in the larger and more effective use of radio." And, even in the major market, where there may be no dearth of service (e.g., Philadelphia, with three full-time network services, and four independent UHF stations either on the air or authorized), CATV may, we recognize, increase viewing opportunities, either by bringing in programing not otherwise available or, what is more likely, bringing in programing locally available but at times different from those presented by the local stations. But this contribution (and related ones such as better reception, etc.) should not be made at the expense of healthy maintenance of UHF operations. We have reached no determination on this critical matter. Rather, we have decided that a serious question is presented whether CATV operations in the major markets may be of such nature or significance as to have an adverse economic impact upon the establishment or maintenance of UHF stations or to require these stations to face substantial competition of a patently unfair nature. We have also indicated our concern with the relationship, if any, of proposed CATV operations on the large markets and the development of pay television in those markets.

140. Our policy and implementing procedure are therefore addressed squarely to these serious questions. The basic thrust of congressional policy in the Communications Act is to resolve such important questions, in the context of appropriate evidentiary hearings, before consequences possibly adverse to the public interest develop. Cf. section 309 of the Communications Act. We think that that policy should be applied to this situation. We have determined that we have jurisdiction over CATV necessary to carry out the provisions of the Communications Act (such as sections 1, 4(i), 303 (h), (g), (r), (s), and 307(b)). It is important, we think, to exercise that jurisdiction with respect to CATV operations in the major markets, so as to insure that such operations will be consistent with the public interest. And to accomplish this, it is necessary to examine thoroughly such operations before they become established or well entrenched. Once entrenched, it is difficult, if not wholly impracticable in the light of the disruption which would result, to take effective action or to attempt to roll back the situation, if it should develop or be shown that the CATV operation is inconsistent with the public interest.

141. We shall accordingly follow a procedure whereby the signal of a television broadcast station shall not be extended beyond its Grade B into the top 100 major markets (as ranked by ARB on the basis of net weekly circulation of the largest station in the market), by a CATV system which has obtained a franchise for operation in such a market, except upon a showing made in an evidentiary hearing that such operation would be consistent with the public interest, and particularly the establishment and healthy maintenance of UHF television broadcast service. In this way, the Commission will be able to explore in depth the details of the proposed CATV operation, the marketing studies which have been made relating to it, by either the CATV or broadcast groups in the area, the present and potential picture as to television broadcasting in the market, the positions and showings of the interested CATV and broadcast parties, the possible plans or potential of the proposed CATV operation for pay television, and other important facets. After such exploration, the Commission will be in a position to make an informed judgment directed to the facts of a particular case.

142. We believe that the procedure which we have adopted is fair and best suited to promote the public interest, taking into account both the development of the broadcast and the CATV industries. It is in line with the urging of several parties that what is needed is full evidentiary hearing. While the hearing urged has usually been one of an overall nature, we believe it best to consider these important matters in the context of the particular request and the particular situation.

143. We recognize that the evidentiary hearing may consume some significant period of time. But as stated, the public interest requires thorough exploration of the very important issues raised; they cannot be sloughed aside or the answers lightly assumed. Further, the requirement for an evidentiary hearing has been confined to the top 100 markets, where there is generally no dearth of service and new UHF services are coming on the air. For example, in Philadelphia, there are three VHF network affiliated stations, three UHF independents on the air, with a fourth authorized. In the markets below 100, where there may be a greater present need for additional television service, the general requirement for evidentiary hearings is inapplicable. See paragraph 146, infra.

144. We have selected the top 100 markets for special attention because it is in these markets that UHF stations or wire Pay-TV based upon CATV operations are most likely to develop and therefore the problems raised are most acute.[63] Further, as noted, any delay in commencement of CATV operation because of the necessity for evidentiary hearings is mitigated by the consideration that these markets generally have a considerable amount of presently available and prospective new service. Finally, the top 100 markets include roughly 90 percent of the television homes in this country. Our policy therefore focuses on the critically important areas.

145. Admittedly, there can be substantial problems affecting the public interest where the CATV system proposes to extend the signals of broadcast stations beyond the Grade B contour into areas below the top 100 markets. But there are differences between the two situations which call for different procedures. In markets below the top 100, the independent UHF (or VHF) station is much less likely to develop; the stations in such markets are apt to be three or less in number and network affiliated. This means, in turn, that the nonduplication provision is effective (since network programing will be significantly involved), and protection of a station's network programing should contribute very substantially to insuring its continued viability. It would appear that network programing will continue to be available in such markets; in the unlikely event that such programing becomes unavailable because of CATV impact, there would appear to be other appropriate

[63] Some question may arise as to whether a particular system is located in a market coming within the top 100. For clarification, we have specified that the above provisions are applicable to a CATV located in a community coming within the predicted Grade A contour of any station in one of the top 100 markets. We have employed the Grade A contour of any station since, while stations often are located at different sites or have different powers or heights (and thus different A contours), these Grade A service areas in the same market have a tendency of becoming fairly close to one another over a period of time. In any event, we think that this is an appropriate criterion since it encompasses the essential area upon which new UHF broadcast operations in the market would be based, without including the much larger areas falling within the Grade B contours, as has been urged by some in this proceeding. Because our effort is to carve out such an essential area upon which new UHF development would be vitally based, we have employed the predicted Grade A contour; use of the predicted contour should also have the advantage of definiteness and easier administration. In the unusual instance where the requirement may be inappropriate, waiver can be sought. Where a CATV system is located within the top 100 markets when a hearing is commenced, the hearing will be continued even if these markets change in a subsequent ARB rating. We note that the 1965 ARB listing makes no change in the 1964 listing of the top 100 markets except as to relative standing within the 100.

remedial action which can be taken. Further, it is in the markets below 100 that there may be underserved areas where CATV can make its most valuable and traditional contribution. Indeed, the market division which we adopt is really a division between CATV in its traditional sense and the new, revolutionary facet of CATV, as posed by its entry into the major markets. It is the latter which peculiarly requires the most thorough examination in the context of an evidentiary hearing.

146. We think, therefore, that a fair compromise is to draw the line as to special attention (i.e., evidentiary hearings) at the 100th market, and below that point, simply to take such action as may be necessary in the public interest, upon appropriate petitions bringing substantial questions to our attention. See paragraph 98. We shall not necessarily hold evidentiary hearing in connection with such petitions in the smaller markets. Such hearings could be a considerable burden both upon the CATV operation and the broadcaster in these small communities. See paragraph 78, first report, 38 FCC at p. 714. Indeed, the hearing might thwart the initiation of needed service. Therefore, while hearings might be held in some instances, we have devised flexible procedures generally to treat expeditiously petitions or requests involving the markets below 100, since we recognize that to hold hearings upon each such petition or request might be burdensome to all parties involved and to the public.[64]

147. The question of grandfathering: On February 15, 1966, we issued a public notice giving the essence of our determination in this respect. Systems not yet in operation on February 15, 1966, and proposing to extend the service of a station beyond its Grade B contour into one of the top 100 markets will come within the scope of our major market procedure, and must make the necessary showing in an evidentiary hearing. In view of the very great desirability of avoiding the disruption stemming from action applicable to an operating system and the strong public interest considerations underlying our policy, we think good cause exists for immediate effectiveness of the major market rules upon their publication, as suggested by some of the parties. A line must be drawn as to "grandfathering," and we believe it appropriate to do so upon the basis of operation on the date of the public notice. A system which has gone into operation by extending signals beyond their Grade B contour to subscribers in the top 100 markets for the first time after that date, would be subject of a cease and desist proceeding.[65] Since we shall not "grandfather" systems coming into operation after February 15, 1966, the effectiveness of our action, practically speaking, is geared to that date. We could follow normal procedure and wait until 30 days after publication in the FEDERAL REGISTER to proceed against systems commencing operation after February 15, 1966, in the top 100 markets. But we do not believe that this hiatus would serve any useful purpose or the public interest. For, in the interval, a system might commence operation after the February 15th date and make "drops" to a significant number of subscribers, all of whose CATV service could be ended when the Commission instituted cease and desist proceedings as to the CATV operation. In the circumstances here, where "grandfathering" is pegged to the February 15th date, we think that orderly procedure and the desirability of avoiding disruption as much as possible call for immediate Commission action, rather than the Commission waiting passively on the side lines for the 30-day period to expire. Good cause therefore exists to make the rules as to the major market procedure effective upon publication, so that we may proceed forthwith against any system operating in contravention of those rules.[66]

148. The essential purpose of our policy is to take hold of the future—to insure a situation where we or the Congress, if it chooses, can make the fundamental decisions in the public interest upon the basis of adequate knowledge. So far as the application of our major market distant signal policy, we do not intend to disrupt the existing situation, by withdrawing from any CATV subscriber any signal which he was receiving as of February 15, 1966, in the top 100 markets or which he is presently receiving in other markets.[67] Based on our experience, we regard such a withdrawal as impractical and, in any event, we note that we have not made any basic policy judgment which would warrant such undue disruption. We therefore shall "grandfather" all systems which were in operation upon February 15, 1966 (the release date of the above-mentioned public notice), to the extent that such systems need not make the showing in § 74.1107 to continue to carry to subscribers signals beyond their Grade B contour, which were being supplied to those subscribers on that date. But any addition of a new distant signal on an existing system in the top 100 markets would come within the major market policy.

149. The foregoing dealt with grandfathering. We turn now to the question whether systems extending signals beyond their Grade B contour on February 15, 1966, into one of the top 100 markets, are to continue to add subscribers in new geographical areas. Such systems, which may recently have gone into operation without regard to the Commission's explicit notice of the pendency of the paragraph 50 proposal, may have relatively few subscribers. In view of the public interest considerations upon which our policy is based, we do not believe that such a system should be allowed to expand from a few thousand subscribers in one part or suburb of a community to the potential of hundreds of thousands throughout the entire community, until there has been resolution of the serious issues presented (in an evidentiary hearing).[68] While there may be a disruptive factor in halting CATV growth in the particular circumstances which should, of course, be taken into account, we believe that if at all practicable, appropriate geographical areas should be delineated, with the CATV growth limited to such areas until resolution of the issues. The problem calls for case-by-case judgment in the particular community as to the feasibility of action along the foregoing lines and the appropriate geographical area or areas. Our judgment will therefore be made upon the petition, if any, of the local broadcaster(s) objecting to the geographical extension of the CATV system to new areas, and responses thereto. The petition may also request temporary relief in the event an evidentiary hearing is found to be appropriate; the Commission will determine, upon the basis of the showing and responses in the particular case, whether such temporary relief is called for, and if so, its nature. In view of the nature of the problem, the Commission will give expedited treatment to petitions in this area. Finally, we wish to stress one important facet: We have previously put all parties on notice as to the pendency of our proposal and have now put parties on notice that there should not be expansion of major market systems from a few thousand subscribers to a very substantial number of subscribers until resolu-

[64] As previously stated (note 51, first report, 3 FCC at p. 715), we will, as required by the Communications Act and consistently with its procedural specifications (e.g., section 309), examine any question raised in connection with individual microwave applications which bears on the public interest in the particular applications involved.

[65] We recognize that this may catch some systems just prior to the commencement of operation. But this will always be true in the case of any policy in this area, and in any event, if the policy is to be effective and achieve the above described goals, it must be implemented immediately. We also point out that parties have known of the Commission's proposals for a major market procedure since April 23, 1965 (and of the counter-proposals since July 26, 1965). The notice expressly "* * * put all persons who now operate or who propose to operate CATV systems on notice that CATV operations may be subject to Commission regulation of the nature indicated, whether microwave is used or not" (notice, par. 65, 1 FCC 2d at 477). Finally, in the unusual case, we can consider the matter upon petition for waiver.

[66] Similar good cause grounds are applicable to the provision of the rule dealing with markets ranked below the 100th (74.1107(c)), since the public interest would not be served by permitting situations to continue to develop which raise substantial questions and may result in either disruption of service or inability to take an otherwise desirable action because of the factor of disruption. We shall also make effective upon publication the procedural provisions (§§ 74.1105, 74.1109) which relate to § 74.1107.

[67] As to the application of our carriage and nonduplication rules, see paragraphs 49, 68, 106.

[68] And certainly where a new franchise or amendment of an existing franchise after Feb. 15, 1966, to operate or extend the operation of the CATV system in the same general area is involved, the requirement of an evidentiary hearing will be applicable.

tion of the public interest issues posed. We expect CATV operators to heed this notice and not to attempt to circumvent orderly consideration of any petition in this respect by an extraordinary effort to wire up the community or a substantial portion of it. In any event, we are requiring the submission of data showing the extent of construction of the system as of February 15, 1966. While we expect the ordinary wiring operations to have continued since that date, any extraordinary wiring efforts or entry into patently new geographical areas (e.g., extension of a system from a suburb into the main community) will be at the risk of the system and will not be accorded weight in the judgment to be made.

150. As we gain more knowledge in this important area, particularly from the hearings being held, we shall revise or terminate the procedure, as the experience indicates. The present rules are our best judgment of what the public interest now calls for. We recognize that they may not perfectly fit every situation, and repeat that should they be inadequate or unduly burdensome in individual cases, special action or waiver can be obtained upon an appropriate showing. United States v. Storer Broadcasting Co., 351 U.S. 192.

151. Finally, we stress that the rules do not halt CATV service or growth. With the possible exception of the applicability of our carriage rules (see par. 66), the CATV viewing public will not be deprived of any distant signal service which it was receiving as of February 15, 1966. CATV will not be precluded from bringing new service to underserved areas or from bringing better reception in cities such as New York. With possibly only the rarest exception, CATV activity which does not involve extension of a signal beyond its Grade B contour may freely continue.[69] CATV expansion into markets below the top 100 may also continue and will be the subject of Commission scrutiny only upon petition in a particular case. Thus, we have confined our special attention to the area of most concern—the top 100 markets where UHF stations are most likely to be coming into existence. And, in line with our present general policy in dealing with microwave applications (see par. 49, notice, 1 FCC 2d at p. 471), we have specified no "freeze" but rather a full exploration of the facts of each case, so that we may make an informed judgment on this most important question. We believe that this is a reasonable way to proceed, and that the public interest requires no less a procedure.

152. Legislative proposals: The foregoing discussion treated matters in Part I and paragraph 50 of the notice of proposed rule making. The remaining matters in Part II of the notice will be considered on the basis of the comments filed in that part and the experience gained. For the reason also, this report is designated as the second report. We turn now to a brief discussion of the legislative proposals which we believe are desirable.

153. There are four areas which we shall urge to the Congress as particularly warranting its attention:

(i) As we stated in the notice, we are clearly concerned here with new and important questions of policy and law in the communications field. We therefore state again that we would welcome congressional guidance as to policy and congressional clarification of our authority in all respects in this field. (See notice, par. 31, 1 FCC 2d at p. 465.)

(ii) We believe that congressional consideration of the Pay-TV aspects of CATV is particularly called for. For the reasons stated in paragraphs 128–129, we shall urge that Congress prohibit the origination of program or other material by a CATV system, with such limitations or exceptions as are deemed appropriate. A hybrid CATV-Pay-TV operation would be based, in an integral and substantial fashion, on use of broadcast signals, and such use of the broadcast industry's signals would appear to be both inequitable and inconsistent with the public interest. It is inequitable because it is clearly unfair to use the broadcast industry's product as a basis for wire Pay-TV operation which could adversely effect that industry or indeed supplant it. More important, were wire Pay-TV to supplant free television broadcast service, it would be inconsistent with the public interest, since it would mean that the public would receive, at least in large part, the same service it now does, but for a fee. Finally, we are considering petitions seeking the authorization of Pay-TV in the broadcast spectrum.

(iii) We believe that Congress should consider whether there should be a provision similar to section 325(a) applicable to CATV systems (i.e., whether, to what extent, and under what circumstances CATV systems should be required to obtain the consent of the originating broadcast station for the retransmission of the signal by the CATV system). We have described the presently anomalous conditions under which the broadcasting and CATV industries compete. See paragraphs 131–138.[70] Several parties such as NBC have urged that a section 325(a) approach would obviate the need for much, if not all, of the Commission regulations in this area and would serve the public interest. We are not in a position to state whether a section 325(a) approach would be effective and fully consistent with the public interest. We think that this is a matter warranting congressional (and Commission) consideration, including such aspects as how a "retransmission consent" requirement would function as a practical matter, whether systems in small communities should be dealt with specially, and whether grandfathering is appropriate and the nature of any such grandfathering.

(iv) Finally, Congress will be asked to consider the appropriate relationship of Federal to State-local jurisdiction in the CATV field, with particular reference to initial franchising, rate regulation, and extension of service.

Conclusion

154. Authority for adoption of these rules is contained in sections 1, 4(i), 303, 307(b), 308, and 309 of the Communications Act. We wish to stress particularly the provisions of section 1 that the general purpose of the Act is to "maintain the control of the United States over all the channels of interstate and foreign radio transmission * * * under licenses granted by federal authority"; of section 303(h), "to establish areas or zones to be served by any station"; of section 307(b), to make "a fair efficient,

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[69] If two major markets each fall within one another's Grade B contour (e.g., Washington and Baltimore), this does not mean that there is no question as to the carriage by a Baltimore CATV system of the signals of Washington; for in doing so and thus equalizing the quality of the more distant Washington signals, it might be changing the viewing habits of the Baltimore population and thus affecting the development of the Baltimore independent UHF station or stations. Such instances rarely arise, and can, we think, be dealt with by appropriate petition or Commission consideration in the unusual case where a problem of this nature might arise.

[70] The problem is further pointed up by the recent controversy involving the telecasting of certain of the Notre Dame home or away games by Station WNDU–TV, South Bend, Ind. See letter to Mr. Asa S. Bushnell, dated Oct. 28, 1965, public notice, dated Oct. 29, 1965, mimeo 75429. Under the NCAA television regulations, the station was allowed to telecast such games, but permission to do so was temporarily withdrawn because CATV systems, without WNDU–TV's consent, would then pick up the station's signal and carry it to areas not coming within the regulations. The NCAA Television Committee, while it is continuing to study the matter, recently adopted a new regulation stating:

> Any televising privilege granted under Article XIII (a or b), or XV shall apply exclusively to the station or stations specified, and shall be limited to such station or stations. Any extension of such an authorized telecast or its stipulated area of coverage by means of commercial microwave, cable, or community antenna television operation shall be construed as a violation of the rights accorded, and shall preclude favorable consideration of further authorizations of this nature. (Report of the 1965 NCAA Television Committee, Jan. 10–12, 1966, p. 31.)

Under this unusual situation, the local broadcast station could lose the opportunity to present a program of great interest to its area (as the NCAA plan recognizes in its regulations), because CATV systems over which it has no control carry the program beyond the specified local area (conceivably for hundreds of miles).

Indeed, the anomalous conditions could have an adverse effect on development of new program sources. Multiple owners such as Westinghouse or Metromedia have undertaken some development of new programs; this endeavor promotes the public interest by increasing the programs available and diversifying their sources. But, as Westinghouse points out, the undertaking is a difficult one, which might not be sustained if the programs are brought into the major markets by CATV systems of significant size or impact, thus diminishing or ending the opportunity for the sale of the programs in these markets. The same consideration might be pertinent in the case of the development of a fourth network.

and equitable distribution of radio service" among the several States and communities", section 303(g), to study new uses of radio and generally encourage the larger and more effective use of radio in the public interest, and section 303(s), the "all-channel receiver" section. The rules we adopt here, under the rule making power bestowed upon the Commission in sections 4(i) and 303(r), are designed to "study new uses" and insure future CATV activity and growth consistent with the "larger and more effective use of radio in the public interest." Indeed, the type of situation here involved is the very reason for the creation of this agency as the history of early chaos in the radio field shows. As the Supreme Court has stated, the Communications Act "expresses a desire on the part of Congress to maintain, through appropriate administrative control a grip on the dynamic aspects of radio transmission" (FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 138; see also NBC v. United States, 319 U.S. 190).

155. In this connection, we stress that we are not committed to the status quo—to protecting existing investment against new technological advances. The whole history of this art has been one of great change, from radio to television to perhaps tomorrow satellite broadcasting or laser communication. It may be that CATV, if allowed full, unfettered growth, would prove to be an excellent supplement, bringing additional service and diverse programing to millions of people in built-up areas who can afford it, without detriment to the provision of additional local broadcasting service to the entire nation. If so, the information obtained in the hearing process will provide that indication, and will be the basis for authorizing such growth. But we cannot make that judgment in the record now before us—and, instead of the above picture of wire television as an excellent supplement, there is the possibility that the nation might find itself with a system half wire, half free, which is destructive of the larger goals of additional networks, additional outlets for local expression, and which provides increased service to some in the city at the expense of those in the rural area or those who cannot afford to pay. It is, we think, time to get the facts, and in light of the service presently available, there is time to get the facts.

156. *Accordingly, it is ordered,* This 4th day of March 1966 that the rules contained in Appendix D below are adopted, effective April 18, 1966; *Provided, however,* That the provisions of § 74.1103 are not effective as to existing operations of nonmicrowave CATV systems until sixty (60) days thereafter; *and provided further,* That the provisions of §§ 74.1105, 74.1107, and 74.1109 are effective immediately upon publication in the FEDERAL REGISTER.

It is further ordered, That, pursuant to section 403 of the Communications Act, all CATV systems in operation on April 18, 1966, shall within thirty (30) days thereafter file with the Commission the information described in paragraph 99 of this report.

It is further ordered, That the proceedings in Docket No. 15971 are not terminated and that, in light of the comments on Part II of Docket No. 15971 and/or such further proceedings as the Commission may order, amendments may be made to the rules set forth in Appendix C below or additional rules may be adopted.

It is further ordered, That the proceedings in Docket Nos. 14895 and 15233 are terminated.

Released: March 8, 1966.

FEDERAL COMMUNICATIONS COMMISSION,[71]

[SEAL] BEN F. WAPLE, *Secretary.*

APPENDIX A

Comments and/or reply comments on Part I and paragraph 50 of this proceeding were filed by:

AFL–CIO Affiliated Labor Organizations.
Allied Artists Television Corp.
American Broadcasting Co.
American Cable Television, Inc.
American Farm Bureau Federation.
American Telephone and Telegraph Co.
Aroostock Broadcasting Corp.
Association for Competitive Television.
Association of Maximum Service Telecasters, Inc.
Black Canon Broadcasting Co.
Bonneville International Corp.
Clearview of Georgia, Inc.
Columbia Broadcasting System.
D. H. Overmyer.
Entron, Inc.
Eastern Educational Network.
Fuqua Industries, Inc.
GT&E Service Corp.
Houston Post Co.
International Telemeter Corp.
Jack O. Gross, d.b.a.
Gross Broadcasting Co.
Jerrold Electronics Corp.
Journal Co.
Joint Comments of Stations KHOU–TV, KOTV, KXTX, WANE–TV, WAVE–TV, WFIE–TV, WFRV, WISH–TV, WJXT, WMT–TV, WNOK–TV, WTOP–TV.
Meredith Broadcasting Co.
Mesa Verde Broadcasting Co., Inc.
Micro-Relay, Inc.
Midwest Television, Inc.
Mobile Video Tapes, Inc.
National Association of Broadcasters.
National Association of Educational Broadcasters.
National Broadcasting Co.
National Community Television Association, Inc.
National Educational Television.
National Farmers Union.
National Grange.
Phillips, Nizer, Benjamin, Krim & Ballon.
Rogers TV Cable, Inc.
Rust Craft Broadcasting Co.
San Diego Telecasters, Inc.
Smith & Pepper (on behalf of over 150 CATV systems).
Snyder & Associates.
Springfield Television Broadcasting Corp.
Storer Broadcasting Co.
Superior Broadcasting Corp.
Taft Broadcasting Co.
Telerama, Inc.
Triangle Publications, Inc.
Tri-State TV Translator Association.
Trans Video Corp.
TV Cable Service of Abilene, Inc.
United States Independent Telephone Association.
West Central Broadcasting Co.
Westinghouse Broadcasting Co., Inc.
Western Slope Broadcasting Co., Inc.
WGAL Television, Inc.
WJAC, Inc.
WKBH Television, Inc.
WTVY, Inc.
William L. Fox.

APPENDIX B

SUMMARY OF COMMENTS ON PAR. 50

National Community Television Association (NCTA) urges that a rule along the lines of the policy adopted in paragraph 49 and proposed in paragraph 50 is "completely arbitrary," "unnecessary," and "would be a virtual prohibition to provide CATV service in such communities" (NCTA comments, pp. 13–14). By way of support NCTA quotes at length (NCTA, exhibit B, pp. 14–22) from the discussion in the Seiden Report concerning "CATV in Three-Station Markets" (pp. 84–86) and from the Fisher Report concerning the effect of noncarriage on audience and revenues where there are three or more off-the-air program alternatives (pp. 91–92). NCTA states that the Seiden and Fisher conclusions "show conclusively that there is absolutely no basis for allegations of CATV as an adverse factor in the potential development of UHF television in large cities" (NCTA, Exhibit B, pp. 22, 32). NCTA asserts further that there is no criterion for determining whether a CATV system might at some time have the effect of delaying construction of a UHF station in a three-station market (NCTA comments, p. 14, Exhibit B, p. 31). Finally, it states that the existence of a CATV system in a community has not in the past prevented construction of a successful VHF or UHF television station in the community (ibid.).

Other comments on behalf of CATV interests challenge the proposed par. 50 rule principally on the ground of alleged lack of jurisdiction over CATV systems. It is asserted in addition that CATV will help UHF by providing good quality reception to an immediate audience prior to all-channel set saturation. Because of this, some UHF permittees in major cities have indicated no objection to CATV entry. It is further asserted that the success of independents will ultimately depend on their ability to provide a program service which will attract viewers and advertisers. International Telemeter Corp. states that if and when CATV systems are established on a broad base in large metropolitan areas, they may well be utilized for Pay-TV operations as an adjunct to other forms of wire television (Telemeter reply comments, p. 11). But, Telemeter adds (ibid.), "this is not to say that the public interest will not be served by the result * * *"; "the multiplicity of services via wire television systems can only serve, not harm, the public interest."

The comments of the American Broadcasting Co. (ABC) support the proposal. ABC states that a CATV operator in a market such as Philadelphia could carry the several New York independents to the very serious detriment of the local Philadelphia UHF stations, and that the carriage and nonduplication rules presently adopted by the Commission are not truly responsive to the "unexpected fractionalization of the audience interested in independent programing." ABC therefore believes that the Commission should "establish the areas or zones" normally to be served by television stations and delineate the circumstances under which

[71] Statements of Commissioners Bartley, Cox, and Loevinger are filed as part of original document.

a station's signals may properly be brought to areas not within its normal service area. It asserts that interim rules, pending the adoption of final rules in Part II, are needed because once CATV systems are established in markets that have a potential for independent UHF station development in the reasonably near future, the Commission will find itself in the impossible position of trying to undo what has already been done—of possibly adopting a regulation which would deny to substantial numbers the service which they assumed they would receive and for which they have already paid. ABC therefore urges the adoption of a rule prohibiting any person from transporting the signal of a TV station beyond its Grade B contour into a community within the range of four or more commercial Grade A assignments and receiving Grade A or better service from three or more commercial TV stations (or two such stations with a third station already authorized). ABC states that such a rule would apply basically to all but three of the nation's top 100 markets and therefore to those areas which now or shortly will have three or more local network services and the reasonably immediate likelihood of a fourth commercial service; that with this amount of service, these areas do not have any pressing need for additional service via wire, and they are also the areas which hold the most possibilities for UHF development; that the interim procedure would insure that a significant Pay-TV service would not be established while the Commission is reaching its final decision in this proceeding and in the Pay-TV rule making proceeding that has recently been requested; and that at the same time, the interim procedure will not preclude the development of CATV in these relatively underserved areas where it serves as a needed adjunct to free television service. Above all, ABC stresses that the proposed rule will prevent the establishment of CATV systems in areas and under conditions which the Commission may ultimately conclude would inhibit or prevent the normal development of UHF television.

Westinghouse in its comments takes a position similar to that of ABC. It urges a restriction upon the importation of signals into communities situated within the Grade A coverage of four or more commercial TV assignments and communities within the Grade A coverage of three or more commercial stations actually in operation (with exceptions (i) for two station markets with an outstanding construction permit for a third station where such permit is not activated within 6 months and (ii) to areas within the Grade A coverage of three stations not receiving the full service of the three networks because of the existing network affiliation relations). It asserts that many applicants for CATV franchises in big cities today are promising to deliver such stations as WOR–TV and WNEW–TV, New York and WGN–TV, Chicago; that these are well-established, independent stations in major markets, and, compared with a UHF station just getting started in another city, have a much greater economic base to make major expenditures for programing; and that the local UHF station, competing with these major stations for what is at best a limited audience (i.e. the audience for nonnetwork programing), will be unable to get a large enough share of this audience necessary for it to produce the income needed for the station to buy programing with which it can in fact compete for viewers with the other stations on the system. It states that CATV only brings its service to some viewers—those fortunate enough to live in areas with a large enough local population to furnish an economic base for the laying of CATV cable, and then only those living in such areas who can afford to pay CATV fees. Westinghouse asserts that CATV in big cities also has the obvious potential of transforming itself into pay television, and points to recent news reports that tell of a company which was unsuccessful in its efforts to operate a pay television system in one city in Canada and is now planning to take over a successful major CATV system in another Canadian city and convert it to pay television in whole or in part. Finally, Westinghouse stresses the need for an interim rule, stating that once CATV franchises are granted in the larger markets and construction of the systems is commenced pursuant to those grants, the Commission, from a practical and political viewpoint, will have lost effective control of the situation in those areas.

Storer Broadcasting Co. also supported the proposal because, it asserts, there is a definite probability of serious impact on television development in such cases, and the Commission cannot, through inaction, permit events to occur which jeopardize the goals set by the Congress and the Commission looking toward a competitive nationwide system of intermixed local television facilities. It urges that there is an established immediate need to "hold the line", during the interim period, on importation of distant signals to the major markets where CATV's "present stampede" into these markets might destroy the independent stations' audience potential "through importation of competitive programing on unequal terms" (Storer comments, p. 12). Storer also states that if the policy is to be effective, it should be applied to affiliated as well as independent UHF stations, and that it should be extended to CATV systems in nearby communities upon which the UHF depend for audience circulation. It asserts that a UHF station, although nominally a network affiliate, may still rely largely on independent programing, and that therefore its development requires the same protection as that proposed for independent UHF operators; and that CATV systems in nearby communities "can impose drastic damage on that station's audience circulation, particularly on a cumulative basis." (Id. at p. 14.)

The Association of Maximum Service Telecasters (AMST), Midwest Television, Inc. (Midwest), and the joint comments of KHOU–TV, KUTV, KXTX, WANE–TV, WAVE–TV, WFLE–TV, WFRV, WJXT, WMT–TV, WNOK–TV, WTOP–TV (joint comments) all urge the adoption of interim procedures going beyond those proposed in paragraph 50. the factual basis of AMST's and Midwest's comments have been described in part (see pars. 31–41). In addition, AMST cites the experiences of the UHF station in Lock Haven, Pa., and of UHF, Station WRLP, Greenfield, Mass., in the face of CATV competition. AMST asserts that the importation of outside large city independent television stations by CATV will be an obstacle to the development of a fourth network, since it will jeopardize the development of the UHF stations in these cities. AMST also states that the entry of CATV into larger cities poses a substantial threat to the development of network UHF service, citing in support statements made to the Commission or to the Congress of Rust Craft Broadcasting Co., permittee of WJKS–TV, Jacksonville, Fla., and WCCB–TV, a new UHF station in Charlotte, N.C. Midwest describes the explosive growth of CATV in the Peoria-La Salle area, the Springfield area, the Champaign-Danville area, the WCIA service area generally, and the San Diego area (see pars. 34, 39–41). The joint comments assert that proposals to bring multiple distant signals into areas such as Fort Wayne, Ind., Columbia, S.C., Jacksonville, Fla., and Indianapolis, Ind., jeopardize or foreclose the development of new UHF stations in these areas. The joint comments point out that in the area served by the existing Sacramento-Stockton stations, CATV systems have been franchised or have commenced operations in at least 31 communities, and applications for franchises have been filed or proposed in at least 18 more—including Sacramento and Stockton themselves; that the total number of households in these cities and communities is more than 250,000, representing a major portion of the audience now served by the three existing Sacramento-Stockton commercial stations and a still more substantial portion of the audience which would be served by KPXL, the newly authorized UHF station on Channel 29 in Sacramento; that as the permittee for the new UHF station in Sacramento has informed the Sacramento City Council, the importation of outside signals from San Francisco-Oakland and Los Angeles stations, as proposed, would make it impossible for the new UHF station to survive.

AMST, Midwest, and the joint comments proposed the interim rule that no CATV system shall be permitted to extend the signal of any television broadcast station beyond its Grade B contour except upon a clear and full showing (a) that there are special circumstances, for example, that the community is remote and isolated and does not have, and cannot be expected to receive in the future, direct off-the-air local or area television service; and (b) that the operation of the CATV system, taken together with the operations of all other CATV systems operating or franchised or which are being proposed in the area in question, would not pose a substantial threat to the maintenance or the expansion of any existing UHF station or the development of new UHF service in the area. AMST urges that the foregoing rule should be made effective immediately upon its publication and should be made applicable to all CATV systems proposed on or after April 23, 1965, the date of the release of the Commission's first report and order and its notice of inquiry and notice of proposed rule making. It states that an alternative but much less satisfactory approach in view of the CATV activity since April 23 would be to apply the interim rule (a) to all CATV systems which become operative on or after the publication of the rule, regardless of the date of franchise, and (b) to any CATV system operating on the date of publication of the rule which thereafter substantially expands its lines or the number of its subscribers or which increases the number of stations carried.

In reply comments ABC and Westinghouse assert that their interim proposal would better serve the public interest because it has been designed to prohibit the development of CATV in areas where it could adversely affect the overall public interest but not to prohibit its development where it could have little adverse effect upon the public interest and where there may well be a substantial public need for CATV services. In its reply, AMST asserts that its interim procedure would not have the effect of being a complete ban on CATV; that it would leave untouched the further expansion and development of CATV in its historic functions—(a) the providing of service to communities that are remote and isolated and do not have, and cannot be expected to receive in the future, direct off-the-air local or area television service and (b) the providing of fill-in service, improving the off-the-air service of local and area television stations in pockets within their normal coverage contours where for terrain or similar reasons a desirable quality of service is not received. It further argues that if there are indeed situations in which a CATV entrepreneur can show that he will aid rather than threaten the mainte-

nance or expansion of existing UHF stations and the development of new UHF service, appropriate interim rules and policies will leave it open to the CATV entrepreneur to make such a showing. AMST urges that the ABC and Westinghouse interim procedure are inadequate because they seek at the most to protect only those communities or areas which could ultimately have four television stations; that even as to those communities or areas, three television stations must already be active or two must be active and the third imminent; and that the proposed rule would apply only in the Grade A contours of those existing or imminent stations. AMST states that there is no reason—at least in the interim—to allow CATV to retard UHF development in any market. And that it is entirely possible for CATV systems in dozens of small communities to blanket most of the audience potential in the station's service area beyond its Grade A contour; and that the area can thus be very effectively denied to a small UHF station—possibly the difference between survival and failure, and at least the difference between effective programing and ineffective programing.

APPENDIX C

COMMISSION'S MEMORANDUM ON ITS JURISDICTION AND AUTHORITY

Section 1 of the Communications Act (47 U.S.C. 151), states that the purpose of the Act is the regulation of interstate and foreign commerce in communication by wire and radio, and that to efficiently achieve this purpose, authority over such commerce is centralized in the Commission. Section 2 (47 U.S.C. 152), states that the "provisions of this Act" shall apply to "all interstate communication by wide or radio * * * and to all persons engaged within the United States in such communication * * *." These terms are defined in section 3 of the Act. Section 3(a) defines wire communication as the "transmission of * * * pictures, and sound of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, appartus, and services (among other things, the receipt, forwarding, and delivery of communications), incidental to such transmission." Section 3(b) defines communication by radio as the "transmission by radio of * * * pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission."

From the plain language of these definitions, there would seem to be no question but that CATV systems are engaged in interstate communications by wire or radio. They transmit "pictures, and sounds * * * by aid of wire" and are "instrumentalities * * * [used for] * * * the receipt, forwarding, and delivery of communications * * * incidental to such transmission," and hence fall within the definition of wire communication under section 3(a).[1]

Moreover, CATV systems constitute interstate communication by wire, since they form a connecting link in the chain of communication between the point of origin (the transmitting station) and reception by the viewing public (the CATV subscriber)—a chain which "is now well established * * * as interstate communication." Capital City Telephone Co., 3 FCC 189, 193 (citing Federal Radio Commission v. Nelson Bros. Bond & Mortgage Co., 289 U.S. 266).[2] The law is clear that the mere location of communication facilities wholly within one State does not establish that the communication service rendered over such facilities is an intrastate service, and that a communications service can be interstate or foreign in nature and subject to the Commission's jurisdiction even though all the facilities are located within the confines of one State. California Interstate Telephone Co. v. FCC, 328 F. 2d 556 (C.A.D.C.); Ward v. Northern Ohio Telephone Co., 300 F. 2d 816 (C.A. 6), cert. den. 371 U.S. 820; Pacific Telatronics, Inc., FCC 64–1180, 4 R.R. 2d 145 (1964). CATV systems are extensions of the interstate service of the television broadcast stations whose signals they carry, Clarksburg Publishing Co. v. FCC, 225 F. 2d 511, 517 (C.A.D.C.), and hence constitute "interstate communication by wire" to which the provisions of the Act are applicable (secs. 2(a), 3(a)). See American Trucking Association v. United States, 344 U.S. 298, 311.[3]

With respect to the Commission's authority to adopt the rules proposed in the notice of inquiry and proposed rule making; i.e., the "provisions of [the] Act" that are to be applied to CATV systems, there are the following sections: Sections 1, 4(i), 303 (f), (h), (p), and (r), 307(b), 315, 317, and 508. But the crucial sections would appear to be 1, 307(b), 4(i), and 303 (f), (h), and (r). As the notice and the report and order in Docket Nos. 14895 and 15233 make clear, the existence and growth of CATV systems threaten to impede realization of the Commission's television assignment plan and policies under sections 1 and 307(b) (i.e., the sixth report and order).[4] (See Carter Mountain Transmission Corp. v. FCC, 321 F. 2d 359 (C.A.D.C.), cert. den. 375 U.S. 951 (1963).) The Commission has authority under sections 4(i), 303(f), 303(h), and 303(r) to:

Perform any and all acts, make such rules and regulations and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions (4(i));

Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act * * * (303(f));

Establish areas or zones to be served by any station (303(h)); and make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act * * * (303(r)).[5]

The foregoing provisions (4(i), 303(f) 303(h), and 303(r)) give the Commission broad rule making authority to carry out the provisions of this Act (e.g., sections 1 and 307(b)) with respect to communications or persons coming within the Commission's jurisdiction (including CATV—section 2(a)). Section 303(h), in particular, was affirmatively designed to assist the Commission in effectuating the fair and equitable distribution of broadcast service called for by section 307(b).[6] The Commission's authority to issue rules establishing the area or zone to be served by any station for this purpose includes the power to prevent infringement of the rules by "any person" (sections 312(b) and 502 of the Communications Act). Hence, it clearly encompasses, we believe, the authority to prescribe by rule the conditions under which the station's signal may be extended beyond the area or zone to be served by the originating station, by means of CATV—an "interstate communication by wire" to which the Act's provisions are applicable (sections 2(a) and 3(a)).

Moreover, apart from section 303(h), the general rule making power of the Commission (sections 4(i) and 303(r)) includes authority to take necessary action, not inconsistent with the Act or law, to prevent frustration of section 307(b) by CATV. In National Broadcasting Co. v. United States, 319 U.S. 190, 215–220, the Supreme Court citing, inter alia, sections 1, 303(f) and 303(r), stated that:

The avowed aim of the Communications Act of 1934 was to secure the maximum benefits of radio to all people of the United States. To that end Congress endowed the Communications Commission with comprehensive powers to promote and realize the vast potentialities of radio * * * In the context of the developing problems to which it was directed, the Act gave the Commission not niggardly but expansive powers.

Under such "expansive" and "comprehensive" powers,[7] the Commission has authority to take reasonable and appropriate action, including promulgation of rules, "as may be necessary" to carry out the provisions of section 307(b)—to insure that the regulatory scheme embodied in that section (the equitable distribution of service) and section 303 is not frustrated by the operation of CATV, an "interstate communication by wire" to which the Act's provisions are applicable. This authority does not depend on a specific reference to CATV or CATV practices in the Act. United States v. Storer Broadcasting Co., 351 U.S. 192, 203. See also, National Broadcasting Co. v. United States,

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[1] It can be argued that CATV systems, in receiving, forwarding, and delivering the station's signal to the viewing public, are the instrumentalities incidental to the transmission of the signal and hence fall within the definition of "communication by radio" in section 3(b). However, it is unnecessary to consider this argument in view of the discussion above as to section 3(a) and the scope of the Commission's proposals. Since CATV operations clearly fall within section 3(a) and/or section 3(b), a determination of their precise status is not essential to the question of the Commission's jurisdiction to proceed as proposed in the notice of inquiry and proposed rule making.

[2] Congressional approval of the Capital City doctrine was expressed in connection with the 1960 amendment to section 202(b). See 105 Congressional Record at 6256.

[3] It is, we believe, significant that in sustaining the jurisdiction of the Interstate Commerce Commission in American Trucking the Supreme Court relied solely upon provisions of the Motor Carrier Act that are, in the circumstances, analogous to sections 2 and 3 of the Communications Act. Compare 49 U.S.C. 302(a) and 303(a)(19) with 47 U.S.C. 152 and 153 (a) and (b).

[4] In addition, as noted in the notice, there exists the potential to frustrate the purposes of the Act embodied in secs. 303(p), 310, 315, 317, and 508 (and certain Commission regulations).

[5] Secs. 303 (f), (h), and (r) are preceded by the following clause: "Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires shall —".

[6] Section 303(h) was copied from the Radio Act of 1927 and originated in preceding bills to amend the Radio Act of 1912. For the legislative intent, see Hearings on H.R. 5589 before the House Committee on Merchant Marine and Fisheries, 69th Cong., 1st sess., pp. 40–41.

[7] See also, Stahlman v. FCC, 126 F. 2d 124, 128 (C.A.D.C.). For the intended comprehensive scope of Commission authority see, e.g., the following legislative history of the Radio Act of 1927, which was reenacted in all substantial respects in the Communications Act of 1934 (78 Congressional Record 8822–23, 10313–14, 10990); 66 Congresisonal Record 5479; S. Rept. 772, 69th Cong., 1st sess., pp. 2, 3.

319 U.S. 190, 218–219, where the Supreme Court stated:

True enough, the Act does not explicitly say that the Commission shall have power to deal with network practices found inimical to the public interest. But Congress was acting in a field of regulation which was both new and dynamic * * * While Congress did not give the Commission unfettered discretion to regulate all phases of the radio industry, it did not frustrate the purpose for which the Communications Act of 1934 was brought into being by attempting an itemized catalog of the specific manifestations of the general problems for the solution of which it was establishing a regulatory agency. That would have stereotyped the powers of the Commission to specific details in regulating a field of enterprise the dominant characteristic of which was the rapid pace of its unfolding. And so Congress did what experience had taught it in similar attempts at regulation, even in fields far less fluid and dynamic than radio. The essence of that experience was to define broad areas for regulation and to establish standards for judgment adequately related in their application to the problems to be solved.[8]

To the same effect in other fields, see Houston, East and West Texas Ry. Co. v. United States, 234 U.S. 342; United States v. Wrightwood Dairy Co., 315 U.S. 110; United States v. Pennsylvania R.R. Co., 323 U.S. 612; American Trucking Association v. United States, 344 U.S. 298; Public Service Commission of State of New York v. Federal Power Commission, 327 F. 2d 893, 897 (C.A.D.C.).[9]

[8] The Court, in referring to provisions of the Act such as sections 303 (g), and (r), stated (319 U.S. at 217–218):

"These provisions, individually and in the aggregate, preclude the notion that the Commission is empowered to deal only with technical and engineering impediments to the 'larger and more effective use of radio in the public interest.' We cannot find in the Act any such restriction of the Commission's authority. Suppose, for example, that a community can, because of physical limitations, be assigned only two stations. That community might be deprived of effective service in any one of several ways. More powerful stations in nearby cities might blanket out the signals of the local stations so that they could not be heard at all. One station might dominate the other with the power of its signal. But the community could be deprived of good radio service in ways less crude. One man, financially and technically qualified, might apply for and obtain the licenses of both stations and present a single service over the two stations, thus wasting a frequency otherwise available to the area. The language of the Act does not withdraw such a situation from the licensing and regulatory powers of the Commission, and there is no evidence that Congress did not mean its broad language to carry the authority it expresses."

[9] The Public Service Commission case sustained the power of the Federal Power Commission to issue temporary certificates to protect producers, although section 7(c) of the Federal Power Act expressly authorized such action only to protect customers, on the basis of the broad provisions of section 16 of that Act which are virtually the same as section 303(r) of the Communications Act. The Court stated (327 F. 2d at 897): "All authority of the Commission need not be found in explicit language. Section 16 demonstrates a realization by Congress that the Commission would be confronted with unforeseen problems of administration in regulating this huge industry and should have a basis for coping with such confrontation."

The American Trucking case is particularly pertinent. The Supreme Court there sustained ICC rules "aimed at conditions [trip-leasing] which may directly frustrate the success of the regulation undertaken by Congress." After citing sections analogous to section 307(b) in our situation, the Court stated (344 U.S. at 311):

Included in the Act as a duty of the Commission is that "to administer, execute, and enforce all provisions of this part, to make all necessary orders in connection therewith, and to prescribe rules, regulation, and procedure for such administration." And this necessary rule-making power, coterminous with the scope of agency regulation itself, must extend to the "transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation" regulation of which is vested in the Commission by 202(a). See also 203(a)(19).

We point out that section 204(a)(6) of the Motor Carrier Act is substantially similar to sections 303(r) and 4(i) of the Communications Act; while in the circumstances, sections 202(a) and 203(a)(19) of that Act are closely analogous to sections 2(b) and 3(a) of the Act. Further, the Court reached its conclusion "despite the absence of specific reference to leasing practices in the Act," stating (at pp. 309–310):

Our function, however, does not stop with a section-by-section search for the phrase "regulation of leasing practices" among the literal words of the statutory provisions. As a matter of principle, we might agree with appellants' contentions if we thought it a reasonable canon of interpretation that the draftsmen of acts delegating agency powers, as a practical and realistic matter, can or do include specific consideration of every evil sought to be corrected. But no great acquaintance with practical affairs is required to know that such prescience either in fact or in the minds of Congress, does not exist. National Broadcasting Co. v. United States, 319 U.S. 190, 219–220; * * *. Its very absence, moreover, is precisely one of the reasons why regulatory agencies such as the Commission are created * * *.

See, also, Public Service Commission of New York v. FPC, 327 F. 2d 893, 896–97 (C.A.D.C.).

Of course, the rules must be "reasonably necessary and fairly appropriate" for the protection of the regulatory scheme. Colorado Interstate Gas Co., v. Federal Power Commission, 142 F. 2d 943, 952 (C.A. 10). See also, American Trucking Association, v. U.S., 344 U.S., at 314–315; National Broadcasting Co., v. U.S., 319 U.S. at 219 ("Generalities unrelated to the living problems of radio communication cannot justify exercises of power by the Commission").[10] The report and order in Docket Nos. 14895 and 15233 demonstrates the appropriateness and necessity of rules requiring all CATV's to carry local stations without duplication for a reasonable period. Moreover, the Carter Mountain decision establishes the reasonableness of the requirements. In affirming the Commission, the Court stated that "this does not appear to us an unreasonable condition" but rather "a legitimate measure of protection for the local station and the public interest" (321 F. 2d 359, at 363–364). The notice of inquiry and proposed rule making similarly demonstrates the validity of the Commission's concern as to the effect of CATV on independent stations and programing sources, as well as on the development of UHF in the larger markets.

[10] The Commission clearly has no jurisdiction over bowling alleys or theaters, for example, as an adminstrative agency has no greater power than has been conferred by Congress. Stark v. Wickard, 321 U.S. 288; NLRB v. Atlantic Metallic Casket Co., 205 F. 2d 931 (C.A. 5). Cf. Peters v. Hobby, 349 U.S. 331. However, unlike bowling alleys and theaters, CATV systems intercept and extend the signals of television stations, and thus have a uniquely close relationship to the regulatory scheme. Moreover, CATV systems are engaged in interstate communcation by wire to which the Act's provisions are expressly applicable.

In conclusion, it would appear that under the broad regulatory powers vested in it by the Communications Act, the Commission presently has jurisdiction over all CATV systems, whether microwave is used or not; that there are pertinent provisions of the Act applicable to the exercise of authority over such systems (in particular, sections 1, 4(i), 303(f), 303(h), 303(r), 307(b), and 403); and that the proposed rules and inquiry represent a reasonable exercise of that authority in the circumstances.

APPENDIX D

I. Part 21 is amended as follows:

1. In § 21.710, paragraphs (a) and (b) are amended and a new paragraph (i) is added as follows:

§ 21.710 Definitions.

As used in §§ 21.712 and 21.714:

(a) *Community antenna television systems.* The term "community antenna television system" ("CATV system") means any facility which, in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service, but such term shall not include (1) any such facility which serves fewer than 50 subscribers, or (2) any such facility which serves only the residents of one or more apartment dwellings under common ownership, control, or management, and commercial establishments located on the premises of such an apartment house.

(b) *Television station; television broadcast station; television translator station.* The terms "television station" and "television broadcast station" mean any television broadcasting station operating on a channel regularly assigned to its community by § 73.606 of this chapter. The term "television translator station" means a television translator station as defined in § 74.701 of this chapter. A television translator station which is licensed to and rebroadcasts the programing of a television broadcast station within that station's Grade B contour, shall be deemed an extension of the originating station.

* * * * *

(i) *Distant signal.* The term "distant signal" means the signal of a television broadcast station which is extended or received beyond the Grade B contour of that station.

2. In § 21.712, paragraphs (b), (c), (d) (3), (e), (g), (h), (i), (j) are amended; paragraphs (i)(4) and (k) are added; and note 2 to § 21.712 is deleted:

§ 21.712 Authorizations for fixed stations to relay television signals to CATV systems.

* * * * *

(b) *Notification of request for service.* Any such CATV system or other subscriber proposing to utilize such service to relay television signals to any CATV system, either directly or indirectly, shall notify the licensee or permittee of any television broadcast station, within whose predicted Grade B contour the CATV system operates or will operate in whole or in part, and the licensee or permittee of any 100 watts or higher power translator station operating in the community of the system, of the request for service. Where it is proposed to extend the signal of any noncommercial educational television station beyond its Grade B contour into a community with an unoccupied reserved educational television channel assignment under § 73.606 of this chapter, the notice shall also be served upon the superintendents of schools in the community and county and the local, area, and State educational television agencies, if any. Such notice shall include the fact of the request for service, identification of each CATV system to utilize the service requested (either directly or indirectly), identification of the community served or to be served by each CATV system, and the television station(s) whose programs will be distributed by each such CATV system.

(c) *Stations required to be carried.* Within the limits of its channel capacity, any such CATV system shall carry the signals of operating or subsequently authorized television broadcast and 100 watts or higher power translator stations in the following order of priority, upon request of the licensee or permittee of the relevant station:

(1) First, all commercial and noncommercial educational stations within whose principal community contours the station operates, in whole or in part;

(2) Second, all commercial and noncommercial educational stations within whose Grade A contours the system operates, in whole or in part;

(3) Third, all commercial and noncommercial educational stations within whose Grade B contours the system operates, in whole or in part; and

(4) Fourth, all commercial and noncommercial educational translator stations operating in the community of the system with 100 watt or higher power.

(d) *Exceptions.* * * *

(3) The system need not carry the signal of any television translator station if (i) the system is carrying the signal of the originating station, or (ii) the system is within the Grade B or higher priority contour of a station carried on the system whose programing is substantially duplicated by the translator.

(e) *Special requirements in the event of noncarriage.* Where the system does not carry the signals of one or more stations within whose Grade B or higher priority contour it operates, or the signals of one or more 100 watts or higher power translator stations located in its community, the system shall offer and maintain, for each subscriber, an adequate switching device to allow the subscriber to choose between cable and noncable reception, unless the subscriber affirmatively indicates in writing that he does not desire this device.

* * * * *

(g) *Stations entitled to program exclusivity.* Any such system which operates, in whole or in part, within the Grade B or higher priority contour of any commercial or noncommercial educational television station or within the community of a fourth priority television translator station, and which carries the signal of such station shall, upon request of the station licensee or permittee, maintain the station's exclusivity as a program outlet against lower priority or more distant duplicating signals, but not against signals of equal priority, in the manner and to the extent specified in paragraphs (h) and (i) of this section.

(h) *Program exclusivity; extent of protection.* Where a station is entitled to program exclusivity, the CATV system shall, upon request of the station licensee or permittee, refrain from duplicating any program broadcast by such station on the same day as its broadcast by the station, if the CATV operator has received notification from the requesting station of the date and time of its broadcast of the program and the date and time of any broadcast to be deleted, as soon as possible and in any event no later than 48 hours prior to the broadcast to be deleted. Upon request of the CATV system, such notice shall be given at least 8 days prior to the date of any broadcast to be deleted.

(i) *Exceptions.* Notwithstanding the the requirements of paragraph (h) of this section,

* * * * *

(4) The system need not delete reception of any program which would be carried on the system in color but will be broadcast in black and white by the station requesting deletion.

(j) *Disputes between television broadcast or translator stations and CATV systems; requests for waiver of the rules or for different treatment.* In the event that a dispute should arise, at any time, between a television broadcast or translator station and a CATV system served under an authorization subject to this section, on the question of whether the CATV system is complying with the applicable requirements, the matter may be referred to the Commission for a ruling pursuant to the provisions of § 74.1109 of this chapter, either by the licensee carrier, or by the station, or CATV system, with notice to the licensee carrier. Where a dispute has been referred to the Commission for a ruling or where a petition for waiver of the rules or for different requirements has been filed under § 74.1109 of this chapter, with notice to the licensee carrier, microwave service to the relevant subscriber shall not be commenced or terminated until thirty (30) days after the Commission's ruling has been received by the licensee carrier.

(k) *Interim requirement.* No CATV system shall be provided with microwave service, either directly or indirectly, if the operation of such CATV system would be inconsistent with § 74.1107 of this chapter.

NOTE 1: As used in § 21.712(b), the term "predicted Grade B contour" means the field intensity contour defined in § 73.683(a) of this chapter, the location of which is determined exclusively by means of the calculations prescribed in § 73.684 of this chapter.

II. Part 74 is amended as follows:

1. In § 74.1, paragraph (c)(4) is deleted, and two new paragraphs (d) and (e) are added to read as follows:

§ 74.1 Services covered by this part.

* * * * *

(d) Community antenna relay stations (Subpart J).

(e) Community antenna television systems (Subpart K).

2. In Section 74.1001(e), subparagraphs (1) and (2) are amended as follows and a new subparagraph (9) is added as follows:

§ 74.1001 Definitions.

* * * * *

(e) As used in §§ 74.1031 and 74.1033.

(1) Community antenna television system. The term "community antenna television system" ("CATV system") means any facility which, in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service, but such term shall not include (1) any such facility which serves fewer than 50 subscribers, or (2) any such facility which serves only the residents of one or more apartment dwellings under common ownership, control, or management, and commercial establishments located on the premises of such an apartment house.

(2) *Television station; television broadcast station; television translator station.* The terms "television station" and "television broadcast station" mean any television broadcasting station operating on a channel regularly assigned to its community by § 73.606 of this chapter. The term "television translator station" means a television broadcast translator station as defined in § 74.701 of this chapter. A television translator station which is licensed to and rebroadcasts the programing of a television broadcast station within that station's Grade B contour shall be deemed an extension of the originating station.

* * * * *

(9) *Distant signal.* The term "distant signal" means the signal of a television broadcast station which is extended or received beyond the Grade B contour of that station.

3. Section 74.1031(c) is amended to read as follows:

§ 74.1031 Eligibility and contents of application.

* * * * *

(c) An application for any authorization subject to § 74.1033 shall contain a statement that the applicant(s) have notified the licensee or permittee of any television station, within whose predicted Grade B contour the CATV system(s) operate or will operate, in whole or in part, and the licensee or permittee of any 100 watts or higher power translator station operating in the community of each such system, of the filing of the application. Where it is proposed to extend the signal of any noncommercial educational television station beyond its Grade B contour into a community with an unoccupied reserved educational television channel assignment under § 73.606 of this chapter, the notice shall also be served upon the superintendents of schools in the community and county and the local, area, and State educational television agencies, if any. Such statement of the applicant shall be supported by copies of the letters of notification directed to such licensees or permittees and educational interests. The notice shall include the fact of filing by the applicant(s), identification of each CATV system served or to be served under the authorization sought, identification of the community served or to be served by each such CATV system, and the television, standard broadcast and FM station(s) whose programs will be distributed by each such CATV system.

NOTE 1: As used in § 74.1031(c), the term "predicted Grade B contour" means the field intensity contour defined in § 73.683(a) of this chapter, the location of which is determined exclusively by means of the calculations prescribed in § 73.684 of this chapter.

4. In § 74.1033, paragraphs (a), (b)(3), (c), (e), and (f) are amended; paragraphs (g)(4) and (h) are added; and the note to § 74.1033 is deleted.

§ 74.1033 Licensing requirements.

* * * * *

(a) *Stations required to be carried.* Within the limits of its channel capacity, any such CATV system shall carry the signals of operating or subsequently authorized and operating television broadcast and 100 watts or higher power translator stations in the following order of priority, upon the request of the licensee or permittee of the relevant station:

(1) First, all commercial and noncommercial educational stations within whose principal community contours the system operates, in whole or in part;

(2) Second, all commercial and noncommercial educational stations within whose Grade A contours the system operates, in whole or in part;

(3) Third, all commercial and noncommercial educational stations within whose Grade B contour the system operates, in whole or in part;

(4) Fourth, all commercial and noncommercial educational translator stations operating in the community of the system with 100 watts or higher power.

(b) *Exceptions.* * * *

(3) The system need not carry the signal of any television translator station if (i) the system is carrying the signal of the originating station, or (ii) the system is within the Grade B or higher priority contour of a station carried on the system whose programing is substantially duplicated by the translator.

(c) *Special requirements in the event of noncarriage.* Where the system does not carry the signals of one or more stations within whose Grade B or higher priority contour it operates, or the signals of one or more 100 watts or higher power translator stations located in its community, the system shall offer and maintain, for each subscriber, an adequate switching device to allow the subscriber to choose between cable and noncable reception, unless the subscriber affirmatively indicates in writing that he does not desire this device.

* * * * *

(e) *Stations entitled to program exclusivity.* Any such system which operates, in whole or in part, within the Grade B or higher priority contour of any commercial or noncommercial educational television station or within the community of a fourth priority television translator station, and which carries the signal of such station shall, upon request of the station licensee or permittee, maintain the station's exclusivity as a program outlet against lower priority or more distant duplicating signals, but not against signals of equal priority, in the manner and to the extent specified in paragraphs (f) and (g) of this section.

(f) *Program exclusivity; extent of protection.* Where a station is entitled to program exclusivity, the CATV system shall, upon the request of the station licensee or permittee, refrain from duplicating any program broadcast by such station on the same day as its broadcast by the station, if the CATV operator has received notification from the requesting station of the date and time of its broadcast of the program and the date and time of any broadcast to be deleted, as soon as possible and in any event no later than 48 hours prior to the broadcast to be deleted. Upon request of the CATV system such notice shall be given at least 8 days prior to the date of any broadcast to be deleted.

(g) *Exceptions.* * * *

(4) The system need not delete reception of any program which would be carried on the system in color but will be broadcast in black and white by the station requesting deletion.

(h) *Interim requirement.* No CATV system shall be provided with microwave service, either directly or indirectly if the operation of such CATV system would be inconsistent with § 74.1107 of this chapter.

5. A new Subpart K is added to read as follows:

Subpart K—Community Antenna Television Systems

Sec.

74.1101 Definitions.
74.1103 Requirements relating to distribution of television signals by community antenna television systems.
74.1105 Notification prior to the commencement of new service.
74.1107 Requirement for showing in evidentiary hearing and Commission approval in top 100 television markets; other procedures.
74.1109 Procedures applicable to requests for waiver of the rules, additional or different requirements and rulings on complaints or disputes.

AUTHORITY: The provisions of this Subpart K issued under secs. 1, 4, 303, 307, 308, 309, 48 Stat. 1064, 1066, 1082, 1083, 1084, 1085, as amended; 47 U.S.C. 151, 154, 303, 307, 308, 309.

§ 74.1101 Definitions.

(a) *Community antenna television system.* The term "community antenna television system" ("CATV system") means any facility which, in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service, but such term shall not include (1) any such facility which serves fewer than 50 subscribers, or (2) any such facility which serves only the residents of one or more apartment dwellings under common ownership, control, or management, and commercial establishments located on the premises of such an apartment house.

(b) *Television station; television broadcast station; television translator station.* The terms "television station" and "television broadcast station" mean any television broadcasting station operating on a channel regularly assigned to its community by § 73.606 of this chapter. The term "television translator station" means a television broadcast translator station as defined in § 74.701 of this chapter. A television translator station which is licensed to and rebroadcasts the programing of a television broadcast station within that station's Grade B contour, shall be deemed an extension of the originating station.

(c) *Principal community contour.* The term "principal community contour" means the signal contour which a television station is required to place over its entire principal community by § 73.685(a) of this chapter.

(d) *Grade A and Grade B contours.* The terms "Grade A contour" and "Grade B contour" mean the field intensity contours defined in § 73.683(a) of this chapter.

(e) *Network programing.* The term "network programing" means the programing supplied by a national television network organization.

(f) *Substantially duplicated.* The term "substantially duplicated" means regularly duplicated by the network programing of one or more stations, singly or collectively, in a normal week during the hours of 6 to 11 p.m., local time, for a total of 14 or more hours.

(g) *Priority.* The term "priority" means the priority among stations established in § 74.1103(a).

(h) *Independent station.* The term "independent station" means a television station which is not affiliated with any national television network organization.

(i) *Distant signal.* The term "distant signal" means the signal of a television broadcast station which is extended or received beyond the Grade B contour of that station.

§ 74.1103 Requirement relating to distribution of television signals by community antenna television systems.

No community antenna television system shall supply to its subscribers signals broadcast by one or more television stations, except in accordance with the following conditions:

(a) *Stations required to be carried.* Within the limits of its channel capacity, any such CATV system shall carry the signals of operating or subsequently authorized and operating television broadcast and 100 watts or higher power translator stations in the following order of priority, upon the request of the licensee or permittee of the relevant station;

(1) First, all commercial and noncommercial educational stations within whose principal community contours the system operates, in whole or in part;

(2) Second, all commercial and noncommercial educational stations within whose Grade A contours the system operates, in whole or in part;

(3) Third, all commercial and noncommercial educational stations within whose Grade B contours the system operates, in whole or in part;

(4) Fourth, all commercial and noncommercial educational television translator stations operating in the community of the system with 100 watts or higher power.

(b) *Exceptions.* Notwithstanding the requirements of paragraph (a) of this section,

(1) The system need not carry the signal of any station, if (i) that station's network programing is substantially duplicated by one or more stations of higher priority, and (ii) carrying it would, because of limited channel capacity, prevent the system from carrying the signal of an independent commercial station or a noncommercial educational station.

(2) In cases where (i) there are two or more signals of equal priority which substantially duplicate each other, and (ii) carrying all such signals would, because of limited channel capacity, prevent the system from carrying the signal of an independent commercial station or a noncommercial educational station, the system need not carry all such substantially duplicating signals, but may select among them to the extent necessary to preserve its ability to carry the signals of independent commercial or noncommercial educational stations.

(3) The system need not carry the signal of any television translator station if (i) the system is carrying the signal of the originating station, or (ii) the system is within the Grade B or higher priority contour of a station carried on the system whose programing is substantially duplicated by the translator.

(c) *Special requirements in the event of noncarriage.* Where the system does not carry the signals of one or more stations within whose Grade B or higher priority contour it operates, or the signals of one or more 100 watts or higher power translator stations located in its community, the system shall offer and maintain, for each subscriber, an adequate switching device to allow the subscriber to choose between cable and noncable reception, unless the subscriber affirmatively indicates in writing that he does not desire this device.

(d) *Manner of carriage.* Where the signal of any station is required to be carried under this section,

(1) The signal shall be carried without material degradation in quality (within the limitations imposed by the technical state of the art);

(2) The signal shall, upon request of the station licensee or permittee, be carried on the system on the channel on which the station is transmitting (where practicable without material degradation); and

(3) The signal shall, upon the request of the station licensee or permittee, be carried on the system on no more than one channel.

(e) *Stations entitled to program exclusivity.* Any such system which operates, in whole or in part, within the Grade B or higher priority contour of any commercial or noncommercial educational television station or within the community of a fourth priority television translator station, and which carries the signal of such station shall, upon request of the station licensee or permittee, maintain the station's exclusivity as a program outlet against lower priority or more distant duplicating signals, but not against signals of equal priority, in the manner and to the extent specified in paragraphs (f) and (g) of this section.

(f) *Program exclusivity; extent of protection.* Where a station is entitled to program exclusivity, the CATV system shall, upon the request of the station licensee or permittee, refrain from duplicating any program broadcast by such station, on the same day as its broadcast by the station, if the CATV operator has received notification from the requesting station of the date and time of its broadcast of the program and the date and time of any broadcast to be deleted, as soon as possible and in any event no later than 48 hours prior to the broadcast to be deleted. Upon request of the CATV system, such notice shall be given at least 8 days prior to the date of any broadcast to be deleted.

(g) *Exceptions.* Notwithstanding the requirements of paragraph (f) of this section,

(1) The CATV system need not delete reception of a network program if, in so doing, it would leave available for reception by subscribers, at any time, less than the programs of two networks (including those broadcast by any stations whose signals are being carried and whose program exclusivity is being protected pursuant to the requirements of this section);

(2) The system need not delete reception of a network program which is scheduled by the network between the hours of 6 and 11 p.m., eastern time, but is broadcast by the station requesting deletion, in whole or in part, outside of the period which would normally be considered prime time for network programing in the time zone involved;

(3) The system need not delete reception of any program consisting of the broadcast coverage of a speech or other event as to which the time of presentation is of special significance, except where the program is being simultaneously broadcast by a station entitled to program exclusivity; and

(4) The system need not delete reception of any program which would be carried on the system in color but will be broadcast in black and white by the station requesting deletion.

§ 74.1105 Notification prior to the commencement of new service.

No CATV system shall commence operations or commence supplying to its subscribers the signal of any television broadcast station carried beyond the Grade B contour of that station, unless the system has given prior notice of the proposed new service to the licensee or permittee of any television broadcast station within whose predicted Grade B contour the system operates or will operate, and to the licensee or permittee of any 100 watts or higher power translator station operating in the community of the system, and has furnished a copy of each such notification to the Federal Communications Commission, within sixty (60) days after obtaining a franchise or entering into a lease or other arrangement to use facilities; in any event, no CATV system shall commence such operations until thirty (30) days after notice has been given. Such notice shall be given by existing systems which propose to add new distant signals at least thirty (30) days prior to commencing service and by systems which propose to extend lines into obviously new geographic areas within sixty (60) days after obtaining a franchise or entering into a lease or other arrangement to use facilities or, where no new local authorization or contractual arrangement is necessary, at least thirty (30) days prior to commencing service. Where it is proposed to extend the signal of any noncommercial educational television station beyond its Grade B contour into a community with an unoccupied reserved educational television channel assignment under § 73.606 of this chapter, the notice shall also be served upon the superintendents of schools in the community and county in which the system will operate and the local, area, and State educational television agencies, if any. The notice shall include the name and address of the system, identification of the community to be served, the television signals to be distributed, and the estimated time opera-

tions will commence. Where a petition with respect to the proposed service is filed with the Commission, pursuant to § 74.1109 of this chapter, within thirty (30) days after notice, new service to subscribers shall not be commenced until after the Commission's ruling on the petition or on the interlocutory question of temporary relief pending further procedures; *Provided, however,* That service shall not be commenced in violation of the terms of any specified temporary relief or of the provisions of § 74.1107 of this chapter. Where no petition pursuant to § 74.1109 has been filed within thirty (30) days after notice, service may be commenced at any time thereafter, subject, however, to the provisions of § 74.-1107. The provisions of this section do not apply to any signals which were being supplied to subscribers of the CATV system on March 17, 1966.

NOTE 1: As used in § 74.1105, the term "predicted Grade B contour" means the field intensity contour defined in § 73.683(a) of this chapter, the location of which is determined exclusively by means of the calculations prescribed in § 73.684 of this chapter.

§ 74.1107 Requirement for showing in evidentiary hearing and Commission approval in top 100 television markets; other procedures.

(a) No CATV system operating within the predicted Grade A contour of a television broadcast station in the 100 largest television markets shall extend the signal of a television broadcast station beyond the Grade B contour of that station, except upon a showing, approved by the Commission, that such extension would be consistent with the public interest, and specifically the establishment and healthy maintenance of television broadcast service in the area. Commission approval of a request to extend a signal in the foregoing circumstances will be granted where the Commission, after consideration of the request and all related materials in a full evidentiary hearing, determines that the requisite showing has been made. The market size shall be determined by the rating of the American Research Bureau, on the basis of the net weekly circulation for the most recent year.

(b) A request under paragraph (a) of this section shall be filed after the CATV system has obtained any necessary franchise for operation or has entered into a lease or other arrangement to use facilities and shall set forth the name of the community involved, the date on which a franchise was obtained, the signal or signals proposed to be extended beyond their Grade B contours, and the specific reasons why it is urged that such extension is consistent with the public interest. Public notice will be given of the filing of such a request, and interested parties may file a response or statement within thirty (30) days after such public notice. A reply to such responses or statement may be filed within a twenty (20) day period thereafter.

The Commission shall designate the request for an evidentiary hearing on issues to be specified, with the burden of proof and the burden of proceeding with the introduction of evidence upon the CATV system making the request, unless otherwise specified by the Commission as to particular issues.

(c) No CATV system, located so as to fall outside the provisions of paragraph (a) of this section, shall extend the signal of a television broadcast station beyond the Grade B contour of that station, where the Commission, upon its own motion or pursuant to a petition filed under § 74.1109, determines, after appropriate proceedings, that such extension would be inconsistent with the public interest, taking into account particularly the establishment and healthy maintenance of television broadcast service in the area.

(d) The provisions of paragraphs (a) and (b) of this section shall not be applicable to any signals which were being supplied by a CATV system to its subscribers on February 15, 1966, and pursuant to a franchise (where necessary) issued on or before that date; provided, however, that any new franchise or amendment of an existing franchise after February 15, 1966, to operate or extend the operations of the CATV system in the same general area does come within the provisions of paragraphs (a) and (b) of this section; and provided further that no CATV system located in the 100 largest television markets, which was supplying to its subscribers on February 15, 1966, a signal carried beyond its Grade B contour, shall extend its service to new geographical areas where the Commission, upon petition filed under § 74.1109 by a television broadcast station located in the area and after consideration of the response of the CATV system and appropriate proceedings, determine that the public interest, taking into account the considerations set forth in the second report and order in Docket Nos. 14895, 15233, and 15971, FCC 66–220, paragraphs 113–149, would be served by appropriate conditions limiting the geographical extension of the system to new areas. In the event that an evidentiary hearing is held on such a petition, the Commission may also consider, upon the basis of the pleadings before it, whether temporary relief pending the outcome of the hearing is called for in the public interest, and, if so, the nature of such relief; no CATV system coming within the foregoing provision shall extend its service to new geographical areas in violation of the terms of the specified temporary relief.

§ 74.1109 Procedures applicable to petitions for waiver of the rules, additional or different requirements and rulings on complaints or disputes.

(a) Upon petition by a CATV system, an applicant, permittee, or licensee of a television broadcast, translator, or microwave relay station, or by any other interested person, the Commission may waive any provision of the rules relating to the distribution of television broadcast signals by CATV systems, impose additional or different requirements, or issue a ruling on a complaint or disputed question.

(b) The petition may be submitted informally, by letter, but shall be accompanied by an affidavit of service on any CATV system, station licensee, permittee, applicant, or other interested person who may be directly affected if the relief requested in the petition should be granted.

(c) (1) The petition shall state the relief requested and may contain alternative requests. It shall state fully and precisely all pertinent facts and considerations relied upon to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest. Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(2) A petition for a ruling on a complaint or disputed question shall set forth all steps taken by the parties to resolve the problem, except where the only relief sought is a clarification of interpretation of the rules.

(d) Interested persons may submit comments or opposition to the petition within thirty (30) days after it has been filed. Upon good cause shown in the petition, the Commission may, by letter or telegram to known interested persons, specify a shorter time for such submissions. Comments or oppositions shall be served on petitioner and on all persons listed in petitioner's affidavit of service, and shall contain a detailed full showing, supported by affidavit, of any facts or considerations relied upon.

(e) The petitioner may file a reply to the comments or oppositions within twenty (20) days after their submission, which shall be served upon all persons who have filed pleadings and shall also contain a detailed full showing, supported by affidavit, of any additional facts or considerations relied upon. Upon good cause shown, the Commission may specify a shorter time for the filing of reply comments.

(f) The Commission, after consideration of the pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request, or may issue a ruling on the complaint or dispute. The Commission may specify other procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects, as it deems appropriate. In the event that an evidentiary hearing is required, the Commission will determine, on the basis of the pleadings and such other procedures as it may specify, whether temporary relief should be accorded to any party pending the hearing and the nature of any such temporary relief. Where a petition involves new service to subscribers (other than service coming within the provisions of § 74.1107(a) of this chapter), the Commission will expedite its consideration and promptly issue a ruling either on the merits of the petition or on the interlocutory question of temporary relief pending further procedures.

(g) Where a request for temporary relief is contained in a petition with respect

to service coming within the provisions of § 74.1107(d) of this chapter, opposition to such request for temporary relief shall be filed within ten (10) days and reply comments within seven (7) days thereafter. The Commission will expedite its consideration of the question of temporary relief.

III. Part 91 is amended as follows:

1. In § 91.557, paragraphs (a) and (b) are amended to read as follows, and a new paragraph (i) is added as follows:

§ 91.557 Definitions.

As used in §§ 91.559 and 91.561,

(a) *Community antenna television systems.* The term "community antenna television system" ("CATV system") means any facility which, in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service, but such term shall not include (1) any such facility which serves fewer than 50 subscribers, or (2) any such facility which serves only the residents of one or more apartment dwellings under common ownership, control, or management, and commercial establishments located on the premises of such an apartment house.

(b) *Television station; television broadcast station; television translator station.* The terms "television station" and "television broadcast station" mean any television broadcasting station operating on a channel regularly assigned to its community by § 73.606 of this chapter. The term "television translator station" means a television translator station as defined in § 74.701 of this chapter. A television translator station which is licensed to and rebroadcasts the programing of a television broadcast station within that station's Grade B contour, shall be deemed an extension of the originating station.

* * * * *

(i) *Distant signal.* The term "distant signal" means the signal of a television broadcast station which is extended or received beyond the Grade B contour of that station.

2. In § 91.559, paragraphs (a), (b)(3), (c), (e), and (f) are amended; paragraphs (g)(4) and (h) are added; and the note to § 91.559 is deleted:

§ 91.559 Authorizations for operational fixed stations to relay television signals to CATV systems.

* * * * *

(a) *Stations required to be carried.* Within the limits of its channel capacity, any such CATV system shall carry the signals of operating or subsequently authorized television broadcast and 100 watts or higher power translator stations in the following order of priority, upon request of the licensee or permittee of the relevant station:

(1) First, all commercial and noncommercial educational stations within whose principal community contours the system operates, in whole or in part;

(2) Second, all commercial and noncommercial educational stations within whose Grade A contours the system operates, in whole or in part;

(3) Third, all commercial and noncommercial educational stations within whose Grade B contour the system operates, in whole or in part; and

(4) Fourth, all commercial and noncommercial educational translator stations operating in the community of the system with 100 watts or higher power.

(b) *Exceptions.* * * *

(3) The system need not carry the signal of any television translator station if (i) the system is carrying the signal of the originating station, or (ii) the system is within the Grade B or higher priority contour of a station carried on the cable whose programing is substantially duplicated by the translator.

(c) *Special requirements in the event of noncarriage.* Where the system does not carry the signals of one or more stations within whose Grade B or higher priority contour it operates, or the signals of one or more 100 watts or higher power translator stations located in its community, the system shall offer and maintain, for each subscriber, an adequate switching device to allow the subscriber to choose between cable and noncable reception, unless the subscriber affirmatively indicates in writing that he does not desire this device.

* * * * *

(e) *Stations entitled to program exclusivity.* Any such system which operates, in whole or in part, within the Grade B or higher priority contour of any commercial or noncommercial educational television station or within the community of a fourth priority television translator station, and which carries the signal of such station shall, upon request of the station licensee or permittee, maintain the station's exclusivity as a program outlet against lower priority or more distant duplicating signals, but not against signals of equal priority, in the manner and to the extent specified in paragraphs (f) and (g) of this section.

(f) *Program exclusivity; extent of protection.* Where a station is entitled to program exclusivity, the CATV system shall, upon request of the station licensee or permittee, refrain from duplicating any program broadcast by such station on the same day as its broadcast by the station, if the CATV operator has received notification from the requesting station of the date and time of any of its broadcast of the program and the date and time of any broadcast to be deleted, as soon as possible and in any event no later than 48 hours prior to the broadcast to be deleted. Upon request of the CATV system, such notice shall be given at least 8 days prior to the date of any broadcast to be deleted.

(g) *Exceptions.* * * *

(4) The system need not delete reception of any program which would be carried on the system in color but will be broadcast in black and white by the station requesting deletion.

(h) *Interim requirement.* No CATV system shall be provided with microwave service, either directly or indirectly, if the operation of such CATV system would be inconsistent with § 74.1107 of this chapter.

3. Section 91.561 is amended to read as follows:

§ 91.561 Notification by applicant.

An application for any authorization subject to § 91.559 shall contain a statement that the applicant has notified the licensee or permittee of any television broadcast station, within whose predicted Grade B contour the CATV system(s) served or to be served operate or will operate, and the licensee or permittee of any 100 watts or higher power translator station operating in the community of the system, of the filing of the application. Where it is proposed to extend the signal of any noncommercial educational television station beyond its Grade B contour into a community with an unoccupied reserved educational television channel assignment under § 73.606 of this chapter, the notice shall also be served upon the superintendents of schools in the community and county and the local, area, and State educational television agencies, if any. Such statement of the applicant shall be supported by copies of the letters of notification directed to such licensees or permittees and educational interests. The notice shall include the fact of intended filing by the applicant, identification of each CATV system served or to be served under the authorization sought, identification of the community served or to be served by each such CATV system, and the television station(s) whose programs will be distributed by each such CATV system.

NOTE: As used in § 91.561, the term "predicted Grade B contour" means the field intensity contour defined in § 73.683(a) of this chapter, the location of which is determined exclusively by means of the calculations prescribed in § 73.684 of this chapter.

(Secs. 1, 4, 303, 307, 308, 309, 48 Stat. 1064, 1066, 1082, 1083, 1084, 1085 as amended; 47 U.S.C. 151, 154, 303, 307, 308, 309)

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