FEDERAL REGISTER

VOLUME 31 • NUMBER 106

Thursday, June 2, 1966 • Washington, D.C.

Pages 7785–7875

PART I

(Part II begins on page 7863)

Agencies in this issue—

Detailed list of Contents appears inside.

FEDERAL REGISTER

Area Code 202 Phone 963-3261

Published daily, Tuesday through Saturday (no publication on Sundays, Mondays, or on the day after an official Federal holiday), by the Office of the Federal Register, National Archives and Records Service, General Services Administration (mail address National Archives Building, Washington, D.C. 20408), pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies varies in proportion to the size of the issue (15 cents for the first 80 pages and 5 cents for each additional group of 40 pages, as actually bound). Remit check or money order, made payable to the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements are listed in the first FEDERAL REGISTER issue of each month.

Contents

(Continued on next page)

List of CFR Parts Affected

(Codification Guide)

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

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1966, and specifies how they are affected.

7 CFR

701 7814
728 7814
845 7815
893 7816
1483 7817

PROPOSED RULES:

1013 7829
1031 7831
1032 7831
1038 7831
1039 7831
1044 7831
1045 7831
1051 7831
1061 7831
1062 7831
1063 7831
1064 7831
1067 7831
1070 7831
1071 7831
1073 7831
1074 7831
1078 7831
1079 7831
1094 7831
1096 7831
1097 7831
1099 7831
1102 7831
1103 7831
1104 7831
1106 7831
1108 7831
1120 7831
1126 7831
1127 7831
1128 7831
1129 7831
1130 7831
1132 7831
1133 7831

14 CFR

71 7827
73 7827
75 7827

PROPOSED RULES:

71 (2 documents) 7836

15 CFR

230 7819

PROPOSED RULES:

9 7833

16 CFR

15 7806

17 CFR

211 7821
276 7821

20 CFR

PROPOSED RULES:

405 7864

26 CFR

1 7789

32 CFR

1 7807
3 7807
4 7810
7 7811
8 7812
16 7814
30 7814

33 CFR

203 7827

41 CFR

4–1 7819
4–6 7819
8–1 (2 documents) 7820
8–2 7820

43 CFR

3120 7806

47 CFR

18 7821
21 7822
74 7822
91 7822

PROPOSED RULES:

1 7837
21 7837
23 7837
73 (3 documents) 7837, 7838
74 7837
81 7837
87 7837
89 7837
91 7837
93 7837
95 7837
97 7837

49 CFR

95 7806

PROPOSED RULES:

170 7841

Rules and Regulations

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T. D. 6885]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Income Averaging

On April 9, 1965, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under sections 1301 through 1305 of the Internal Revenue Code of 1954 (relating to income averaging) and certain other conforming changes was published in the FEDERAL REGISTER (30 F.R. 4619). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted subject to the changes set forth below:

PARAGRAPH 1. Section 1.1302–2, as set forth in paragraph 1 of the appendix to the notice of proposed rule making, is amended by revising subparagraphs (1) (ii) and (3) (ii) (b) of paragraph (c) and paragraph (f).

PAR. 2. Section 1.1304–2, as set forth in paragraph 1 of the appendix to the notice of proposed rule making, is amended by revising paragraph (a) (1) and (4).

PAR. 3. Section 1.1304–3, as set forth in paragraph 1 of the appendix to the notice of proposed rule making, is amended by revising paragraph (e).

[SEAL] SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved: May 24, 1966.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) to the amendments made to part I, subchapter Q, chapter 1 of the Internal Revenue Code of 1954 by section 232(a) of the Revenue Act of 1964 (78 Stat. 105); to redesignate and amend the regulations under sections 1301 through 1307 of the Internal Revenue Code of 1954, as in effect prior to the enactment of the Revenue Act of 1964; and to make certain other changes, such regulations are amended as follows:

INCOME AVERAGING

Sec.
1.1301 Statutory provisions; limitation on tax.
1.1301–1 Limitation on tax.
1.1302 Statutory provisions; definition of averagable income; related definitions.
1.1302–1 Definition of averagable income.
1.1302–2 Adjusted taxable income.
1.1302–3 Average base period income.
1.1302–4 Capital gain net income.
1.1302–5 Other related definitions.
1.1303 Statutory provisions; eligible individuals.
1.1303–1 Eligible individuals.
1.1304 Statutory provisions; special rules.
1.1304–1 Choice of income averaging by taxpayer.
1.1304–2 Provisions inapplicable if income averaging is chosen.
1.1304–3 Special rules for computing base period income.
1.1304–4 Dollar limitations in case of joint returns.
1.1304–5 Determination of total tax for the computation year.
1.1304–6 Special rule for computation of alternative tax.
1.1304–7 Short taxable years.
1.1305 Statutory provisions; regulations.

AUTHORITY: The provisions of §§ 1.301 to 1.1305 issued under sec. 7805 of the Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805.

PARAGRAPH 1. The following new center heading and regulations are inserted following the heading "Readjustment of Tax Between Years and Special Limitations":

INCOME AVERAGING

§ 1.1301 Statutory provisions; limitation on tax.

Sec. 1301. *Limitation on tax.* If an eligible individual has averagable income for the computation year, and if the amount of such income exceeds $3,000, then the tax imposed by section 1 for the computation year which is attributable to averagable income shall be five times the increase in tax under such section which would result from adding 20 percent of such income to the sum of—

(1) 133⅓ percent of average base period income, and

(2) The amount (if any) of the average base period capital gain net income.

[Sec. 1301 as amended by sec. 232(a), Rev. Act 1964 (78 Stat. 105)]

§ 1.1301–1 Limitation on tax.

If, for a taxable year beginning after December 31, 1963, an eligible individual (as defined in section 1303 and § 1.1303–1) has averagable income (as defined in section 1302(a) and § 1.1302–1) for the computation year (as defined in section 1302(e)(1) and § 1.1302–5), and if the amount of his averagable income exceeds $3,000, then such individual may choose (pursuant to the provisions of section 1304(a) and § 1.1304–1) to compute the tax attributable to his averagable income under section 1301. The tax imposed by section 1 of the Code which is attributable to an individual's averagable income for the computation year is the amount of tax equal to five times the increase in tax under section 1 which would result from adding 20 percent of the averagable income to the sum of—

(a) 133⅓ percent of the individual's average base period income (as defined in section 1302(c) and § 1.1302–3), and

(b) The amount (if any) of the individual's average base period capital gain net income (as defined in section 1302 (d)(2) and paragraph (b) of § 1.1302–4).

§ 1.1302 Statutory provisions; definition of averagable income; related definitions.

Sec. 1302. *Definition of averagable income; related definitions*—(a) *Averagable income.* For purposes of this part—

(1) *In general.* The term "averagable income" means the amount (if any) by which adjusted taxable income exceeds 133⅓ percent of average base period income.

(2) *Adjustment in certain cases for capital gains.* If—

(A) The average base period capital gain net income, exceeds

(B) The capital gain net income for the computation year,

then the term "averagable income" means the amount determined under paragraph (1), reduced by an amount equal to such excess.

(b) *Adjusted taxable income.* For purposes of this part, the term "adjusted taxable income" means the taxable income for the computation year, decreased by the sum of the following amounts:

(1) *Capital gain net income for the computation year.* The amount (if any) of the capital gain net income for the computation year.

(2) *Income attributable to gifts, bequests, etc.*—(A) *In general.* The amount of net income attributable to an interest in property where such interest was received by the taxpayer as a gift, bequest, devise, or inheritance during the computation year or any base period year. This paragraph shall not apply to gifts, bequests, devises, or inheritances between husband and wife if they make a joint return, or if one of them makes a return as a surviving spouse (as defined in section 2(b)), for the computation year.

(B) *Amount of net income.* Unless the taxpayer otherwise establishes to the satisfaction of the Secretary or his delegate, the amount of net income for any taxable year attributable to an interest described in subparagraph (A) shall be deemed to be 6 percent of the fair market value of such interest (as determined in accordance with the provisions of chapter 11 or chapter 12, as the case may be).

(C) *Limitation.* This paragraph shall apply only if the sum of the net incomes attributable to interests described in subparagraph (A) exceeds $3,000.

(D) *Net income.* For purposes of this paragraph, the term "net income" means, with respect to any interest, the excess of—

(i) Items of gross income attributable to such interest, over

(ii) The deductions properly allocable to or chargeable against such items.

For purposes of computing such net income, capital gains and losses shall not be taken into account.

(3) *Wagering income.* The amount (if any) by which the gains from wagering transactions for the computation year exceed the losses from such transactions.

(4) *Certain amounts received by owner-employees.* The amount (if any) to which section 72(m)(5) (relating to penalties applicable to certain amounts received by owner-employees) applies.

(c) *Average base period income.* For purposes of this part—

(1) *In general.* The term "average base period income" means one-fourth of the sum of the base period incomes for the base period.

(2) *Base period income.* The base period income for any taxable year is the taxable income for such year first increased and then decreased (but not below zero) in the following order:

(A) Taxable income shall be increased by an amount equal to the excess of—

(i) The amount excluded from gross income under section 911 (relating to earned income from sources without the United States) and subpart D of part III of subchapter N (sec. 931 and following, relating to income from sources within possessions of the United States), over

(ii) The deductions which would have been properly allocable to or chargeable against such amount but for the exclusion of such amount from gross income.

(B) Taxable income shall be decreased by the capital gain net income.

(C) If the decrease provided by paragraph (2) of subsection (b) applies to the computation year, the taxable income shall be decreased under the rules of such paragraph (2) (other than the limitation contained in subparagraph (C) thereof).

(d) *Capital gain net income, etc.* For purposes of this part—

(1) *Capital gain net income.* The term "capital gain net income" means the amount equal to 50 percent of the excess of the net long-term capital gain over the net short-term capital loss.

(2) *Average base period capital gain net income.* The term "average base period capital gain net income" means one-fourth of the sum of the capital gain net incomes for the base period. For purposes of the preceding sentence, the capital gain net income for any base period year shall not exceed the base period income for such year computed without regard to subsection (c)(2)(B).

(e) *Other related definitions.* For purposes of this part—

(1) *Computation year.* The term "computation year" means the taxable year for which the taxpayer chooses the benefits of this part.

(2) *Base period.* The term "base period" means the 4 taxable years immediately preceding the computation year.

(3) *Base period year.* The term "base period year" means any of the 4 taxable years immediately preceding the computation year.

(4) *Joint return.* The term "joint return" means the return of a husband and wife made under section 6013.

[Sec. 1302 as amended by sec. 232(a), Rev. Act 1964 (78 Stat. 105)]

§ 1.1302–1 Definition of averagable income.

(a) Except as provided in section 1302(a)(2) and paragraph (b) of this section, the term "averagable income" means the amount (if any) by which adjusted taxable income (as defined in section 1302(b) and § 1.1302–2) for the computation year exceeds 133⅓ percent of average base period income (as defined in section 1302(c) and § 1.1302–3).

(b) If average base period capital gain net income exceeds capital gain net income for the computation year, then the term "averagable income" means the amount determined under section 1302(a)(1) and paragraph (a) of this section reduced by an amount equal to such excess. For example, if the amount of an individual's averagable income, determined under section 1302(a)(1) and paragraph (a) of this section, is $10,000, and his average base period capital gain net income is $5,000 while his capital gain net income for the computation year is only $3,000, then the amount of such individual's averagable income for the computation year is $8,000.

§ 1.1302–2 Adjusted taxable income.

(a) *Definition.* The term "adjusted taxable income" means taxable income for the computation year as modified in accordance with paragraphs (1), (2), (3), and (4) of section 1302(b), section 1304(c)(4)(B), and this section. Such term is used only for purposes of computing the tax under sections 1301 through 1305. It has no effect, for example, upon either the determination of a credit or a deduction based upon the income of the computation year or the amount of income to be taken into account in computing base period income if the computation year later becomes a base period year.

(b) *Capital gain net income for the computation year.* In determining adjusted taxable income, taxable income for the computation year is decreased by the amount (if any) of capital gain net income (as defined in section 1302(d)(1) and paragraph (a) of § 1.1302–4) for that year.

(c) *Income attributable to gifts, bequests, devises, or inheritances*—(1) *General rule.* (i) In determining adjusted taxable income, taxable income for the computation year is decreased by the amount of net income attributable to an interest in property where such interest was received by the taxpayer as a gift, bequest, devise, or inheritance during the computation year or any base period year. Under the authority of sections 1302(b)(2) and 1305, this paragraph shall apply to any inter vivos or testamentary gift, including interests in property acquired from a decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment). For example, the gratuitous beneficiary of a life insurance policy who receives the proceeds of the policy receives such proceeds as a gift, devise, bequest, or inheritance. The time when such an interest is received is determined in accordance with subparagraph (2) of this paragraph. Section 1302(b)(2) and this paragraph apply only if the total net income attributable to all such interests in property exceeds $3,000 in such year.

(ii) This paragraph shall not apply to the income attributable to interests in property transferred between husband and wife if, for the computation year, they make a joint return (including a joint return filed by a survivor with his deceased spouse for the year of the death of such spouse), or if one of them makes a return as a surviving spouse (as defined in section 2(b) and § 1.2–2) with respect to the transferor. However, this paragraph is applicable to the amount of net income attributable to interests in property transferred between husband and wife if such interests were received by the transferor spouse from a third party in the computation year or any base period year as a gift, bequest, devise, or inheritance.

(2) *Date of receipt.* (i) For purposes of section 1302(b)(2) and this paragraph, an interest in property is received at the time an individual has a present right to such property or the income from such property. An individual has a present right to the income from property even though such right is subject to the discretion of a fiduciary. For example, under the terms of a trust created by A, the trustee may pay the net income to B, C, and D in such proportions and amounts as the trustee, in his absolute discretion, determines. The trustee is authorized to accumulate income and add such income to trust corpus. Although the rights of B, C, and D to receive income payments are subject to the discretion of a fiduciary, each will be treated as having received a gift of his proportionate share of the trust corpus at the time the trust is established.

(ii) An individual may receive, at various times, different interests in a single property. For example, if H purchases Blackacre but takes title to the property with W as a tenant by the entirety, W will be treated as having received a gift of an undivided 50-percent interest in Blackacre at the time of such purchase. If H predeceases W, she will be treated as having received, for purposes of section 1302(b)(2) and this paragraph, the balance of the property on the date of H's death. However, if W predeceases H, he will be treated as having received a gift of W's 50-percent interest in Blackacre.

(3) *Net income*—(i) *Definition.* For purposes of section 1302(b)(2) and this paragraph, the term "net income" means, with respect to any interest in property, the excess of items of gross income attributable to such interest over the deductions properly allocable to or chargeable against such items. The total amount of net income for any taxable year attributable to all of the interests in property which an individual must take into account under this paragraph is the sum of the amounts of net income or net loss attributable to each such interest for such year. However, for purposes of computations under this paragraph, capital gains and losses and the deductions allocable to such gains and losses are not taken into account in determining the amount of net income at-

tributable to any interest in property. Thus, in any case in which an interest in property (or the disposition of such an interest) to which section 1302(b)(2) and this paragraph apply gives rise to a capital gain or loss, neither the amount of such gain or loss or of any deduction allocable to such gain or loss is taken into account in determining the net income attributable to such interest in property.

(ii) *Amount of net income.* (*a*) The amount of net income for any taxable year attributable to an interest in property to which this paragraph applies shall be deemed to be 6 percent of the fair market value of such interest, as determined in accordance with the provisions of chapter 11 (relating to the estate tax) or chapter 12 (relating to the gift tax) of the Code, as the case may be, unless the taxpayer establishes the actual income attributable to such interest to the satisfaction of the district director. The fair market value of an interest in property shall be determined as of the date of its receipt. Six percent of the fair market value of an interest in property is a fixed amount. Such amount is not adjusted to reflect any subsequent increase or decrease in the fair market value of such interest or any increase or decrease in the amount of income actually arising from such interest.

(*b*) With respect to any computation year, the amount of net income attributable to each interest in property must be determined in the same manner for each of the 5 taxable years taken into account under the income averaging provisions. Thus, unless the taxpayer establishes the actual income attributable to an interest in property to the satisfaction of the district director for each of such 5 years, the amount of net income attributable to each such interest for each of such 5 years is deemed to be 6 percent of the fair market value of such interest.

(d) *Wagering income.* In determining adjusted taxable income, taxable income for the computation year is decreased by the amount (if any) by which the gains includible in gross income for the computation year which are attributable to wagering transactions exceed the deduction for wagering losses under section 165(d) and § 1.165–10 for such year.

(e) *Certain amounts received by owner-employees.* In determining adjusted taxable income, taxable income for the computation year is decreased by the amounts (if any), described in section 72(m)(5)(A), to which a penalty under section 72(m)(5) and paragraph (e) of § 1.72–17 is applicable.

(f) *Items subject to a limitation on tax.* If the amount of tax attributable to an item of taxable income is subject to a limitation, such as section 632 (relating to the sale of oil and gas properties) or section 1347 (relating to claims against the United States), then, in determining adjusted taxable income, taxable income for the computation year is decreased by such items. If the tax attributable to any amount of an accumulation distribution from a trust is determined under section 668 (relating to treatment of amounts deemed distributed in preceding years) as though such amount had been distributed in a preceding taxable year, then, in determining adjusted taxable income, taxable income for the computation year is decreased by such amount.

(g) *Community income attributable to services.* (1) Under section 1304(c)(4)(B), in determining adjusted taxable income in the case of a married taxpayer who makes a separate return for the computation year, taxable income for such year shall be decreased by the excess (if any) of amounts includible in such return which constitute earned income (within the meaning of section 911(b)) and are community income under community property laws over the amount of such income which would have been includible if such earned income did not constitute community income.

(2) This paragraph may be illustrated by the following example:

Example. The total income of a husband and wife for the computation year consists of $60,000 of community income attributable to personal services, $40,000 of which is earned by H. W makes a separate return for such year and reports gross income of $30,000, her share of the community income. W chooses the benefits of income averaging for such year. In determining her adjusted taxable income for such year, W's taxable income must be reduced by $10,000, the excess of the community income attributable to personal services includible in her return ($30,000) over the amount of such income from personal services which would have been reportable by her if such income did not constitute community income ($20,000). The additional $10,000 of W's income for such year (which results from the application of local community property laws) is not subject to income averaging. For tax on such amounts, see paragraph (b) of § 1.1304–5.

§ 1.1302–3 Average base period income.

(a) *Definition.* The term "average base period income" means one-fourth of the sum of an individual's base period income for the base period. The term "base period" means the 4 taxable years immediately preceding the computation year.

(b) *Base period income*—(1) *Definition.* Except as otherwise provided in subparagraph (3) of this paragraph, the term "base period income" means taxable income for any base period year first increased in accordance with subparagraph (A) of section 1302(c)(2), and this section, and then decreased in accordance with subparagraphs (B) and (C) of section 1302(c)(2) and this section. Base period income for any taxable year may never be less than zero.

(2) *Base period income with respect to a computation year.* Base period income for each base period year must be determined in a manner consistent with the return for the computation year. The base period income with respect to a computation year for which an individual makes a separate return is the separate base period income of such individual. The base period income with respect to a computation year for which a husband and wife make a joint return is the sum of the base period incomes of both the husband and wife. Thus, if A and B, who were not married for the taxable years 1960–1963 and made separate returns for such years, marry in 1964 and make a joint return for the computation year 1964, their base period income for each of the taxable years 1960–1963 is the sum of the base period incomes for each such year of A (computed on the basis of his taxable income for each such year) and of B (similarly computed). If, however, they were married and made joint returns with each other for any of the base period years, their base period income for any such year may be computed on the basis of their aggregate taxable income. The base period income with respect to a computation year for which an individual makes a return as a surviving spouse (as defined in section 2(b) and § 1.2–2) is the sum of the base period incomes of the surviving spouse and the decedent with respect to whom such return is made.

(3) *Minimum limitation on base period income.* For any base period year to which section 1304(c)(1) applies (generally where an individual's marital status is different from that in the computation year), the separate base period income of an individual may not be less than the minimum separate base period income for such year computed in accordance with section 1304(c)(2) and § 1.1304–3.

(c) *Adjustments to taxable income*—(1) *Foreign and possessions income.* In determining base period income for any taxable year, taxable income for such year shall be increased by an amount equal to the excess of the amount of income which was excluded from gross income under section 911 (relating to earned income from sources without the United States) and subpart D of part III of subchapter N (sec. 931 and following, relating to income from sources within possessions of the United States) over the deductions which would have been properly allocable to or chargeable against such amount but for the exclusion of such amount from gross income.

(2) *Capital gain net income.* In determining base period income for any taxable year, taxable income for such year shall be decreased by the amount of capital gain net income (as defined in section 1302(d)(1) and paragraph (a) of § 1.1302–4) for such year. Section 1304(c)(3) and paragraph (f) of § 1.1304–3, relating to minimum base period capital gain net income, do not apply to the adjustment under this subparagraph.

(3) *Income attributable to gifts, bequests, devises, or inheritances.* If the decrease provided by section 1302(b)(2) and paragraph (c) of § 1.1302–2 is applicable to the computation year, then, in determining base period income for any taxable year, taxable income for such year shall be decreased under the rules of section 1302(b)(2) and paragraph (c) of § 1.1302–2. The limitation contained in section 1302(b)(2)(C) and paragraph (c)(1)(i) of § 1.1302–2 shall not apply to a base period year. For example, if an individual's taxable income for the computation year includes an amount of net

income attributable to gifts, bequests, devises, or inheritances which is in excess of $3,000, then, in determining base period income for his base period years, his taxable income for each such year must be decreased by any amount of net income so attributable to such property, whether or not in excess of $3,000. However, no adjustment to taxable income for a base period year shall be made under this subparagraph for a net loss.

§ 1.1302–4 Capital gain net income.

(a) *Capital gain net income.* The term "capital gain net income" means the amount, for any taxable year, equal to 50 percent of the excess of the net long-term capital gain (as defined in section 1222(7)) for such year over the net short-term capital loss (as defined in section 1222(6)) for such year. For example, if, for the taxable year 1964, an individual has a long-term capital gain of $10,000, a short-term capital gain of $3,000, and a capital loss carryover to 1964 of $8,000, then such individual has a capital gain net income for such year of $2,500 ($10,000—($8,000—$3,000) x 50 percent). An individual's capital gain net income for any taxable year cannot be less than zero.

(b) *Average base period capital gain net income*—(1) *Definition.* The term "average base period capital gain net income" means the amount equal to one-fourth of the sum of the capital gain net incomes for the 4 base period years.

(2) *Limitations.* (i) For purposes of determining average base period capital gain net income, the amount of capital gain net income for any base period year shall not exceed the amount of base period income for such year, computed without reduction by capital gain net income for such year. For example, if an individual's base period income computed without reduction by his capital gain net income for the base period year is $1,000, and if the amount of his capital gain net income for such year is $4,000, then, for purposes of computing his average base period capital gain net income, his capital gain net income for such base period year is $1,000.

(ii) For purposes of determining average base period capital gain net income, capital gain net income for any base period year for which section 1304(c)(1) and paragraph (b)(3) of § 1.1302–3 apply shall not be less than the minimum capital gain net income for such year computed in accordance with section 1304(c)(3) and paragraph (b) of § 1.1304–3. However, the amount of capital gain net income shall not exceed the amount of such income computed under subdivision (i) of this subparagraph.

§ 1.1302–5 Other related definitions.

(a) *Computation year.* The term "computation year" means the taxable year for which an eligible individual chooses under section 1304(a) the benefits of income averaging.

(b) *Base period.* See paragraph (a) of § 1.1302–3 for definition of the term "base period."

(c) *Base period year.* The term "base period year" means any of the 4 taxable years immediately preceding the computation year.

(d) *Joint return.* The term "joint return" means the return of a husband and wife made under section 6013.

§ 1.1303 Statutory provisions; eligible individuals.

Sec. 1303. *Eligible individuals*—(a) *General rule.* Except as otherwise provided in this section, for purposes of this part the term "eligible individual" means any individual who is a citizen or resident of the United States throughout the computation year.

(b) *Nonresident alien individuals.* For purposes of this part, an individual shall not be an eligible individual for the computation year if, at any time during such year or the base period, such individual was a nonresident alien.

(c) *Individuals receiving support from others*—(1) *In general.* For purposes of this part, an individual shall not be an eligible individual for the computation year if, for any base period year, such individual (and his spouse) furnished less than one-half of his support.

(2) *Exceptions.* Paragraph (1) shall not apply to any computation year if—

(A) Such year ends after the individual attained age 25 and, during at least four of his taxable years beginning after he attained age 21 and ending with his computation year, he was not a full-time student,

(B) More than one-half of the individual's adjusted taxable income for the computation year is attributable to work performed by him in substantial part during two or more of the base period years, or

(C) The individual makes a joint return for the computation year and not more than 25 percent of the aggregate adjusted gross income of such individual and his spouse for the computation year is attributable to such individual.

In applying subparagraph (C), amounts which constitute earned income (within the meaning of section 911(b)) and are community income under community property laws applicable to such income shall be taken into account as if such amounts did not constitute community income.

(d) *Student defined.* For purposes of this section, the term "student" means, with respect to a taxable year, an individual who during each of 5 calendar months during such taxable year—

(1) Was a full-time student at an educational institution (as defined in section 151(e)(4); or

(2) Was pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution (as defined in section 151(e)(4) or of a State or political subdivision of a State.

[Sec. 1303 as amended by sec. 232(a), Rev. Act 1964 (78 Stat. 105)]

§ 1.1303–1 Eligible individuals.

(a) *General rule.* Except as otherwise provided in section 1303 and this section, the term "eligible individual" means any individual who is a citizen or resident of the United States throughout the computation year. Such term does not include an estate or trust. If a husband and wife make a joint return under section 6013 for the computation year, both the husband and the wife must be eligible individuals in order to choose the benefits of income averaging.

(b) *Nonresident alien individuals.* An individual is not an eligible individual for the computation year if, at any time during such year or his base period, he was a nonresident alien. The determination that an individual is a nonresident alien is made in accordance with § 1.871–2 through § 1.871–4. For example, if H, a United States citizen living abroad, married W, an alien, during 1960 and returned with her to live in the United States on December 31, 1962, they may not choose the benefits of income averaging if they file a joint return for the taxable year 1964 since W was a nonresident alien for three base period years (1960–1962). H, however, may make a separate return and may, if he is otherwise qualified, choose the benefits of income averaging.

(c) *Individuals receiving support from others*—(1) *Self-support rule.* Except as provided in section 1303(c)(2) and subparagraphs (2), (3), and (4) of this paragraph, to be an eligible individual for the computation year under this paragraph, an individual must, together with his spouse, have furnished 50 percent or more of his support during each of his 4 base period years. For example, H and W are married for the computation year and the 4 base period years. If H and W have provided more than 50 percent of their support during each of the 4 base period years, both H and W are eligible individuals for the computation year. For purposes of determining, under section 1303(c)(1) and this paragraph, whether or not an individual supplied, for a given taxable year, 50 percent or more of his support, the rules of section 152 and the regulations thereunder shall be applied.

(2) *Individuals over 25.* Notwithstanding the general rule contained in section 1303(c)(1) and subparagraph (1) of this paragraph, an individual may be an eligible individual for a computation year if—

(i) That year ends after the individual attained age 25, and

(ii) During at least four of his taxable years beginning after he attained age 21 and ending with the computation year, he was not a full-time student.

For the definition of the term "student" as used in this subparagraph, see paragraph (d)(1) of this section.

(3) *Major accomplishment rule.* Notwithstanding the general rule contained in section 1303(c)(1) and subparagraph (1) of this paragraph, an individual may be an eligible individual for a computation year if more than 50 percent of his adjusted taxable income for the computation year is attributable to work performed by him in substantial part during two or more of his four base period years. It is not necessary that the individual perform any of the work in his computation year.

(4) *Spouse supported by others.* (i) Notwithstanding the general rule contained in section 1303(c)(1) and subparagraph (1) of this paragraph, an individual may be an eligible individual for a computation year if—

(a) Such individual makes a joint return under section 6013 for such year, and

(b) Not more than 25 percent of the aggregate adjusted gross income of such individual and his spouse for such year is attributable to such individual.

For example, H and W, who are United States citizens and calendar year taxpayers, were married in August 1963. H supported himself from 1960 to 1964. W's parents furnished more than 50 percent of her support for each year prior to her marriage. For the taxable year 1964, H and W filed a joint return showing an aggregate adjusted gross income of $10,000, all of which is attributable to H. If H and W are otherwise qualified, they may choose the benefits of income averaging for 1964.

(ii) In applying this subparagraph, to determine the amount of the aggregate adjusted gross income of a husband and wife which is attributable to either of them, amounts of earned income which are community income under community property laws applicable to such income are taken into account as if such amounts did not constitute community income. For the definition of the term "earned income," see section 911(b) and paragraph (c) of § 1.911–2.

(d) *Definitions*—(1) *Student.* For purposes of section 1303 and this section, the term "student" means, with respect to a taxable year, an individual who during each of 5 calendar months during such taxable year was a full-time student at an educational institution or was pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a State or political subdivision of a State. An example of "institutional on-farm training" is that authorized by 38 U.S.C. 1652 (formerly section 252 of the Veterans' Readjustment Assistance Act of 1952), as described in section 252 of such act. A full-time student is one who is enrolled for some part of 5 calendar months for the number of hours of courses which is considered to be full-time attendance. The 5 calendar months need not be consecutive. School attendance exclusively at night does not constitute full-time attendance. However, full-time attendance at an educational institution may include some attendance at night in connection with a full-time course of study.

(2) *Educational institution.* For definition of "educational institution," see section 151(e)(4) and § 1.151–3.

§ 1.1304 Statutory provisions; special rules.

Sec. 1304. *Special rules*—(a) *Taxpayer must choose benefits.* This part shall apply to the taxable year only if the taxpayer chooses to have the benefits of this part for such taxable year. Such choice may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for the taxable year.

(b) *Certain provisions inapplicable.* If the taxpayer chooses the benefits of this part for the taxable year, the following provisions shall not apply to him for such year:

(1) Section 3 (relating to optional tax if adjusted gross income is less than $5,000),

(2) Section 72(n)(2) (relating to limitation of tax in case of certain distributions with respect to contributions by self-employed individuals),

(3) Section 911 (relating to earned income from sources without the United States), and

(4) Subpart D of part III of subchapter N (sec. 931 and following, relating to income from sources within possessions of the United States).

(c) *Failure of certain married individuals to make joint return, etc.*—(1) *Application of subsection.* Paragraphs (2), (3), and (4) of this subsection shall apply in the case of any individual who was married for any base period year or the computation year; except that—

(A) Such paragraphs shall not apply in respect of a base period year if—

(i) Such individual and his spouse make a joint return, or such individual makes a return as a surviving spouse (as defined in section 2(b)), for the computation year, and

(ii) Such individual was not married to any other spouse for such base period year, and

(B) Paragraph (4) shall not apply in respect of the computation year if the individual and his spouse make a joint return for such year.

(2) *Minimum base period income.* For purposes of this part, the base period income of an individual for any base period year shall not be less than 50 percent of the base period income which would result from combining his income and deductions for such year—

(A) With the income and deductions for such year of the individual who is his spouse for the computation year, or

(B) If greater, with the income and deductions for such year of the individual who was his spouse for such base period year.

(3) *Minimum base period capital gain net income.* For purposes of this part, the capital gain net income of any individual for any base period year shall not be less than 50 percent of the capital gain net income which would result from combining his capital gain net income for such year (determined without regard to this paragraph) with the capital gain net income for such year (similarly determined) of the individual with whom he is required by paragraph (2) to combine his income and deductions for such year.

(4) *Community income attributable to services.* In the case of amounts which constitute earned income (within the meaning of section 911(b)) and are community income under community property laws applicable to such income—

(A) The amount taken into account for any base period year for purposes of determining base period income shall not be less than the amount which would be taken into account if such amounts did not constitute community income, and

(B) The amount taken into account for purposes of determining adjusted taxable income for the computation year shall not exceed the amount which would be taken into account if such amounts did not constitute community income.

(5) *Marital status.* For purposes of this subsection, section 143 shall apply in determining whether an individual is married for any taxable year.

(d) *Dollar limitations in case of joint returns.* In the case of a joint return, the $3,000 figure contained in section 1301 shall be applied to the aggregate averagable income, and the $3,000 figure contained in section 1302(b)(2)(C) shall be applied to the aggregate net incomes.

(e) *Special rules where there are capital gains*—(1) *Treatment of capital gains in computation year.* In the case of any taxpayer who has capital gain net income for the computation year, the tax imposed by section 1 for the computation year which is attributable to the amount of such net income shall be computed—

(A) By adding so much of the amount thereof as does not exceed average base period capital gain net income above 133⅓ percent of average base period income, and

(B) By adding the remainder (if any) of such net income above the 20 percent of the averagable income as taken into account for purposes of computing the tax imposed by section 1 (and above the amounts (if any) referred to in subsection (f)(1)).

(2) *Computation of alternative tax.* In the case of any taxpayer who has capital gain net income for the computation year, section 1201(b) shall be treated as imposing a tax equal to the tax imposed by section 1, reduced by the amount (if any) by which—

(A) The tax imposed by section 1 and attributable to the capital gain net income for the computation year (determined under paragraph (1)), exceeds

(B) An amount equal to 25 percent of the excess of the net long-term capital gain over the net short-term capital loss.

(f) *Treatment of certain other items*—(1) *Gift or wagering income.* The tax imposed by section 1 for the computation year which is attributable to the amounts subtracted from taxable income under paragraphs (2) and (3) of section 1302(b) shall equal the increase in tax under section 1 which results from adding such amounts above the 20 percent of the averagable income as taken into account for purposes of computing the tax imposed thereon by section 1.

(2) *Section 72(m)(5).* Section 72(m)(5) (relating to penalties applicable to certain amounts received by owner-employees) shall be applied as if this part had not been enacted.

(3) *Other items.* Except as otherwise provided in this part, the order and manner in which items of income shall be taken into account in computing the tax imposed by this chapter on the income of any eligible individual to whom section 1301 applies for any computation year shall be determined under regulations prescribed by the Secretary or his delegate.

(g) *Short taxable years.* In the case of any computation year or base period year which is a short taxable year, this part shall be applied in the manner provided in regulations prescribed by the Secretary or his delegate.

[Sec. 1304 as amended by sec. 232(a), Rev. Act 1964 (78 Stat. 105)]

§ 1.1304–1 Choice of income averaging by taxpayer.

(a) *Choice by taxpayer.* The income averaging provisions apply to a taxable year only if the taxpayer chooses to have the benefits of income averaging for such taxable year. The taxpayer shall signify his choice by making his return for the computation year on Form 1040 and attaching Schedule G, Income Averaging, thereto. The taxpayer may make or change his choice of such benefits at any time before the expiration of the period (including extensions thereof) prescribed in section 6511 for making a claim for credit or refund of the tax imposed by chapter 1 of the Code for such taxable year.

(b) *Subsequent qualification.* A taxpayer who was not qualified to choose the benefits of income averaging for a taxable year may subsequently become qualified for such taxable year. For example, if a taxpayer was not qualified to choose the benefits of income averaging

for 1964 incurs a net operating loss in 1965, and the carryback of such loss reduces his income for 1962 and 1963 so that he is no longer ineligible under section 1301 to choose the benefits of income averaging for 1964, the taxpayer may recompute the tax imposed by chapter 1 of the Code on his income for 1964 as if he had originally chosen the benefits of income averaging.

(c) *Subsequent disqualification.* A taxpayer who has chosen the benefits of income averaging for a taxable year may subsequently become disqualified for such benefits for such taxable year. For example, if a taxpayer who chose the benefits of income averaging for 1964 incurs a net operating loss for 1965 and the carryback of such loss reduces his income for 1964 so that he is no longer qualified under section 1301 to choose the benefits of income averaging for that year, the taxpayer must recompute the tax imposed by chapter 1 of the Code on his income for 1964 as if he had not originally chosen the benefits of income averaging.

§ 1.1304–2 Provisions inapplicable if income averaging is chosen.

(a) *Provisions inapplicable.* If a taxpayer chooses the benefits of income averaging for any taxable year, pursuant to section 1304(a) and § 1.1304–1, the following sections of the Code will not apply for such year:

(1) Section 3 (relating to optional tax if adjusted gross income is less than $5,000). A taxpayer may not, therefore, make use of the tax table contained in section 3 for any taxable year for which he chooses the benefits of income averaging. For availability of standard deduction, see section 144(d) and the regulations thereunder.

(2) Section 72(n)(2) (relating to limitation of tax in case of certain distributions with respect to contributions by self-employed individuals).

(3) Section 911 (relating to earned income from sources without the United States). Thus, a taxpayer who chooses the benefits of income averaging for a taxable year may not exclude from his gross income for such year any portion of his earned income from sources without the United States.

(4) Subpart D of Part III of Subchapter N (section 931 and following, relating to income from sources within possessions of the United States). Thus, a taxpayer who chooses the benefits of income averaging for a taxable year may not exclude from his gross income for such year any portion of his income from sources within possessions of the United States. However, the application of this provision for purposes of income averaging shall not affect any subsequent determination under the 3-year rule contained in section 931(a)(1). See § 1.931–1.

(b) *Subsequent disqualification.* The provisions of section 1304(b) and this section do not apply to a taxable year for which a taxpayer chose the benefits of income averaging if he subsequently becomes disqualified for such benefits. See paragraph (c) of § 1.1304–1.

§ 1.1304–3 Special rules for computing base period income.

(a) *Applicability.* Section 1304(c) prescribes the minimum amount of separate base period income of an individual to be taken into account for any base period year in certain circumstances. It applies if an individual was married for any base period year or for the computation year, unless—

(1) For the computation year, such individual and his spouse make a joint return, or he makes a return as a surviving spouse (as defined in section 2(b) and § 1.2–2), and

(2) He was not married to any other spouse for such base period year.

The applicability of this section is determined separately for each base period year. Thus, the provisions of this section may apply to one or more but less than all base period years.

(b) *Minimum separate base period income*—(1) *General rule.* In any case in which section 1304(c) and this section apply, the separate base period income of an individual for a base period year is the greatest of the following amounts:

(i) The individual's separate income and deductions (increased in accordance with subparagraph (A) of section 1304(c)(4), relating to community income) adjusted in accordance with paragraph (c) of § 1.1302–3;

(ii) 50 percent of the base period income resulting from adjusting, in accordance with paragraph (c) of § 1.1302–3, the sum of the individual's separate income and deductions (increased in accordance with subparagraph (A) of section 1304(c)(4), relating to community income) and the separate income and deductions of his spouse for the computation year; or

(iii) 50 percent of the base period income resulting from adjusting, in accordance with paragraph (c) of § 1.1302–3, the sum of the individual's separate income and deductions and the separate income and deductions of his spouse for such base period year.

However, subdivision (ii) of this subparagraph shall not apply in respect of a base period year if an individual and his spouse make a joint return for the computation year.

(2) *Computation of adjustments.* For purposes of subparagraph (1) (ii) and (iii) of this paragraph, in computing the amount of any adjustment under paragraph (c) of § 1.1302–3, an item of income of an individual may not be decreased by a loss incurred by the individual with whom he combines his income, unless such individuals made a joint return for the base period year in question. For example, if an individual has a net long-term capital gain of $20,000 for a base period year and the individual with whom he combines his income has a net long-term capital loss of $5,000 for such year, their combined capital gain net income for such year is $10,000 ($20,000−(50 percent of $20,000)). However, if such individuals made a joint return for such year, their capital gain net income is $7,500 ($15,000−(50 percent of $15,000)).

(c) *Separate income and deductions*—(1) *Definition.* The term "separate income and deductions" for a base period year means the excess an individual's gross income over his allowable separate deductions. The separate income and deductions of an individual may never be less than zero.

(2) *Separate deductions.* (i) An individual's separate deductions for a base period year for which he made a separate return are the deductions allowable on such return.

(ii) An individual's separate deductions for a base period year for which he made a joint return are:

(*a*) In the case of deductions allowable in computing adjusted gross income, the sum of such deductions attributable to the items of his gross income; and

(*b*) In the case of deductions allowable in computing taxable income, an amount which bears the same ratio to the amount of such deductions allowable on the joint return as the amount of adjusted gross income attributable to him for such year bears to the amount of the aggregate adjusted gross income of him and his spouse for such year. However, in any case in which 85 percent or more of the aggregate adjusted gross income of a husband and wife for a taxable year is attributable to either the husband or wife, all of such deductions shall be deemed to be the allowable deductions of the individual to whom 85 percent or more of such income is attributable, and none of such deductions shall be deemed to be the allowable deductions of the other spouse.

(d) *Community income attributable to services.* Under section 1304(c)(4)(A), in any case in which subdivisions (i) and (ii) of subparagraph (1) of paragraph (b) apply, an individual's separate income and deductions (as defined in paragraph (c)), shall be increased to take into account, in the case of amounts which constitute earned income (within the meaning of section 911(b)) and are community income under community property laws applicable to such income, not less than the net amount of such earned income which would be taken into account if such amounts of earned income did not constitute community income.

(e) *Example.* The provisions of this section may be illustrated by the following example:

Example. H and W are calendar year taxpayers who were married, residents of a common law State, and otherwise eligible to choose the benefits of income averaging for the taxable year 1964. They made a joint return for 1964. W, however, was married to and made a joint return with A for the taxable year 1960. H was unmarried for 1960. H, A, and W had taxable income for 1960 as indicated in the table below. H and W compute their base period income for 1960 in the following manner:

	A	W	A and W joint return	H
Salary	$11,500	$3,000	$14,500	$3,000
Dividends	500	1,000	1,500	1,000
Adjusted gross income	12,000	4,000	16,000	4,000
Total deductions allowable in computing taxable income			4,000	1,500
Amount of total deductions allowable in computing separate income and deductions	3,000	1,000		1,500
Separate income and deductions	9,000	3,000	12,000	2,500
Foreign income excluded under section 911	10,000			
Separate base period income in accordance with paragraph (b)(1)(i)	19,000	3,000		2,500

Separate base period income in accordance with paragraph (b):

(1) W's separate income and deductions under subdivision (i) of paragraph (b)(1) $3,000

(2) W's separate base period income under subdivision (iii) of paragraph (b)(1):
(a) W and A's taxable income for 1960 ..... $12,000
(b) Adjustment under paragraph (c) of § 1.1302-3 10,000
22,000
(c) 50 percent of combined base period income 11,000

W must take $11,000 into account as her separate base period income for 1960. Since H made a joint return with W in the computation year and was not married to another spouse in 1960, section 1304(c) and § 1.1304-3 do not apply to him for 1960. Therefore, his separate base period income for 1960 is $2,500. H and W's base period income, on a joint return basis, for 1960 is $13,500.

(f) *Minimum base period capital gain net income.* In any base period year to which section 1304(c) and this section apply, for purposes of determining an individual's average base period capital gain net income under section 1302(d)(2) and paragraph (b) of § 1.1302-4, his capital gain net income for such year shall not be less than 50 percent of the capital gain net income which would result from combining his capital gain net income for such year (determined without regard to section 1304(c)(3) and this paragraph) with the capital gain net income for such year (also determined without regard to section 1304(c)(3) and this paragraph) of the individual with whom he is required, pursuant to paragraph (b) of this section, to combine his separate income and deductions for such year.

(g) *Marital status.* For purposes of section 1304(c) and this section, the rules of section 143 (relating to determination of marital status) and the regulations thereunder apply in determining whether an individual is married for any taxable year.

§ 1.1304-4 Dollar limitations in case of joint returns.

(a) *Averagable income.* Under section 1301 an eligible individual may choose the benefits of income averaging only if his averagable income for the computation year exceeds $3,000. In the case of a joint return, the $3,000 limitation applies to the aggregate averagable income of the husband and wife making the joint return.

(b) *Income attributable to gifts, bequests, etc.* Under section 1302(b)(2)(C) an individual must, in determining his adjusted taxable income for a computation year, decrease his taxable income for such year by the amount of his income attributable to gifts, bequests, devises, and inheritances only if the sum of such amounts exceeds $3,000. Under section 1304(d), the $3,000 limitation with respect to the amount of net income attributable to such interests in property applies, in the case of a joint return, to the aggregate net income of the husband and wife making the joint return.

§ 1.1304-5 Determination of total tax for the computation year.

(a) *Total tax.* The total amount of tax imposed by section 1 for the computation year on the income of an individual for that year is the sum of the separate amounts of tax imposed on the several segments of the income of the individual who chooses the benefits of income averaging for such year. The several segments of an individual's income arranged in ascending order (from the standpoint of the tax rate brackets applicable to such segments of income) are:

Segment 1. The amount of income equal to 133⅓ percent of average base period income.

Segment 2. The amount (if any) of the adjustment for capital gains made to averagable income under section 1302(a)(2).

Segment 3. The amount (if any) of capital gain net income for the computation year which is less than or equal to average base period capital gain net income.

Segment 4. Twenty percent of averagable income.

Segment 5. The amount (if any) of items of income not specifically included in any other segment.

Segment 6. The amount (if any) of capital gain net income for the computation year which exceeds average base period capital gain net income.

Segment 7. The amount (if any) of income to which section 72(m)(5), relating to certain distributions to owner-employees which are subject to penalties, applies.

(b) *Treatment of segment 5 items.* The tax imposed by section 1 for the computation year on items of income in segment 5 shall equal the increase in tax resulting from adding such amounts to an individual's income immediately above 20 percent of averagable income (segment 4) as such averagable income is taken into account for purposes of computing the tax imposed on such averagable income by section 1. Segment 5 includes the items of income by which taxable income is decreased in determining adjusted taxable income under section 1302(b)(2) and paragraph (c) of § 1.1302-2, section 1302(b)(3) and paragraph (d) of § 1.1302-2, paragraph (f) of § 1.1302-2, and paragraph (g) of § 1.1302-2.

(c) *Treatment of certain amounts received by owner-employees.* The amount of tax imposed by section 1 for the computation year attributable to amounts described in section 72(m)(5)(A), to which a penalty is applicable under section 72(m)(5) and paragraph (e) of § 1.72-17, is computed by determining the increase in tax which results under section 1 from the inclusion of such amounts in income without the use of the income averaging provisions.

(d) *Examples.* The application of the rules described in this section may be illustrated by the following examples:

Example (1). A, an eligible individual who was not married for the taxable years 1960 through 1964, has taxable income for those years as indicated in the table below. For the taxable years 1960 through 1963, all of A's income is ordinary income from salary. For the taxable year 1964, all of A's income is ordinary income, and includes $5,000 of net income attributable to property received by bequest in 1964. A's qualification to choose the benefits of income averaging and the amount of his averagable income for 1964 are determined in the following manner:

Year:	*Taxable income*
1960	$2,000
1961	4,000
1962	3,500
1963	2,500
1964	49,000

(1) Adjusted taxable income for 1964 (computation year):
(a) Taxable income for 1964 ..... $49,000
Less:
(b) Income attributable to bequest 5,000
Adjusted taxable income 44,000

(2) Average base period income for years 1960-63 (the base period years):
(a) 1960 2,000
1961 4,000
1962 3,500
1963 2,500
12,000

(b) Average base period income ($12,000÷4) 3,000

(3) Averagable income for 1964:
(a) Adjusted taxable income 44,000
Less:
(b) 133⅓ percent of average base period income (⅓×$3,000) 4,000
Averagable income 40,000

Since A's averagable income exceeds $3,000, the entire amount ($40,000) of his averagable income is subject to averaging.

Computation of tax due for computation year (1964):

(1) Segments of income:
(a) 133⅓ percent of the average base period income $4,000
(b) 20 percent of the averagable income ($40,000÷5) 8,000
(c) Income attributable to bequest 5,000
17,000

(2) Tax attributable to the averagable income:
- (a) Tax on $4,000 — 740
- (b) Tax on $12,000 ($4,000+$8,000) — 3,040
- (c) Tax on 20 percent of averagable income ($3,040—$740) — 2,300
- (d) Multiply tax by 5 (5× $2,300) — 11,500

(3) Tax attributable to the income attributable to bequest:
- (a) Tax on $17,000 — 5,055
- (b) Tax on $12,000 — 3,040
- — 2,015

(4) Total tax for 1964:
- (a) Tax on 133⅓ percent of the average base period income ($4,000) — 740
- (b) Tax on averagable income ($40,000) — 11,500
- (c) Tax on income attributable to bequest ($5,000) — 2,015
- Total tax — 14,255

Example (2). A, an eligible individual who was not married for the taxable years 1960 through 1964, has taxable income for those years as indicated in the table below. For the taxable years 1960 through 1963, all of his ordinary income is from salary and all of his capital gain is net long-term capital gain. For the taxable year 1964, A's ordinary income includes $5,000 of net income attributable to a bequest received by A in 1964. A's qualification to choose the benefits of income averaging and the amount of his averagable income for 1964 are determined in the following manner:

Year	Taxable income		
	Total	Ordinary income	Capital gain net income
1960	$8,250	$2,000	$6,250
1961	7,750	4,000	3,750
1962	7,500	3,500	4,000
1963	8,500	2,500	6,000
1964	59,000	49,000	10,000

(1) Adjusted taxable income for 1964 (the computation year):
- (a) Taxable income for 1964 — $59,000
- Less:
- (b) (i) Capital gain net income for the computation year — $10,000
- (ii) Income attributable to bequest — 5,000
- Total — 15,000
- Adjusted taxable income — 44,000

(2) Average base period income for years 1960–63 (the base period years):
- (a) 1960 — $2,000
- 1961 — 4,000
- 1962 — 3,500
- 1963 — 2,500
- — 12,000
- (b) $12,000÷4 — 3,000

(3) Average base period capital gain net income:
- (a) 1960 — 6,250
- 1961 — 3,750
- 1962 — 4,000
- 1963 — 6,000
- — 20,000
- (b) $20,000÷4 — 5,000

(4) Averagable income for 1964:
- (a) Adjusted taxable income — 44,000
- Less:
- (b) 133⅓ percent of average base period income (4/3× $3,000) — 4,000
- Averagable income — 40,000

Since A's averagable income exceeds $3,000, the entire amount ($40,000) of his averagable income is subject to averaging.

Computation of tax due for computation year (1964):

(1) Segments of income:
- (a) 133⅓ percent of the average base period income — $4,000
- (b) The average base period capital gain net income — 5,000
- (c) 20 percent of the averagable income ($40,000÷5) — 8,000
- (d) Income attributable to bequest — 5,000
- (e) Excess of computation year capital gain net income over average base period capital gain net income $10,000—$5,000) — 5,000
- — 27,000

(2) Tax attributable to the averagable income:
- (a) Tax on $9,000 — 2,055
- (b) Tax on $17,000 — 5,055
- (c) Tax on 20 percent of averagable income ($5,055—$2,055) — 3,000
- (d) Multiply tax by 5 (5× $3,000) — 15,000

(3) Tax attributable to the income attributable to bequest:
- (a) Tax on $22,000 — 7,460
- Less:
- (b) Tax on $17,000 — 5,055
- — 2,405

(4) Tax attributable to the excess of computation year capital gain net income over average base period capital gain net income:
- (a) Tax on $27,000 — 10,160
- Less:
- (b) Tax on $22,000 — 7,460
- — 2,700

(5) Total tax for 1964:
- (a) Tax on 133⅓ percent of the average base period income ($4,000) — 740
- (b) Tax on average base period capital gain net income ($5,000) — 1,315
- (c) Tax on averagable income ($40,000) — $15,000
- (d) Tax on income attributable to bequest ($5,000) — 2,405
- (e) Tax on excess capital gain net income ($5,000) — 2,700
- Total tax — 22,160

Example (3). The facts are the same as in example (2) for the taxable years 1960 to 1963. For the taxable year 1964, A's taxable income is $47,000, of which $44,000 is ordinary income and the remaining $3,000 is attributable to his $6,000 of net long-term capital gain.

(1) Adjusted taxable income for 1964 (the computation year):
- (a) Taxable income for 1964 — $47,000
- Less:
- (b) Capital gain net income for the computation year — 3,000
- Adjusted taxable income — 44,000

(2) Average base period income for years 1960–63 (the base period years) — 3,000

(3) Average base period capital gain net income — 5,000

(4) Averagable income for 1964:
- (a) Adjusted taxable income — 44,000
- Less:
- (b) 133⅓ percent of average base period income (⅓× $3,000) — 4,000
- Total — 40,000
- Less:
- (c) The adjustment for capital gains:
  - (i) Average base period capital gain net income — $5,000
  - Less:
  - (ii) Capital gain net income for the computation year — 3,000
- Total — 2,000
- Averagable income — 38,000

Since A's averagable income exceeds $3,000, the entire amount ($38,000) of his averagable income is subject to averaging.

Computation of tax due for computation year (1964):

(1) Segments of income:
- (a) 133⅓ percent of the average base period income (⅓× $3,000) — $4,000
- (b) Adjustment for capital gains — 2,000
- (c) The amount of the computation year capital gain net income — 3,000
- (d) 20 percent of the averagable income ($38,000÷5) — 7,600
- Total — 16,600

(2) Tax attributable to the averagable income:
- (a) Tax on $9,000 — $2,055
- (b) Tax on $16,600 — 4,877
- (c) Tax on 20 percent of averagable income ($4,877—$2,055) — 2,822
- (d) Multiply tax by 5 (5× $2,822) — 14,110

(3) Total tax for 1964:	
(a) Tax on 133⅓ percent of the average base period income ($4,000)	$740
(b) Tax on the adjustment for capital gains ($2,000)	470
(c) Tax on computation year capital gain net income ($3,000)	845
(d) Tax on averagable income ($38,000)	14,110
Total tax	16,165

§ 1.1304–6 Special rule for computation of alternative tax.

(a) If an individual has capital gain net income, section 1201(b) is treated as imposing an alternative tax in lieu of the tax imposed by section 1, if such alternative tax is less than the tax imposed by section 1. The alternative tax is equal to the tax imposed by section 1, reduced by the amount by which—

(1) The tax imposed by section 1 which is attributable to an individual's capital gain net income for the computation year (as determined under section 1304(e)(1) and § 1.1304–5), exceeds

(2) An amount equal to 25 percent of the excess of such individual's net long-term capital gain for the computation year over his net short-term capital loss for such year.

See § 1.1–3 for rule relating to the computation of the limitation on tax under section 1(c) in cases where the alternative tax is imposed. For purposes of paragraph (a) of § 1.34–2 relating to the limitation on amount of the dividend received credit under section 34) and paragraph (a) of § 1.35–1 (relating to computation of credit for partially tax-exempt interest under section 35) in any case where the alternative tax is imposed, taxable income for a taxable year is an individual's taxable income as defined in section 63.

(b) The application of the rules described in this paragraph may be illustrated by the following example:

Example. A, an eligible individual who was not married for the taxable years 1960 through 1964, has taxable income for those years as indicated in the table below. For the taxable years 1960 through 1964, all of his ordinary income is from salary and all of his capital gain is net long-term capital gain. A's qualification to choose the benefits of income averaging and the amount of his averagable income for 1964 are determined in the following manner:

Year	Taxable income		
	Total	Ordinary income	Capital gain net income
1960	$8,250	$2,000	$6,250
1961	7,750	4,000	3,750
1962	7,500	3,500	4,000
1963	8,500	2,500	6,000
1964	84,000	44,000	40,000

(1) Adjusted taxable income for 1964 (the computation year):	
(a) Taxable income for 1964	$84,000
Less:	
(b) Capital gain net income for the computation year	40,000
Adjusted taxable income	44,000
(2) Average base period income for years 1960–63 (the base period years) (See example 2, § 1.1304–5(d))	$3,000
(3) Average base period capital gain net income (See example 2, § 1.1304–5(d))	5,000
(4) Averagable income for 1964:	
(a) Adjusted taxable income	44,000
Less:	
(b) 133⅓ percent of average base period income (⅓ × $3,000)	4,000
Averagable income	40,000

Since A's averagable income exceeds $3,000, the entire amount ($40,000) of his averagable income is subject to averaging.

Computation of the tax due for computation year (1964):

(1) Segments of income:	
(a) 133⅓ percent of the average base period income	$4,000
(b) The average base period capital gain net income	5,000
(c) 20 percent of the averagable income ($40,000 ÷ 5)	8,000
(d) Excess of computation year capital gain net income over average base period capital gain net income	35,000
Total	52,000
(2) Tax attributable to the averagable income:	
(a) Tax on $9,000	2,055
(b) Tax on $17,000	5,055
(c) Tax on 20 percent of averagable income ($5,055—$2,055)	3,000
(d) Multiply tax by 5 (5 × $3,000)	15,000
(3) Tax attributable to the excess of computation year capital gain net income over average base period capital gain net income:	
(a) Tax on $52,000	25,260
Less:	
(b) Tax on $17,000	5,055
	20,205
(4) Total tax for 1964:	
(a) Tax on 133⅓ percent of the average base period income ($4,000)	740
(b) Tax on average base period capital gain net income ($5,000)	1,315
(c) Tax on averagable income ($40,000)	15,000
(d) Tax on excess capital gain net income ($35,000)	20,205
Total tax	37,260

Computation of alternative tax for computation year (1964):

(1) Tax equal to the tax imposed by sec. 1 of the Code	$37,260
(2) Amount (if any) of reduction in tax:	
(a) Tax imposed by sec. 1 of the Code which is attributable to the amount of capital gain net income for the computation year which is equal to the average base period capital gain net income ($5,000)	1,315
(b) Tax imposed by sec. 1 of the Code which is attributable to the excess of capital gain net income for the computation year over the average base period capital gain net income ($35,000)	$20,205
Total tax attributable to capital gain net income for the computation year	21,520
(c) Amount which is 25 percent of net long-term capital gain for computation year ($80,000)	20,000
Reduction in tax	1,520
(3) Alternative tax for 1964 ($37,260—$1,520)	35,740

§ 1.1304–7 Short taxable years.

(a) *Change of annual accounting period.* (1) If an individual is required under section 443(a)(1) and the regulations thereunder to make a return for a short period, such short period may be treated as a computation year or a base period year. For purposes of this section, a "short period" means any period of less than 12 months for which a return was required to be made under section 443(a).

(2) For a short period which is a computation year, an individual shall determine his eligibility to choose the benefits of income averaging by placing his taxable income on an annual basis by multiplying such income by 12 and dividing the result by the number of months in the short period. The provisions of section 443(c) and the regulations thereunder (relating to adjustment in deduction for personal exemptions) shall apply in such computations. The total tax imposed by section 1 for the short period which is a computation year shall be the same part of the total tax computed on the annual basis as the number of months in the short period is of 12 months. The period described in section 443(b)(2) (relating to computation based on 12-month period) may not be a computation year.

(3) For a short period which is a base period year, the amount of an individual's base period income for such short period is computed as if such short period were a taxable year of 12 months ending on the last day of the short period.

(4) The application of the rules described in subparagraph (1) of this paragraph may be illustrated by the following example:

Example. A, an unmarried, eligible individual who had been a calendar year taxpayer, was allowed in 1964 to change his annual accounting period to a taxable year beginning on April 1. A made a return for

the short period from January 1 to March 31, 1964. His taxable income for the taxable years 1960 to 1964 is as indicated in the table below. For the taxable years 1960 through 1963, all of A's income is ordinary income from salary. For the short period, all of A's income is ordinary income, and includes $5,000 of net income attributable to a bequest received in 1964. A's eligibility to choose the benefits of income averaging and the amount of his averagable income for 1964 are determined in the following manner:

Year:	*Taxable income*
1960	$12,000
1961	14,000
1962	17,500
1963	16,500
1964 (3 months)	15,000

(1) Adjusted taxable income for 1964 (computation year):	
(a) Taxable income for 1964 on annual basis (($15,000×12)÷3)	60,000
Less:	
(b) Income attributable to bequest on annual basis (($5,000×12)÷3)	20,000
Adjusted taxable income	40,000
(2) Average base period income for years (1960–1963) (the base period years):	
(a) 1960	12,000
1961	14,000
1962	17,500
1963	16,500
	60,000
(b) Average base period income ($60,000÷4)	15,000
(3) Averagable income for 1964:	
(a) Adjusted taxable income	40,000
Less:	
(b) 133⅓ percent of average base period income (4/3×$15,000)	20,000
Averagable income	20,000

Since A's averagable income exceeds $3,000, the entire amount ($20,000) of his averagable income is subject to averaging.

Computation of total tax due for computation year (1964):

(1) Segments of income on annual basis:	
(a) 133⅓ percent of the average base period income	$20,000
(b) 20 percent of the averagable income ($20,000÷5)	4,000
(c) Income attributable to bequest	20,000
	44,000
(2) Tax attributable to the averagable income:	
(a) Tax on $20,000	6,450
(b) Tax on $24,000	8,530
(c) Tax on 20 percent of averagable income ($8,530—$6,450)	2,080
(d) Multiply tax by 5 (5×$2,080)	10,400
(3) Tax attributable to the income attributable to bequest:	
Tax on $44,000	20,130
Less: Tax on $24,000	8,530
	11,600
(4) Total tax for 1964:	
(a) Tax on 133⅓ percent of average base period income ($20,000)	6,450
(b) Tax on averagable income on annual basis ($20,000)	10,400
(c) Tax on income attributable to bequest on annual basis ($20,000)	11,600
(d) Tax on annualized income ($60,000)	28,450
Total tax due ($28,450×3/12)	7,112.50

(b) *Taxpayer not in existence for entire taxable year.* If an individual is required under section 443(a)(2) and the regulations thereunder to make a return for a short period, such short period may be treated as a computation year or a base period year. The amount of such individual's adjusted taxable income (if such short period is a computation year) or his base period income (if such short period is a base period year) is computed as if such short period were a taxable year of 12 months ending on the last day of the short period.

(c) *Termination of taxable year for jeopardy.* An individual who is required under section 443(a)(3) and the regulations thereunder to make a return for a period of less than 12 months shall not take such short period into account as a computation year or a base period year.

§ 1.1305 Statutory provisions; regulations.

Sec. 1305. *Regulations.* The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this part.

[Sec. 1305 as amended by sec. 232(a), Rev. Act 1964 (78 Stat. 105)]

PAR. 2. Section 1.72 is amended by striking out paragraph (3) of section 72 (e) and by revising the historical note. The amended provisions read as follows:

§ 1.72 Statutory provisions; annuities; certain proceeds of endowment and life insurance contracts.

Sec. 72. *Annuities; certain proceeds of endowment and life insurance contracts.* * * *

(e) *Amounts not received as annuities.* * * *

(3) [Deleted]

[Sec. 72 as amended by sec. 4 (a), (b), Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 821); sec. 11(b), Rev. Act 1962 (76 Stat. 1005); sec. 232(b), Rev. Act 1964 (78 Stat. 110)]

PAR. 3. Paragraph (a)(3)(i) of § 1.72–2 is amended to read as follows:

§ 1.72–2 Applicability of section.

(a) *Contracts.* * * *

(3)(i) Sections 402 and 403 provide that certain distributions by employees' trusts and certain payments under employee plans are taxable under section 72. For taxable years beginning before January 1, 1964, section 72(e)(3), as in effect before such date, does not apply to such distributions or payments. For purposes of applying section 72 to such distributions and payments (other than those described in subdivision (iii) of this subparagraph), each separate program of the employer consisting of interrelated contributions and benefits shall be considered a single contract. Therefore, all distributions or payments (other than those described in subdivision (iii) of this subparagraph) which are attributable to a separate program of interrelated contributions and benefits are considered as received under a single contract. A separate program of interrelated contributions and benefits may be financed by the purchase from an insurance company of one or more group contracts or one or more individual contracts, or may be financed partly by the purchase of contracts from an insurance company and partly through an investment fund, or may be financed completely through an investment fund. A program may be considered separate for purposes of section 72 although it is only a part of a plan which qualifies under section 401. There may be several trusts under one separate program, or several separate programs may make use of a single trust. See, however, subdivision (iii) of this subparagraph for rules relating to what constitutes a "contract" for purposes of applying section 72 to distributions commencing before October 20, 1960.

* * * * *

PAR. 4. Section 1.72–11 is amended by revising paragraphs (a)(2), (c)(3), (d)(2), (f)(1), (3), and (g). These amended provisions read as follows:

§ 1.72–11 Amounts not received as annuity payments.

(a) *Introductory.* * * *

(2) The principles of this section apply, to the extent appropriate thereto, to amounts paid which are taxable under section 72 (except, for taxable years beginning before January 1, 1964, section 72(e)(3)) in accordance with sections 402 and 403 and the regulations thereunder. However, if contributions used to purchase the contract include amounts for which a deduction was allowed under section 404 as contributions on behalf of an owner-employee, the rules of this section are modified by the rules of paragraph (b) of § 1.72–17. Further, in applying the provisions of this section, the aggregate premiums or other consideration paid shall not include contributions on behalf of self-employed individuals to the extent that deductions were allowed under section 404 for such contributions. Nor, shall the aggregate of premiums or other consideration paid include amounts used to purchase life, accident, health, or other insurance protection for an owner-employee. See paragraph (b)(4) of § 1.72–16 and paragraph (c) of § 1.72–17. The principles of this section also apply to payments made in the manner described in paragraph (b)(3)(i) of § 1.72–2.

* * * * *

(c) *Amounts received in the nature of a refund of the consideration under a contract and in full discharge of the obligation thereof.* * * *

(3) For the purpose of applying the rule contained in subparagraph (1) of this paragraph, it is immaterial whether the recipient of the amount received in full discharge of the obligation is the

same person as the recipient of amounts previously received under the contract which were excludable from gross income, except in the case of a contract transferred for a valuable consideration, with respect to which see paragraph (a) of § 1.72–10. For the limit on the tax, for taxable years beginning before January 1, 1964, attributable to the receipt of a lump sum to which this paragraph applies, see paragraph (g) of this section.

(d) *Amounts received upon the surrender, redemption, or maturity of a contract.* * * *

(2) For the purpose of applying the rule contained in subparagraph (1) of this paragraph, it is immaterial whether the recipient of the amount received upon the surrender, redemption, or maturity of the contract is the same as the recipient of amounts previously received under the contract which were excludable from gross income, except in the case of a contract transferred for a valuable consideration, with respect to which see paragraph (a) of § 1.72–10. For the limit on the amount of tax, for taxable years beginning before January 1, 1964, attributable to the receipt of certain lump sums to which this paragraph applies, see paragraph (g) of this section.

* * * * *

(f) *Periodic payments received for the same term after a lump sum withdrawal.* (1) If, after the date of the first receipt of a payment as an annuity, the annuitant receives a lump sum and is thereafter to receive annuity payments in a reduced amount under the contract for the same term, life, or lives as originally specified in the contract, a portion of the contract shall be considered to have been surrendered or redeemed in consideration of the payment of such lump sum and the exclusion ratio originally determined for the contract shall continue to apply to the amounts received as an annuity without regard to the fact that such amounts are less than the original amounts which were to be paid periodically. The lump sum shall be includible in the gross income of the recipient in accordance with the provisions of subparagraph (2) of this paragraph. However, except in the case of amounts to which sections 402 and 403 apply, the tax, for taxable years beginning before January 1, 1964, attributable to the inclusion of all or part of the lump sum in gross income shall not exceed the amount determined under section 72(e)(3) and paragraph (g) of this section. For taxable years beginning after December 31, 1963, such amounts may be taken into account in computations under sections 1301 through 1305 (relating to income averaging).

* * * * *

(3) This paragraph may be illustrated by the following examples:

Example (1). Taxpayer A pays $20,000 for an annuity contract providing for payments to him of $100 per month for his life. At the annuity starting date he has a life expectancy of 20 years. His expected return is therefore $24,000 and the exclusion ratio is five-sixths. He continues to receive the original annuity payments for 5 years, receiving a total of $6,000, and properly excludes a total of $5,000 from his gross income in his income tax returns for those years. At the beginning of the next year, A agrees with the insurer to take a reduced annuity of $75 per month and a lump sum payment of $4,000 in cash. Of the lump sum he receives, he will include $250 and exclude $3,750 from his gross income for his taxable year of receipt, determined as follows:

Aggregate of premiums or other consideration paid	$20,000
Less amounts received as an annuity to the extent they were excludable from A's income	$5,000
Remainder of the consideration	$15,000
Ratio of the reduction in the amount of the annuity payments to the original annuity payments	25/$100 or ¼
Lump sum received	$4,000
Less one-fourth of the remainder of the consideration (¼ of $15,000)	$3,750
Portion of the lump sum includible in gross income	$250

For taxable years beginning before January 1, 1964, the limit on tax of section 72(e)(3), as in effect before such date, applies to the portion of the lump sum includible in gross income. For taxable years beginning after December 31, 1963, such portion may be taken into account in computations under sections 1301 through 1305 (relating to income averaging). If, in this example, the annuity were a pension payable to A as a retired employee, but the facts were otherwise the same (assuming that, for instance, the $20,000 aggregate of premiums or other consideration paid were A's contributions as determined under section 72(f) and § 1.72–8) the result would be the same except that the tax attributable to the inclusion of the $250 in A's gross income, for taxable years beginning before January 1, 1964, would not be limited by section 72(e)(3), as in effect before such date. If such a lump sum is received in a taxable year beginning after December 31, 1963, the portion of such sum includible in gross income may be taken into account in computations under sections 1301 through 1305 (relating to income averaging).

Example (2). Taxpayer B pays $30,000 for a contract providing for monthly payments to be made to him for 15 years with respect to the principal and earnings of 10 units of an investment fund. B receives $12,000 during the first 5 years of participation and of this amount he has properly excluded a total of $10,000 from his gross income in his income returns for the taxable years, since $2,000 of $2,400 he received in each such year represented his investment divided by the term of the annuity ($30,000÷15). At the beginning of the 6th year, B agrees to take $11,000 in a lump sum and thereafter to accept the payments arising with respect to five units for the remaining 10 years of payments in full discharge of the original obligations of the contract. B shall include $1,000 in his gross income for the 6th year as the result of the lump sum he receives and allocates $1,000 of his original investment in the contract to each of the remaining 10 years with respect to the payments which will continue, determined as follows:

Aggregate of premiums or other consideration paid	$30,000
Total amount received and excludable from gross income	$10,000
Remainder of the consideration	$20,000
Ratio of units discontinued to the total units originally provided	5/10 or ½
Lump sum received at the time of reduction in the number of units to be paid	$11,000
Less one-half of the remainder of the consideration (½ of $20,000)	$10,000
Portion of the lump sum received and includible in gross income	$1,000
Remainder of the consideration less the portion of such remainder attributable to the excludable portion of the lump sum ($20,000—$10,000)	$10,000
Remainder of the consideration properly allocable to each taxable year for the remaining 10 years ($10,000÷10)	$1,000

For the taxable years beginning before January 1, 1964, the limit on tax of section 72(e)(3), as in effect before such date, applies to the portion of the lump sum received and includible in gross income. For taxable years beginning after December 31, 1963, such portion may be taken into account in computations under sections 1301 through 1305 (relating to income averaging).

(g) *Limit on tax attributable to the receipt of a lump sum.* (1) For taxable years beginning before January 1, 1964, if the entire amount of the proceeds received upon the redemption, maturity, surrender, or discharge of a contract to which section 72 applies is received in a lump sum and paragraph (c), (d), or (f) of this section is applicable in determining the portion of such amount which is includible in gross income, the tax attributable to such portion shall not exceed the tax which would have been attributable thereto had such portion been received ratably in the taxable year in which received and the 2 preceding taxable years. The amount of tax attributable to the includible portion of the lump sum received shall be the lesser of:

(i) The difference between the amount of tax for the taxable year of receipt computed by including such portion in gross income and the amount of tax for such taxable year computed by excluding such portion from gross income; or

(ii) The difference between the total amount of tax for the taxable year of receipt and the 2 preceding taxable years computed by including one-third of such portion in gross income for each of the 3 taxable years, and the total amount of the tax for the taxable year of receipt and the 2 preceding taxable years computed by entirely excluding such portion from the gross income of all 3 taxable years.

For the definition of "taxable year", see section 441(b). This subparagraph shall not apply, for taxable years beginning before January 1, 1964, to payments excepted from the application of section 72(e)(3), as in effect before such date, under the provisions of section 402 or 403. See paragraph (a) of § 1.72–2 and paragraph (d) of § 1.72–14.

(2) For taxable years beginning after December 31, 1963, any amount includible in gross income to which this section relates may be taken into account in computations under sections 1301 through 1305 (relating to income averaging).

PAR. 5. Paragraph (b)(3) of § 1.72–17 is amended to read as follows:

§ 1.72–17 Special rules applicable to owner-employees.

* * * * *

(b) *Certain amounts received before annuity starting date.* * * *

(3) Any amounts to which this paragraph applies and which are not includible in gross income under the rules of subparagraph (2) of this paragraph shall be subject to the provisions of section 72(e) and § 1.72–11. However, for taxable years beginning before January 1, 1964, section 72(e)(3), as in effect before such date, shall not apply to such amounts. For taxable years beginning after December 31, 1963, such amounts (other than amounts subject to a penalty under section 72(m)(5) and paragraph (e) of this section) may be taken into account in computations under sections 1301 through 1305 (relating to income averaging).

* * * * *

PAR. 6. Paragraph (b)(3)(iii) of § 1.72–18 is amended to read as follows:

§ 1.72–18 Treatment of certain total distributions with respect to self-employed individuals.

* * * * *

(b) *Distribution to which this section applies.* * * *

(3) * * *

(iii) Distributions or payments made to the employee from a plan or trust unless contributions which were allowed as a deduction under section 404 have been made on behalf of such employee as a self-employed individual under such trust or plan for 5 or more taxable years (whether or not consecutive) prior to the taxable year in which such distributions or payments are made. Distributions or payments to which this section does not apply by reason of this subdivision are taxed as otherwise provided in section 72. However, for taxable years beginning before January 1, 1964, section 72(e)(3), as in effect before such date, is not applicable. For taxable years beginning after December 31, 1963, such distributions or payments may be taken into account in computations under sections 1301 through 1305 (relating to income averaging).

* * * * *

PAR. 7. Section 1.144 is amended by adding a new subsection (d) to section 144 and by revising the historical note. These added and amended provisions read as follows:

§ 1.144 Statutory provisions; election of standard deduction.

Sec. 144. *Election of standard deduction.* * * *

(d) *Individuals electing income averaging.* In the case of a taxpayer who chooses to have the benefits of part I of subchapter Q (relating to income averaging) for the taxable year—

(1) Subsection (a) shall not apply for such taxable year, and

(2) The standard deduction shall be allowed if the taxpayer so elects in his return for such taxable year.

The Secretary or his delegate shall by regulations prescribe the manner of signifying such election in the return. If the taxpayer on making his return fails to signify, in the manner so prescribed, his election to take the standard deduction, such failure shall be considered his election not to take the standard deduction.

* * * * *

[Sec. 144 as amended by secs. 112(c), 232(c), Rev. Act 1964 (78 Stat. 24, 110)]

PAR. 8. The following new section is added after § 1.144–2:

§ 1.144–3 Standard deduction for individuals choosing income averaging.

(a) In the case of an individual who chooses under section 1304(a) to have the benefits of part I of subchapter Q (relating to income averaging) for the taxable year—

(1) Section 144(a) shall not apply, and

(2) The standard deduction under section 141 shall be allowed if an individual so elects in his return for such computation year.

Thus, even though an individual who chooses the benefits of income averaging for a taxable year may not pay the tax imposed under section 3, such individual may elect the standard deduction under section 141.

(b) The standard deduction shall be allowed to an individual if he elects on his return for the computation year to take such deduction. Such individual shall signify on his return his election to take the standard deduction by claiming thereon the deduction in the amount provided for in section 141 instead of itemizing the deductions (other than those specified in sections 62 and 151) allowable in computing taxable income. In the case of a husband and wife (whether separate or joint returns are filed), the election to take the standard deduction and the manner of signifying such election shall, to the extent not limited by section 142 and the regulations thereunder, be made in accordance with these rules.

(c) A change of the election to take, or not to take, the standard deduction for any computation year shall be made in accordance with the rules provided in § 1.144–2.

PAR. 9. Section 1.402(a) is amended by revising section 402(a)(1) and by adding a historical note. These amended and added provisions read as follows:

§ 1.402(a) Statutory provisions; taxability of beneficiary of employees' trust; exempt trust.

Sec. 402. *Taxability of beneficiary of employees' trust*—(a) *Taxability of beneficiary of exempt trust*—(1) *General rule.* Except as provided in paragraphs (2) and (4), the amount actually distributed or made available to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to him, in the year in which so distributed or made available, under section 72 (relating to annuities). The amount actually distributed or made available to any distributee shall not include net unrealized appreciation in securities of the employer corporation attributable to the amount contributed by the employee. Such net unrealized appreciation and the resulting adjustments to basis of such securities shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

* * * * *

[Sec. 402(a) as amended by sec. 4(c), Self-Employed Individuals Tax Retirement Act of 1962 (76 Stat. 825); sec. 232(e)(1), Rev. Act 1964 (78 Stat. 111)]

PAR. 10. Paragraph (a)(1)(ii) of § 1.402(a)–1 is amended to read as follows:

§ 1.402(a)–1 Taxability of beneficiary under a trust which meets the requirements of section 401(a).

(a) *In general.* (1) * * *

(ii) The provisions of section 402(a) relate only to a distribution by a trust described in section 401(a) which is exempt under section 501(a) for the taxable year of the trust in which the distribution is made. With two exceptions, the distribution from such an exempt trust when received or made available is taxable to the distributee to the extent provided in section 72 (relating to annuities). First, for taxable years beginning before January 1, 1964, section 72(e)(3) (relating to the treatment of certain lump sums), as in effect before such date, shall not apply to such distributions. For taxable years beginning after December 31, 1963, such distributions may be taken into account in computations under sections 1301 through 1305 (relating to income averaging). Secondly, certain total distributions described in section 402(a)(2) are taxable as long-term capital gains. For the treatment of such total distributions, see subparagraph (6) of this paragraph. Under certain circumstances, an amount representing the unrealized appreciation in the value of the securities of the employer is excludable from gross income for the year of distribution. For the rules relating to such exclusion, see paragraph (b) of this section. Furthermore, the exclusion provided by section 105(d) is applicable to a distribution from a trust described in section 401(a) and exempt under section 501(a) if such distribution constitutes wages or payments in lieu of wages for a period during which an employee is absent from work on account of a personal injury or sickness. See § 1.72–15 for the rules relating to the tax treatment of accident or health benefits received under a plan to which section 72 applies.

* * * * *

PAR. 11. Section 1.402(b) is amended by revising section 402(b) and by adding a historical note. These amended and added provisions read as follows:

§ 1.402(b) Statutory provisions; taxability of beneficiary of employees' trust; nonexempt trust.

Sec. 402. *Taxability of beneficiary of employees' trust.* * * *

(b) *Taxability of beneficiary of nonexempt trust.* Contributions to an employees' trust made by an employer during a taxable year of the employer which ends within or with a taxable year of the trust for which the trust is not exempt from tax under section 501(a) shall be included in the gross income of an employee for the taxable year in which the contribution is made to the trust in the

case of an employee whose beneficial interest in such contribution is nonforfeitable at the time the contribution is made. The amount actually distributed or made available to any distributee by any such trust shall be taxable to him, in the year in which so distributed or made available, under section 72 (relating to annuities).

* * * * *

[Sec. 402(b) as amended by sec. 232(e)(2), Rev. Act 1964 (78 Stat. 111)]

PAR. 12. Paragraph (b) of § 1.402(b)–1 is amended to read as follows:

§ 1.402(b)–1 Treatment of beneficiary of a trust not exempt under section 501(a).

* * * * *

(b) *Taxation of distributions from trust not exempt under section 501(a).* Any amount actually distributed or made available to any distributee by an employees' trust which is not exempt under section 501(a) for the taxable year of the trust in which the distribution is made shall be taxable in the year in which so distributed or made available under section 72 (relating to annuities). For taxable years beginning before January 1, 1964, section 72(e)(3) (relating to the treatment of certain lump sums), as in effect before such date, shall not apply to such amounts. For taxable years beginning after December 31, 1963, such amounts may be taken into account in computations under sections 1301 through 1305 (relating to income averaging). If, for example, the distribution from such a trust consists of an annuity contract, the amount of the distribution shall be considered to be the entire value of the contract at the time of distribution, and such value is includible in the gross income of the distributee at the time of the distribution to the extent that such value exceeds the investment in the contract determined by applying sections 72 and 101(b). The distributions by such an employees' trust shall be taxed as provided in section 72, whether or not the employee's rights to the contributions were nonforfeitable when the contributions were made or at any time thereafter. For rules relating to the treatment of employer contributions to a non-exempt trust as part of the consideration paid by the employee, see section 72(f). For rules relating to the treatment of the limited exclusion allowable under section 101(b)(2)(D) as additional consideration paid by the employee, see the regulations under that section.

PAR. 13. Section 1.402(d) is amended by revising the language following section 402(d)(3) and by adding a historical note. These amended and added provisions read as follows:

§ 1.402(d) Statutory provisions; taxability of beneficiary of employees' trust; annuities under agreements entered into prior to October 21, 1942.

Sec. 402. *Taxability of beneficiary of employees' trust.* * * *

(d) *Certain employees' annuities.* Notwithstanding subsection (b) or any other provision of this subtitle, a contribution to a trust by an employer shall not be included in the gross income of the employee in the year in which the contribution is made if—

(1) Such contribution is to be applied by the trustee for the purchase of annuity contracts for the benefit of such employee;

(2) Such contribution is made to the trustee pursuant to a written agreement entered into prior to October 21, 1942, between the employer and the trustee, or between the employer and the employee; and

(3) Under the terms of the trust agreement the employee is not entitled during his lifetime, except with the consent of the trustee, to any payments under annuity contracts purchased by the trustee other than annuity payments.

The employee shall include in his gross income the amounts received under such contracts for the year received as provided in section 72 (relating to annuities). This subsection shall have no application with respect to amounts contributed to a trust after June 1, 1949, if the trust on such date was exempt under section 165(a) of the Internal Revenue Code of 1939. For purposes of this subsection, amounts paid by an employer for the purchase of annuity contracts which are transferred to the trustee shall be deemed to be contributions made to a trust or trustee and contributions applied by the trustee for the purchase of annuity contracts; the term "annuity contracts purchased by the trustee" shall include annuity contracts so purchased by the employer and transferred to the trustee; and the term "employee" shall include only a person who was in the employ of the employer, and was covered by the agreement referred to in paragraph (2), prior to October 21, 1942.

* * * * *

[Sec. 402(d) as amended by sec. 232(e)(3), Rev. Act. 1964 (78 Stat. 111)]

PAR. 14. Paragraph (a) of § 1.402(d)–1 is amended to read as follows:

§ 1.402(d)–1 Effect of section 402(d).

(a) If the requirements of section 402(d) are met, a contribution made by an employer on behalf of an employee to a trust which is not exempt under section 501(a) shall not be included in the income of the employee in the year in which the contribution is made. Such contribution will be taxable to the employee, when received in later years, as provided in section 72 (relating to annuities). For taxable years beginning before January 1, 1964, section 72(e)(3) (relating to the treatment of certain lump sums), as in effect before such date, shall not apply to such contributions. For taxable years beginning after December 31, 1963, such contributions, when received, may be taken into account in computations under sections 1301 through 1305 (relating to income averaging). See paragraph (b) of § 1.403(c)–1. The intent and purpose of section 402(d) is to give those employees, covered under certain non-exempt trusts to which such section applies, essentially the same tax treatment as those covered by trusts described in section 401(a) and exempt under section 501(a), except that the capital gains treatment referred to in section 402(a)(2) does not apply.

* * * * *

PAR. 15. Section 1.403(a) is amended by revising section 403(a)(1) and by revising the historical note. These amended provisions read as follows:

§ 1.403(a) Statutory provisions; taxation of employee annuities; qualified annuity plan.

Sec. 403. *Taxation of employee annuities*—(a) *Taxability of beneficiary under a qualified annuity plan*—(1) *General rule.* Except as provided in paragraph (2), if an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).

* * * * *

[Sec. 403(a) as amended by sec. 23(b), Technical Amendments Act 1958 (72 Stat. 1622); by sec. 4(d), Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 825); sec. 232(e)(4), Rev. Act 1964 (78 Stat. 111)]

PAR. 16. Paragraph (b) of § 1.403(a)–1 is amended to read as follows:

§ 1.403(a)–1 Taxability of beneficiary under a qualified annuity plan.

* * * * *

(b) The amounts received by or made available to any employee referred to in paragraph (a) of this section under such annuity contract shall be included in gross income of the employee for the taxable year in which received or made available, as provided in section 72 (relating to annuities), except that certain total distributions described in section 403(a)(2) are taxable as long-term capital gains. For the treatment of such total distributions, see § 1.403(a)–2. However, for taxable years beginning before January 1, 1964, section 72(e)(3) (relating to the treatment of certain lump sums), as in effect before such date, shall not apply to such amounts. For taxable years beginning after December 31, 1963, such amounts may be taken into account in computations under sections 1301 through 1305 (relating to income averaging).

* * * * *

PAR. 17. Section 1.403(b) is amended by revising section 403(b)(1) and by revising the historical note. These amended provisions read as follows:

§ 1.403(b) Statutory provisions; taxation of employee annuities; taxability of beneficiary under annuity purchases by section 501(c)(3) organization or public school.

Sec. 403. *Taxation of employee annuities.* * * *

(b) *Taxability of beneficiary under annuity purchased by section 501(c)(3) organization*—(1) *General rule.* If—

(A) An annuity contract is purchased—

(i) For an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a), or

(ii) For an employee (other than an employee described in clause (i)), who performs services for an educational institution (as defined in section 151(e)(4)), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing,

(B) Such annuity contract is not subject to subsection (a), and

(C) The employee's rights under the contract are nonforfeitable, except for failure to pay future premiums,

then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the exclusion allowance for such taxable year. The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).

* * * * *

[Sec. 403(b) as added by sec. 23(a), Technical Amendments Act 1958 (72 Stat. 1620) and amended by sec. 3, Act of October 4, 1961 (Pub. Law 87-370, 75 Stat. 801); sec. 232 (e)(5), Rev. Act 1964 (78 Stat. 111)]

PAR. 18. Paragraph (c)(1) of § 1.403(b)-1 is amended to read as follows:

§ 1.403(b)-1 Taxability of beneficiary under annuity purchased by a section 501(c)(3) organization or public school.

* * * * *

(c) *Taxation of amounts received under annuity contracts*—(1) *In general.* The amounts received by or made available to any employee under an annuity contract to which paragraph (a) or (b) of this section applies shall be included in the gross income of the employee for the taxable year in which received or made available, as provided in section 72 (relating to annuities). For taxable years beginning before January 1, 1964, section 72(e)(3) (relating to the treatment of certain lump sums), as in effect before such date, shall not apply to any amount received by or made available to any such employee under such an annuity contract. For taxable years beginning after December 31, 1963, amounts received or made available to any such employee under such annuity contract may be taken into account in computations under sections 1301 through 1305 (relating to income averaging).

* * * * *

PAR. 19. Section 1.403(c) is amended by revising section 403(c) and by revising the historical note. These amended provisions read as follows:

§ 1.403(c) Statutory provisions; taxation of employee annuities; taxability of beneficiary under a nonqualified annuity.

Sec. 403. *Taxation of employee annuities.* * * *

(c) *Taxability of beneficiary under a nonqualified annuity.* If an annuity contract purchased by an employer for an employee is not subject to subsection (a) and the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums, the amount contributed by the employer for such annuity contract on or after such rights become nonforfeitable shall be included in the gross income of the employee in the year in which the amount is contributed. The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).

* * * * *

[Sec. 403(c) as relettered by sec. 23(a), Technical Amendments Act 1958 (72 Stat. 1620) and amended by sec. 232(e)(6), Rev. Act 1964 (78 Stat. 111)]

PAR. 20. Section 1.403(c)-1 is amended by revising paragraphs (a) and (b). These amended provisions read as follows:

§ 1.403(c)-1 Taxability of beneficiary under a nonqualified annuity.

(a) Except as provided in section 402(d), if an employer purchases an annuity contract and if the amounts paid for the contract are not subject to paragraph (a) of § 1.403(a)-1 or paragraph (a) of § 1.403(b)-1, the amount of such contribution shall, to the extent it is not excludable under paragraph (b) of § 1.403(b)-1, be included in the income of the employee for the taxable year during which such contribution is made if, at the time the contribution is made, the employee's rights under the annuity contract are nonforfeitable, except for failure to pay future premiums. If the annuity contract was purchased by an employer which is not exempt from tax under section 501(a) or section 521(a), and if the employee's rights under the annuity contract in such a case were forfeitable at the time the employer's contribution was made for the annuity contract, even though they became nonforfeitable later, the amount of such contribution is not required to be included in the income of the employee at the time his rights under the contract become nonforfeitable. On the other hand, if the annuity contract is purchased by an employer which is exempt from tax under section 501(a) or section 521(a), all or part of the value of the contract may be includible in the employee's gross income at the time his rights under the contract become nonforfeitable (see section 403(d) and the regulations thereunder). As to what constitutes nonforfeitable rights of an employee, see § 1.402(b)-1. The amounts received by or made available to the employee under the annuity contract shall be included in the gross income of the employee for the taxable year in which received or made available, as provided in section 72 (relating to annuities). For taxable years beginning before January 1, 1964, section 72(e)(3) (relating to the treatment of certain lump sums), as in effect before such date, shall not apply to such amounts. For taxable years beginning after December 31, 1963, such amounts may be taken into account in computations under sections 1301 through 1305 (relating to income averaging). For rules relating to the treatment of employer contributions as part of the consideration paid by the employee, see section 72(f). See also section 101(b)(2)(D) for rules relating to the treatment of the limited exclusion provided thereunder as part of the consideration paid by the employee.

(b) If an employer has purchased annuity contracts and transferred the same to a trust or if an employer has made contributions to a trust for the purpose of providing annuity contracts for his employees as provided in section 402(d) (see paragraph (a) of § 1.402(d)-1), the amount so paid or contributed is not required to be included in the income of the employee, but any amount received by or made available to the employee under the annuity contract shall be includible in the gross income of the employee for the taxable year in which received or made available, as provided in section 72 (relating to annuities). For taxable years beginning before January 1, 1964, section 72(e)(3) (relating to the treatment of certain lump sums), as in effect before such date, shall not apply to any amount received by or made available to the employee under the annuity contract. For taxable years beginning after December 31, 1963, amounts received by or made available to the employee under the annuity contract may be taken into account in computations under sections 1301 through 1305 (relating to income averaging). In such case the amount paid or contributed by the employer shall not constitute consideration paid by the employees for such annuity contract in determining the amount of annuity payments required to be included in his gross income under section 72 unless the employee has paid income tax for any taxable year beginning before January 1, 1949, with respect to such payment or contribution by the employer for such year and such tax is not credited or refunded to the employee. In the event such tax has been paid and not credited or refunded the amount paid or contributed by the employer for such year shall constitute consideration paid by the employee for the annuity contract in determining the amount of the annuity required to be included in the income of the employee under section 72.

* * * * *

PAR. 21. Section 1.5 is amended by revising section 5(b) and by adding a historical note. These amended and added provisions read as follows:

§ 1.5 Statutory provisions; cross references relating to tax on individuals.

Sec. 5. *Cross references relating to tax on individuals.* * * *

(b) *Special limitations on tax.* (1) For limitation on surtax attributable to sales of oil or gas properties, see section 632.

(2) For limitation on tax in case of income of members of Armed Forces on death, see section 692.

(3) For limitation on tax where an individual chooses the benefits of income averaging, see section 1301.

(4) For computation of tax where taxpayer restores substantial amount held under claim of right, see section 1341.

(5) For limitation on surtax attributable to claims against the United States involving acquisitions of property, see section 1347.

[Sec. 5 as amended by sec. 232(f)(2), Rev. Act 1964 (78 Stat. 111)]

PAR. 22. Section 1.1-3 is amended to read as follows:

§ 1.1-3 Limitation on tax.

The tax imposed by section 1 (whether by subsection (a) or subsection (b) thereof) shall not exceed 87 percent of the taxable income for the taxable year. For purposes of determining this limitation the tax under section 1 (a) or (b) and the tax at the 87-percent rate shall each be computed before the allowance

of any credits against the tax. Where the alternative tax on capital gains is imposed under section 1201(b), the 87-percent limitation shall apply only to the partial tax computed on the taxable income reduced by 50 percent of the excess of net long-term capital gains over net short-term capital losses. Where, for purposes of computations under the income averaging provisions, section 1201 (b) is treated as imposing the alternative tax on capital gains computed under section 1304(e)(2), the 87-percent limitation shall apply only to the tax equal to the tax imposed by section 1, reduced by the amount of the tax imposed by section 1 which is attributable to capital gain net income for the computation year.

PAR. 23. Paragraph (b)(3) of § 1.691(a)-3 is amended to read as follows:

§ 1.691(a)-3 Character of gross income.

* * * * *

(b) * * *

(3) If the amounts received would be subject to special treatment under part I (section 1301 and following), subchapter Q, chapter 1 of the Code, relating to income attributable to several taxable years, as in effect for taxable years beginning before January 1, 1964, if the decedent had lived and included such amounts in his gross income, such sections apply with respect to the recipient of the income.

* * * * *

PAR. 24. Paragraph (c)(1)(ii) of § 1.702-1 is amended to read as follows:

§ 1.702-1 Income and credits of partner.

* * * * *

(c) Gross income of a partner.

(1) * * *

(ii) In determining the application of the provisions permitting the spreading of income for services rendered over a 36-month period (section 1301, as in effect for taxable years beginning before January 1, 1964);

* * * * *

PAR. 25. Paragraph (c)(1) of § 1.1235-1 is amended to read as follows:

§ 1.1235-1 Sale or exchange of patents.

* * * * *

(c) *Special rules*—(1) *Payments for infringement.* If section 1235 applies to the transfer of all substantial rights to a patent (or an undivided interest therein), amounts received in settlement of, or as the award of damages in, a suit for compensatory damages for infringement of the patent shall be considered payments attributable to a transfer to which section 1235 applies to the extent that such amounts relate to the interest transferred. For taxable years beginning before January 1, 1964, see section 1304, as in effect before such date, and § 1.1304a-1 for treatment of compensatory damages for patent infringement.

* * * * *

PAR. 26. Paragraph (a) of § 1.6012-1 is amended by revising subparagraph (7)(ii) (*j*) and (*k*), by adding a new subparagraph (7)(ii)(*l*), and by revising subparagraph (7)(viii). These amended and added provisions read as follows:

§ 1.6012-1 Individuals required to make returns of income.

(a) *Individual citizen or resident.* * * *

(7) *Use of Form 1040A by certain taxpayers with gross income less than $10,000* * * *

(ii) *Restrictions on use of Form 1040A.* * * *

(*j*) Who claims a deduction for an exemption upon a multiple support agreement under section 152(c);

(*k*) Who claims credit for payment of estimated income tax or for an overpayment of income tax for the previous taxable year; or

(*l*) Who chooses to have the benefits of income averaging for the taxable year.

* * * * *

(viii) *Joint return of husband and wife on Form 1040A.* A husband and wife, eligible under section 6013 and the regulations thereunder to file a joint return for the taxable year, may, subject to the provisions of this subparagraph, make a joint return on Form 1040A for any such year in which the aggregate gross income of the spouses is less than $10,000, consists entirely of remuneration for services performed as an employee, dividends, or interest, and does not include more than $200 from dividends, interest, and remuneration other than wages as defined in section 3401(a). For purposes of determining whether gross income from sources to which the $200 limitation applies exceeds such amount in cases where both spouses receive dividends from domestic corporations, the amount of such dividends received by each spouse is taken into account to the extent that such dividends are includible in gross income. See section 116 and §§ 1.116-1 and 1.116-2. If a joint return is made by husband and wife on Form 1040A, the liability for the tax shall be joint and several. Form 1040A shall not be used by a husband and wife for any taxable year for which they choose to have the benefits of income averaging.

* * * * *

PAR. 27. Section 1.1301 which follows the heading "Income Attributable to Several Taxable Years" is amended by revising its heading and by adding a historical note. These amended and added provisions read as follows:

§ 1.1301a Statutory provisions; compensation from an employment.

* * * * *

[Sec. 1301 as in effect prior to amendment by sec. 232(a), Rev. Act 1964 (78 Stat. 105)]

PAR. 28. Section 1.1301-1 is amended to read as follows:

§ 1.1301a-1 Introduction and effective date.

(a) Part I (section 1301 and following), subchapter Q, chapter 1 of the Code, provides special rules to relieve a taxpayer from the amount of tax which otherwise results when an amount of income which has been earned over a period of years is received or accrued in 1 taxable year. Because of the graduated income tax rates this so-called bunching of income in 1 year usually subjects it to a higher rate of tax than would be payable if it had been received or accrued over the several years during which it was earned. The statutory provisions of such part I mitigate the tax consequences of such bunching of income by placing a limit upon the amount of tax to be paid for the taxable year in which such income is received or accrued. In effect, these sections generally treat the income as having been included in gross income ratably over the years (preceding receipt or accrual) in which it was earned. However, these sections have no effect on the income tax liability for prior taxable years; they simply provide a special method of computing the amount of tax for the year of receipt or accrual.

(b) Except as otherwise provided in § 1.1301a-3 and § 1.1307a-3, part I (section 1301 and following), subchapter Q, chapter 1 of the Code (relating to income attributable to several taxable years), shall not apply to taxable years beginning after December 31, 1963.

PAR. 29. The heading of § 1.1301-2 is amended to read as follows:

§ 1.1301a-2 Compensation from an employment.

PAR. 30. The following new section is inserted following § 1.1301a-2:

§ 1.1301a-3 Applicability to taxable years after December 31, 1963.

(a) Section 1301 is applicable to a taxable year beginning after December 31, 1963, if—

(1) An individual or a partnership receives or accrues compensation from an employment (as defined in section 1301(b) and the regulations thereunder) which began before February 6, 1963, and

(2) The taxpayer elects, in accordance with paragraph (b) of this section, to compute the tax attributable to such compensation under the provisions of sections 1301 and 1307, as in effect for taxable years beginning before January 1, 1964.

A taxpayer who makes such an election for a taxable year may not choose the benefits provided by part I of subchapter Q of chapter 1 of the Code (relating to income averaging) for that taxable year.

(b) Such election is signified by computing tax under the provisions of sections 1301 and 1307 on his return. The taxpayer may make or change his election at any time before the expiration of the period (including extensions thereof) prescribed in section 6511 for making a claim for credit or refund of the tax imposed by chapter 1 for such taxable year. However, such period is not extended by the right to make or change such election.

PAR. 31. Section 1.1302 is amended by revising its heading and by adding a historical note. These amended and added provisions read as follows:

§ 1.1302a Statutory provisions; income from an invention or artistic work.

* * * * *

[Sec. 1302 as in effect prior to amendment by sec. 232(a), Rev. Act 1964 (78 Stat. 105)]

PAR. 32. Section 1.1302–1 is amended by revising its heading, by revising paragraph (d) (2) and (3), and by adding a new paragraph (e). These amended and added provisions read as follows:

§ 1.1302a–1 Income from an invention or artistic work.

* * * * *

(d) *Computation of tax.* * * *

(2) For effect of allocation of income on items based on amount of income and with respect to a net operating loss or a capital loss carryover, see paragraph (d) (2) of § 1.1301a–2.

(3) See paragraph (d) (4) of § 1.1301a–2 for the computations which are necessary when an amount of gross income from an invention or artistic work is allocated to a period to which there has also been allocated other income entitled to the benefits of part I (section 1301 and following), subchapter Q, chapter 1 of the Code.

(e) *Effective date.* Section 1302 and this section shall not apply to taxable years beginning after December 31, 1963.

PAR. 33. Section 1.1303 is amended by revising its heading, by adding a paragraph (4) to section 1303(b), and by adding a historical note. These amended and added provisions read as follows:

§ 1.1303a Statutory provisions; income from back pay.

Sec. 1303. *Income from back pay.* * * *

(b) *Definition of back pay.* * * *

(4) Termination payments under section 5(c) or section 6(1) of the Peace Corps Act which are received or accrued by an individual during the taxable year on account of any period of service, as a volunteer or volunteer leader under the Peace Corps Act, occurring prior to the taxable year.

[Sec. 1303 as amended by sec. 201, Peace Corps Act (Pub. Law 87–293, 75 Stat. 625); as in effect prior to amendment by sec. 232 (a), Rev. Act 1964 (78 Stat. 105)]

PAR. 34. Section 1.1303–1 is amended by revising its heading, by revising paragraph (d) (2) and (3), and by adding a new paragraph (e). These amended and added provisions read as follows:

§ 1.1303a–1 Income from back pay.

* * * * *

(d) *Computation of tax.* * * *

(2) For effect of allocation of income on items based on amount of income and with respect to a net operating loss or a capital loss carryover, see paragraph (d) (2) of § 1.1301a–2.

(3) See paragraph (d) (4) of § 1.1301 a–2 for the computations which are necessary when an amount of back pay is allocated to a period to which there has also been allocated other income entitled to the benefits of part I (section 1301 and following), subchapter Q, chapter 1 of the Code.

* * * * *

(e) *Effective date.* Section 1303 and this section shall not apply to taxable years beginning after December 31, 1963.

PAR. 35. Section 1.1304 is amended by revising its heading and by revising the historical note. These amended provisions read as follows:

§ 1.1304a Statutory provisions; compensatory damages for patent infringement.

* * * * *

[Sec. 1304 as added by sec. 1, Act of Aug. 11, 1955 (Pub. Law 366, 84th Cong., 69 Stat. 688); as in effect prior to amendment by sec. 232(a), Rev. Act 1964 (78 Stat. 105)]

PAR. 36. Section 1.1304–1 is amended by revising its heading and by revising paragraphs (d) (2) and (3) and (f). These amended provisions read as follows:

§ 1.1304a–1 Compensatory damages for patent infringement.

* * * * *

(d) *Computation of tax.* * * *

(2) For effect of allocation of income on items based on amount of income and with respect to a net operating loss or a capital loss carryover, see paragraph (d) (2) of § 1.1301a–2.

(3) See paragraph (d) (4) of § 1.1301a–2 for the computations which are necessary when an amount of compensatory damages is allocated to a period to which there has also been allocated other income entitled to the benefits of part I (section 1301 and following), subchapter Q, chapter 1 of the Code.

* * * * *

(f) *Effective date of this section.* The provisions of section 1304 and this section shall be applicable with respect to taxable years ending after August 11, 1955, but only with respect to amounts of compensatory damages received or accrued after such date as the result of awards made after such date. Section 1304 and this section shall not apply to taxable years beginning after December 31, 1963.

* * * * *

PAR. 37. Section 1.1305 is amended by revising its heading and by revising the historical note. These amended provisions read as follows:

§ 1.1305a Statutory provisions; breach of contract damages.

* * * * *

[Sec. 1305 as added by sec. 1, Act of Aug. 26, 1957 (Pub. Law 85–165, 71 Stat. 413); as in effect prior to amendment by sec. 232(a), Rev. Act 1964 (78 Stat. 105)]

PAR. 38. Section 1.1305–1 is amended by revising its heading and by revising paragraphs (d) (3) and (4), (g), and (h). These amended provisions read as follows:

§ 1.1305a–1 Breach of contract damages.

* * * * *

(d) *Computation of tax.* * * *

(3) For effect of allocation of income on items based on amount of income and with respect to a net operating loss or a capital loss carryover, see paragraph (d) (2) of § 1.1301a–2.

(4) See paragraph (d) (4) of § 1.1301a–2 for the computations which are necessary when an amount of breach of contract damages is allocated to a period to which there has also been allocated other income entitled to the benefits of the provisions of part I (section 1301 and following), subchapter Q, chapter 1 of the Code.

* * * * *

(g) *Applicability of another section under part I, subchapter Q, chapter 1 of the Code.* In any case where the amount involved in a particular breach of contract, or breach of a fiduciary duty or relationship, are also covered by the particular terms of another section in part I, subchapter Q, chapter 1 of the Code, the rules for such other section shall apply, since those sections are directed to more specific situations than the provisions of section 1305. Thus, if a taxpayer receives an amount representing damages awarded in a civil action for breach of contract, or breach of fiduciary duty or relationship, and such award also constitutes the payment of an amount which qualifies for treatment prescribed in section 1302 and the regulations thereunder, such amount shall be subject to the provisions of section 1302 and § 1.1302a–1, and section 1305 shall not apply.

(h) *Effective date of this section.* The provisions of section 1305 and this section apply with respect to taxable years ending after December 31, 1954, but only as to amounts received or accrued after such date as the result of awards made after such date. Section 1305 and this section shall not apply to taxable years beginning after December 31, 1963.

PAR. 39. Section 1.1305–2 is amended to read as follows:

§ 1.1305a–2 Illustrations.

The provisions of section 1305 and § 1.1305a–1 may be illustrated by the following examples:

Example (1). On December 31, 1957, a consent judgment is entered in favor of A, an accrual method taxpayer, for $500,000 damages to compensate him for the failure of the XYZ Company to pay royalties due him under the terms of a contract involving the operation by the XYZ Company of an oil lease. The court determined that the breach of contract covered the period from July 1, 1953, through December 31, 1957. The award of $500,000 includes $40,000 representing legal fees and court costs, and $460,000 representing compensation for loss of oil royalties for the period during which the contract was breached. Of the $460,000, the court determined that $110,000 was attributable to 1956 and $130,000 to January through October 1957. Information in the court records disclosed that $60,000 was attributable to 1955. A makes his income tax return on a calendar year basis. For purposes of determining the limitation on tax under section 1305, A must first compute the tax for 1957 under paragraph (d) (1) (i) of § 1.1305a–1 by including the entire amount of damages ($460,000) in gross income for such year and then compute the tax for 1957 without including the $460,000 in gross income in accordance with paragraph (d) (1) (ii) of such section. A must then compute the tax for the current year and all prior years to which the amount of the award is allocable pursuant to paragraph (d) (1) (iii) of § 1.1305a–1. In making such compensation, A must allocate $110,000 to 1956, $130,000 to the first 10 months of 1957, and $60,000 to 1955 in accordance with para-

graph (c)(1) of § 1.1305a–1. The remaining $160,000 of the $460,000 would be prorated over the unallocated 20 months, 2 in 1957, 12 in 1954, and 6 in 1953 or $8,000 per month in accordance with paragraph (c)(2) of § 1.1305a–1. Thus, the proper allocations would be $146,000 to 1957, $110,000 to 1956, $60,000 to 1955, $96,000 to 1954, and $48,000 to 1953. In addition A is entitled to a deduction for percentage depletion with respect to the amounts allocated to the current taxable year and to prior taxable years. For such purpose, A must reconstruct his gross income and taxable income from the property for 1957 and for the years 1953, 1954, 1955, and 1956. A is also entitled to all credits, deductions, or other items to which he would have been entitled had the royalties been received and included in the gross income in those years. Thus, if, for 1953, prior to the allocation of a part of the award to such year, A had no gains from the sale or exchange of capital assets and no taxable income and he had a capital loss carryover of $1,500 to such year, A may deduct $1,000 as a capital loss in computing the tax for 1953 as provided in paragraph (d)(1)(iii) of § 1.1305a–1. See sections 1211(b) and 1212 and the regulations thereunder.

Example (2). B, a cash method taxpayer, is the author of a play presented in New York City, Chicago, and San Francisco. The play ran from April 6, 1957, through December 27, 1959. In September 1959, B sues the producer, M, for breach of contract respecting the agreement entered into between M and B. M contends that under the terms of the contract B was entitled to a payment of $25,000 on the production of the play and royalties thereafter limited to its earnings in New York City. B insists that he is also entitled to royalties on the earnings of the two companies established by M to present the play in Chicago and San Francisco. On December 29, 1959, the court awards B the sum of $38,000 representing compensation for the loss of royalty income over the period during which the play was presented in Chicago and San Francisco, including legal fees and other costs. This award is paid to B in 1960. In its decree, the court designates royalty payments to B for such period (April 6, 1957, to December 27, 1959) of $1,000 per month or a total of $33,000 for the full period. Although B is entitled to the benefits of section 1305, he must first ascertain whether section 1302 applies, since the other sections under part I (section 1301 and following), subchapter Q, chapter 1 of the Code, have prior applicability. However, B determines that section 1302 is not applicable for the reason that he worked only 18 months on the play. For the purpose of section 1305(a) and paragraph (a) of § 1.1305a–1, B may allocate the $33,000 at the rate of $1,000 per month over the 33 months extending from April 1957 through December 1959. Upon receipt of the award and pursuant to agreement with his literary agent, B pays the agent $2,500 as agent's commission; had B received his royalties when due, he would have paid his agent $3,300 under his contract with the agent. In computing his taxable income for 1960 and for the years reflected in the period April 1957 through December 1959, B may, under the limitation prescribed in paragraph (d)(1) of § 1.1305a–1, deduct only $2,500 for commissions paid to his agent.

PAR. 40. Section 1.1306 is amended by revising its heading and by revising the historical note. These amended provisions read as follows:

§ 1.1306a Statutory provisions; damages for injuries under the antitrust laws.

* * * * *

[Sec. 1306 as added by sec. 58(a), Technical Amendments Act 1958 (72 Stat. 1646); as in effect prior to amendment by sec. 232(a), Rev. Act 1964 (78 Stat. 105)]

PAR. 41. Section 1.1306–1 is amended by revising its heading and by revising paragraphs (d) (2) and (3) and (e). These amended provisions read as follows:

§ 1.1306a–1 Damages for injuries under the antitrust laws.

* * * * *

(d) *Computation of tax.* * * *

(2) For the effect of allocation of income on items based on amount of income and with respect to a net operating loss or capital loss carryover, see paragraph (d)(2) of § 1.1301a–2.

(3) See paragraph (d)(4) of § 1.1301a–2 for the computations which are necessary when an amount of damages is allocated to a period to which there has also been allocated other income entitled to the benefits of part I (section 1301 and following), subchapter Q, chapter 1 of the Code.

(e) *Effective date of this section.* The provisions of section 1306 and this section are applicable with respect to taxable years ending after September 2, 1958, but only with respect to amounts of damages received or accrued after such date as a result of awards or settlements made after such date. Section 1306 and this section shall not apply to taxable years beginning after December 31, 1963.

* * * * *

PAR. 42. Section 1.1307 is amended by revising its heading and by revising the historical note. These amended provisions read as follows:

§ 1.1307a Statutory provisions; rules applicable to part I (section 1301 and following), subchapter Q, chapter 1 of the Code.

* * * * *

[Sec. 1307 as renumbered by sec. 1, Act of Aug. 11, 1955 (Pub. Law 366, 84th Cong., 69 Stat. 688); sec. 1, Act of Aug. 26, 1957 (Pub. Law 85–165, 71 Stat. 413); sec. 58, Technical Amendments Act 1958 (72 Stat. 1646); amended by sec. 22, Rev. Act 1962 (76 Stat. 1064); as in effect prior to amendment by sec. 232(a), Rev. Act 1964 (78 Stat. 105)]

PAR. 43. The heading of § 1.1307–1 is amended to read as follows:

§ 1.1307a–1 Rules applicable to part I (section 1301 and following), subchapter Q, chapter 1 of the Code.

* * * * *

PAR. 44. Section 1.1307–2 is amended by revising its heading and by revising paragraphs (a)(3) and (c), and subparagraphs (2), (3), and (5)(ii) of the example in paragraph (e). These amended provisions read as follows:

§ 1.1307a–2 Election with respect to charitable contributions.

(a) *Introduction.* * * *

(3) If an election is made by a taxpayer to determine the limitation on tax on bunched income with the application of section 1307(e) and this section, then the computations required by sections 1301, 1302, 1303, 1304, 1305, 1306, and 1307 (a) to (d), and the regulations thereunder, shall be made with due regard to the requirements of section 1307(e) and this section. For example, with respect to compensation from an employment which is subject to the provisions of section 1301, the allocation required to be made by paragraph (c) of § 1.1301a–2 shall be made with due regard to the fact that the amount of the compensation must be reduced by the amount prescribed in paragraph (b) of this section; similarly, in making the computations required by paragraph (d)(2) of § 1.1301a–2, due regard must be given to the fact that the amount of bunched income which is to be included in adjusted gross income of a taxable year for the purpose of determining the maximum limitation prescribed by section 170(b)(1) for charitable contribution deductions is limited to the amount prescribed in paragraph (d) of this section.

* * * * *

(c) *Reduction of charitable contributions made in the current taxable year.* The portion of the charitable contributions made in the current taxable year which is required to be used as a reduction of the bunched income, as prescribed in paragraph (b) of this section, may not be taken into account as charitable contributions made during the current taxable year in making the computations for such taxable year prescribed by paragraph (d)(1)(iii) of §§ 1.1301a–2, 1.1302a–1, 1.1303a–1, 1.1304a–1, 1.1305a–1, and 1.1306a–1. Thus, in the situation exemplified in paragraph (b) of this section, where it is shown that the taxpayer made charitable contributions of $9,000 during the current taxable year, only $6,750 ($9,000—$2,250) may be taken into account as contributions actually made during such taxable year in the application of section 1307(e) and this section.

* * * * *

(e) * * *

Example. * * *

(2) *Reduction of bunched income.* The amount by which the employment compensation is to be reduced, pursuant to paragraph (b) of this section, is $3,000 computed as follows:

Employment compensation	$15,000
Adjusted gross income for 1962 (including the $15,000 employment compensation)	35,000
Maximum limitation under section 170(b)(1)(B)	7,000
Deduction allowable for 1962 (computed without regard to part I)	7,000
Amount of reduction ($7,000 × $15,000/$35,000)	3,000

Thus, $12,000 ($15,000 minus $3,000) is the portion of the employment compensation to be allocated equally over the 48-month period ($3,000 to each year) for purposes of paragraph (c) of § 1.1301a–2.

(3) *Reduction of charitable contributions made in 1962.* Pursuant to paragraph (c) of this section, the partial tax for 1962, that is, the tax attributable to the employment compensation allocated to 1962 computed as prescribed in paragraph (d)(1)(iii) of § 1.1301a–2, is determined as though B had made charitable contributions in 1962 of only $11,000 ($14,000 minus the $3,000 reduction).

* * * * *

(5) *Computation of taxable income.* * * *

(ii) The computation of taxable income pursuant to paragraph (d)(1)(iii) of

§ 1.1301a–2, with the application of section 1307(e), is as follows:

* * * * *

PAR. 45. The following new section is inserted after § 1.1307a–2:

§ 1.1307a–3 Effective date.

(a) Except as otherwise provided in paragraph (b) of this section, section 1307 is not applicable to taxable years beginning after December 31, 1963.

(b) If, for a taxable year beginning after December 31, 1963, a taxpayer elects under the provisions of § 1.1301a–3 to compute his tax in accordance with the provisions of sections 1301 and 1307 (as in effect for taxable years beginning before January 1, 1964), and also elects to have section 1307(e) apply, section 170 (b)(5) does not apply to charitable contributions paid in such taxable year.

[F.R. Doc. 66–5960; Filed, June 1, 1966; 8:50 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[2d Rev. S.O. 975; Amdt. 1]

PART 95—CAR SERVICE

Railroad Operating Regulations for Freight Car Movement

At a session of the Interstate Commerce Commission held in Washington, D.C., on the 26th day of May A.D., 1966.

Upon further consideration of Second Revised Service Order No. 975 (31 F.R. 4802, 31 F.R. 5317, 31 F.R. 6058) and good cause appearing therefor:

It appearing, that for several years a number of railroads have published in the coal demurrage tariff, Freight Tariff 8–N, I.C.C. H–22, an exception which provides that during the 2 weeks prior to the miners' vacation period carloads of coal billed from mines or preparation plants with shipping instructions postdated to a date within the miners' vacation period may be moved from mines or preparation plant tracks for the convenience of the railroad and held free of demurrage until the shipping date shown on shipping instructions; that this arrangement is beneficial to the coal industry, to the receivers of coal, and to the railroads; that such holding would now be in violation of ICC Second Revised Service Order No. 975:

It is ordered, That:

(a) The provisions of § 95.975 *Railroad operating regulations for freight car movement* are suspended as to coal billed during the 2 weeks' period prior to the miners' vacation period from mines or preparation plants which will observe the vacation period and moved from these mines or preparation plant tracks with shipping instructions postdated to a date within the miners' vacation period in accordance with Item 238–A, Supplement 6 of Freight Tariff 8–N, ICC H–22.

(b) *Effective date.* This amendment shall become effective at 12:01 a.m., June 11, 1966.

(c) *Expiration date.* This amendment shall expire at 11:59 p.m., July 22, 1966, after which date all provisions of Second Revised Service Order No. 975 shall continue effective until its expiration date unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15 and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15 and 17(2). Interprets or applies secs. 1(10–17), 15(4) and 17(2), 40 Stat. 101, as amended 54 Stat. 911; 49 U.S.C. 1(10–17), and 15(4) and 17(2))

It is further ordered, That a copy of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 66–6026; Filed, June 1, 1966; 8:47 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

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

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2207]

PART 3120—OIL AND GAS

Subpart 3127—Continuation or Extension of Lease

CONTINUATION OF LEASE AS A RESULT OF ACTUAL DRILLING OPERATIONS

On page 11329 of the FEDERAL REGISTER of September 3, 1965, there was published a notice and text of a proposed amendment of 43 CFR 3127.2. The purpose of the amendment is to include in this section a definition of "actual drilling operations" as used in 30 U.S.C. sec. 266(e).

Interested persons were given 30 days within which to submit written comments, suggestions, or objections with respect to the proposed amendment. After consideration of all of the comments and suggestions received during that period the proposed definition has been amplified to include operations for testing, completing or equipping a well.

The proposed amendment with this change as set forth below is hereby adopted and shall become effective upon publication in the FEDERAL REGISTER.

§ 3127.2 Continuation of lease as a result of actual drilling operations.

(a) Any lease on which actual drilling operations, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time, shall be extended for 2 years and so long thereafter as oil or gas is produced in paying quantities.

(b) Actual drilling operations must be conducted in such a way as to be an effort which one seriously looking for oil or gas could be expected to make in that particular area, given existing knowledge of geologic and other pertinent facts.

(c) As used in this section (1) "actual drilling operations" shall include not only the physical drilling of a well but the testing, completing or equipping of such well for the production of oil or gas; (2) "primary term" means all periods in the life of the lease prior to its extension by reason of production of oil or gas in paying quantities.

STEWART L. UDALL, *Secretary of the Interior.*

MAY 26, 1966.

[F.R. Doc. 66–6006; Filed, June 1, 1966; 8:45 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

PART 15—ADMINISTRATIVE OPINIONS AND RULINGS

Self-Locating Shopping Guide Promotional Program

§ 15.53 Self-locating shopping guide promotional program.

(a) The Federal Trade Commission has advised a sales promotion company that its proposed plan, to furnish self-locating shopping guides to wholesalers for redistribution to their competing retail customers, would not be objectionable provided that smaller retailers are able to obtain proportionally equal treatment.

(b) The Commission noted that some of the aspects of the plan are of interest only to relatively large retailers, and that it appears likely that some, at least, of a participating wholesaler's competing customers may be quite small retailers for whom the proposed plan would have little practical value.

(c) The Commission advised that the "statute requires that any services or facilities made available to the larger of two competing customers must be made proportionally available to the smaller."

(d) Assuming the existence of small competing customers, the Commission said, "it appears clear that if [the] plan is to conform to statutory requirements some provisions should be included therein which would provide for the needs of the smaller customers."

(38 Stat. 717, as amended; 15 U.S.C. 41–58; 49 Stat. 1526; 15 U.S.C. 13, as amended)

Issued: June 1, 1966.

By direction of the Commission.

JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 66–5993; Filed, June 1, 1966; 8:45 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATIONS

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The following amendments to this subchapter are issued by direction of the Assistant Secretary of Defense (Installations and Logistics) pursuant to authority contained in Department of Defense Directive No. 4105.30, dated March 11, 1959 (24 F.R. 2260), as amended, and 10 U.S.C. 2202.

PART 1—GENERAL PROVISIONS

1. Section 1.325 is revised and new §§ 1.325–1 and 1.325–2 are added, as follows:

§ 1.325 Variation in quantity.

§ 1.325–1 General.

To the extent that a variation is caused by the conditions specified in the clause in § 7.103–4 of this chapter, that quantity may be accepted only to the extent specified in the Schedule. Except as set forth in § 1.325–2, the permissible variation shall be stated as a percentage and may be an increase, a decrease, or a combination of both. There should be no standard or usual percentage or variation. Each procurement for which an overrun or underrun is permissible should be based upon the normal commercial practices of the particular industry for particular items, and the permitted percentage should be no larger than is necessary to afford a contractor reasonable protection. In no event shall the permissible variation exceed plus or minus 10 percent. The clause set forth below shall be included in the Schedule, only when one or more of the causes of quantity variation foreseeable exists at the time of solicitation.

EXTENT OF QUANTITY VARIATION (APRIL 1965)

The permissible variation under the clause of the General Provisions entitled "Variation in Quantity" shall be limited to:

Increase (Insert: _____ Percent or None).
Decrease (Insert: _____ Percent or None).
This increase or decrease shall apply to_____.*

Consideration shall be given to the quantity to which the percentage variation applies. For example, when it is contemplated that delivery will be made to multiple destinations and it is desired that the quantity variation extend to the item quantity for each destination, this requirement must be set forth with particularity. Similarly, when it is desired that the quantity variation extend to the total quantity of each item and not to the quantity for each destination, it may be desirable to express a percentage limitation for each destination to prevent unrealistic distribution of any increase or decrease.

§ 1.325–2 Subsistence.

The permissible variation in the procurement of small quantities of subsistence may be stated in the Schedule as follows:

(a) Standard pack items purchased on a package, carton, can or other than pound basis: maximum variation for 250 units or less—nearest full shipping container.

(b) Non-standard pack items other than carcass meats not purchased on a package, carton, or can basis: maximum variation for 250 pounds or less—nearest piece or shipping container.

(c) Carcass meats: maximum variation for 500 pounds or less—nearest piece, quarter, side or carcass.

2. Sections 1.606, 1.706–5(b), and 1.1005–2(b) are revised to read as follows:

§ 1.606 Limited debarment or suspension.

Where it is determined to debar or suspend a concern pursuant to § 1.604–1 or § 1.605–1, the Secretary or his authorized representative shall decide whether the debarment or suspension should extend to procurement contracts or to sales contracts, or both. If the debarment or suspension is limited to procurement contracts or to sales contracts, the listing should so indicate. Likewise, a decision may be made to except from an administrative debarment or suspension a particular commodity or commodities or a particular division or subsidiary or other appropriate organizational element of the contractor where such action is considered to be in the best interests of the Government.

§ 1.706–5 Total set-asides.

* * * * *

(b) Contracts for total small business set-asides may be entered into by conventional negotiation or by a special method of procurement known as "Small Business Restricted Advertising". The latter method shall be used wherever possible (see also § 3.201–3). Where multiyear procurement procedures are appropriate (see § 1.322), total set-asides may be made in connection therewith. Invitations for bids and request for proposals shall be restricted to small business concerns. Small Business Restricted Advertising, including awards thereunder, shall be conducted in the same way as prescribed for formal advertising in Part 2 of this chapter except that bids and awards shall be restricted to small business concerns. Bids received from firms which do not qualify as small business concerns shall be considered as nonresponsive and shall be rejected.

* * * * *

§ 1.1005–2 Other publication of award information.

* * * * *

(b) For awards after procurement by negotiation, include the information contained in the notice precribed by § 3.508–3 of this chapter and where the award was made after competitive negotiation (either price or design competition), include a statement to this effect and state in general terms the basis for selection.

PART 3—PROCUREMENT BY NEGOTIATION

3. Sections 3.201–3 and 3.217–2 are revised, and a new subparagraph (7) is added to § 3.407–2(a), as follows:

§ 3.201–3 Limitation.

The authority of §§ 3.201–3.201–3 shall not be used when negotiation is authorized by the provisions of § 3.206 except that, in the event of a labor surplus or unilateral small business set-aside, this authority shall be used in preference to any other authority in this subpart (see §§ 1.706–2 and 1.804–4). The authority of §§ 3.201—3.201–3 shall not be used to negotiate a reasonable price with a low responsible small business bidder whose bid has been determined by the contracting officer to be an unreasonable bid under Small Business Restricted Advertising procedures. When such an unreasonable bid is received, the set-aside shall be dissolved and the requirement procured on an unrestricted basis by the use of formal advertising or where appropriate by other negotiation authority in accordance with existing regulations.

§ 3.217–2 Application.

The authority of §§ 3.217–3.217–2 shall be used only if, and to the extent, approved for any Military Department and in accordance with Departmental procedures.

§ 3.407–2 Contracts with performance incentives.

(a) *Description.* * * *

(7) It is important that incentive arrangements relating to delivery schedules specify the application of the reward/penalty structure in the event of Government-caused delays (e.g., delays in allotting additional funds to a contract) and other delays beyond the control of the contractor or subcontractor, and without the fault or negligence of either.

* * * * *

4. Section 3.500 is revised; new subparagraph (54) is added to § 3.501(b); and § 3.507–2(a) is revised, as follows:

§ 3.500 Scope of subpart.

This subpart applies to all negotiated procurement except that described by Subpart F of this part.

§ 3.501 Preparation of request for proposals or request for quotations.

* * * * *

(b) * * *

(54) A statement on the first sheet or on a cover sheet of the Request for Proposals that: "Proposals must set forth full, accurate, and complete information as required by this request for proposal (including attachments). The penalty for making false statements in proposals is prescribed in 18 U.S.C. 1001." This

*Insert in the blank the designation(s) to which the percentages apply, such as: (1) The total contract quantity; (2) item 1 only; (3) each quantity specified in the delivery schedule of the "Time of Delivery" clause; (4) the total item quantity for each destination; (5) the total quantity of each item without regard to destination.

statement shall be suitably modified when quotations are requested.

* * * * *

§ 3.507–2 Disclosure of information during the pre-award or pre-acceptance period.

(a) *General.* After receipt of proposals or quotations, no information contained in any proposal or quotation regarding the number or identity of the offerors shall be made available to the public, or to anyone within the Government not having a legitimate interest therein, except in accordance with § 3.508.

* * * * *

5. Section 3.508 is revised and new §§ 3.508–1, 3.508–2, 3.508–3, and 3.508–4 are added, as follows:

§ 3.508 Information to offerors.

§ 3.508–1 General.

Notice shall be provided offerors in accordance with §§ 3.508–2 and 3.508–3. Such notice need not be given where disclosure may in some way prejudice the Government's interest or where the contract is:

(a) For subsistence;

(b) Negotiated pursuant to 10 U.S.C. 2304(a) (4), (5), or (6) (see §§ 3.204, 3.205, or 3.206);

(c) Negotiated with a foreign supplier when only foreign sources of supplies or services have been solicited.

§ 3.508–2 Preaward notice of unacceptable offers.

In any procurement in excess of $10,000 in which it appears that the period of evaluation of proposals is likely to exceed 30 days or in which a limited number of suppliers have been selected for additional negotiation (see § 3.805–1), the contracting officer, upon determination that a proposal is unacceptable, shall provide prompt notice of that fact to the source submitting the proposal. Such notice need not be given where the proposed contract is to be awarded within a few days and notice pursuant to § 3.508–3 would suffice. In addition to stating that the proposal has been determined unacceptable, notice to the offeror shall indicate, in general terms, the basis for such determination and shall advise that, since further negotiation with him concerning this procurement is not contemplated, a revision of his proposal will not be considered.

§ 3.508–3 Post-award notice of offerors.

(a) Promptly after making all awards in any procurement in excess of $10,000, the contracting officer shall give written notice to the unsuccessful offerors that their proposals were not accepted, except that such notice need not be given where notice has been provided pursuant to § 3.508–2. Such notice shall include:

(1) The number of prospective contractors solicited;

(2) The number of proposals received;

(3) The name and address of each offeror receiving an award;

(4) The items, quantities, and unit prices of each award; provided that, where the number of items or other factors makes the listing of unit prices impracticable, only the total contract price need be furnished; and

(5) In general terms, the reasons why the offeror's proposal was not accepted, except where the price information in subparagraph (4) of this paragraph readily reveals such reason, but in no event will an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

Additional information as to why an offeror's proposal was not accepted should be provided to the offeror upon his request to the contracting officer, subject to the limitation in subparagraph (5) of this paragraph.

(b) In procurements of $10,000 or less and subject to the exceptions in § 3.508–1, the information described in paragraph (a) of this section shall be furnished to unsuccessful offerors upon request.

(c) Such information as is authorized to be released to unsuccessful offerors pursuant to paragraph (a) (1) through (4) of this section may, upon his request, be provided to the successful offeror.

§ 3.508–4 Classified information.

Classified information shall be furnished only in accordance with regulations governing classified information.

6. Sections 3.604–2, 3.607–3, and 3.607–4 (c) (1) and (j) are revised, as follows:

§ 3.604–2 Purchases in excess of $250 but not in excess of $2,500.

Except as provided in § 3.608–2(b) (2) and (3), reasonable solicitation of quotations from qualified sources of supply shall be made to assure that the procurement is to the advantage of the Government, price and other factors considered, including the administrative cost of the purchase. Generally, solicitation shall be limited to three suppliers and, to the maximum extent possible, shall be restricted to the local trade area. When prices are solicited from three suppliers dealing in the general category of items required and only one quotation is received, it is not necessary to solicit additional quotations if the price received is considered fair and reasonable. Quotations shall generally be solicited orally. Written solicitations shall be used only where (a) the suppliers are located outside the local area, (b) special specifications are involved, (c) a large number of items are included in a single proposed procurement, or (d) obtaining oral quotations is not considered economical. Reasonableness of proposed prices may be established by comparison with previous purchases, current price lists, catalogs, advertisements, or by any other appropriate method. Where these informational media are not available, reasonableness of price may be based on a comparison with similar items in a related industry or the contracting officer's personal knowledge of the item being procured. Although the contracting officer must determine that prices are fair and reasonable, written justification explaining how prices were determined to be fair and reasonable is not required. Written records of solicitation may be limited to notes or abstracts to show the vendor or vendors contacted, prices, delivery, and other informal historical data. When only one source is solicited, a brief written notation must be made a part of the file to explain the absence of competition. Notification to unsuccessful suppliers shall be given only if requested.

§ 3.607–3 Conditions for use.

(a) Imprest funds may be used in accomplishing small purchases when all of the following conditions are present:

(1) The transaction is not in excess of $100 ($250 under emergency conditions);

(2) The supplies or services are available for delivery within 30 days, whether at the supplier's place of business or at destination; and

(3) The purchase does not require detailed technical specifications or technical inspection.

(b) Imprest funds may also be used for payment of:

(1) Charges for local delivery and parcel post (including c.o.d. postal charges) for supplies ordered for payment from imprest funds, when the vendor is requested to arrange for delivery; and

(2) C.o.d. charges for supplies ordered for payment from imprest funds except as limited by paragraph (d) (2) of this section.

(c) The conditions for use specified in paragraphs (a) and (b) of this section do not preclude the use of imprest funds for other expenditures not related to small purchases (e.g., travel advances, travel expenses, and purchases of postage stamps and transportation tokens or passes), when such expenditures are authorized by other regulations governing the use of imprest funds.

(d) Imprest funds shall not be used for:

(1) Payments of salaries and wages;

(2) Payment of transportation charges (i.e., line-haul or intercity charges for transportation services paid directly to a common carrier providing such services, as distinguished from transportation charges included as an integral part of the vendors price);

(3) Advances, other than those authorized in § 3.607–4(d); or

(4) Cashing of checks or other negotiable instruments.

§ 3.607–4 Procedures.

* * * * *

(c) *Receipt of material.* (1) All material purchased through the imprest fund shall be delivered to a designated receiving activity. The receiver shall examine the material to ascertain that the quantities and items described on the purchase request document and the supplier's sales document are present and in satisfactory condition. If the material is acceptable, the receiver shall stamp the supplier's sales document "Received and Accepted", date and sign the document, and pass it to the imprest fund cashier for payment. In the

absence of a supplier's sales document or sufficient copies thereof, a receipted Standard Form 1165 (Receipt for Cash—Subvoucher), DD Form 1155 (Order for Supplies or Services), or DD Form 1348–1 (DOD Single Line Item Release/Receipt Document) may be used to record the receipt of purchases made from the imprest fund and shall be processed in the same manner.

* * * * *

(j) *Review.* The imprest fund cashier shall be required to account for the established fund at any time, by cash on hand, paid suppliers' receipts, unpaid reimbursement vouchers, and interim receipts for cash. Unannounced inspections, including cash counts are required to be made of each imprest fund at least quarterly by qualified individuals who are under the jurisdiction of the Comptroller or Chief Accounting Officer of the installation, where such positions exist, but in any case by individuals, excluding the disbursing officer advancing the funds and subordinates of the imprest fund cashier.

7. Sections 3.608–1, 3.608–2 (a) and (b), and 3.608–4 (a), (c), and (d) are revised; new paragraph (c) is added to § 3.608–6; and § 3.608–7 is revised, as follows:

§ 3.608–1 General.

Negotiated purchases of material and nonpersonal services not in excess of $2,500, except as provided in § 3.608–2(b)(2) and (3), may be effected by using DD Form 1155 (Order for Supplies or Services), and its ancillary forms, or Standard Form 44 (Purchase Order—Invoice—Voucher) (see § 3.608–8). The DD Form 1155 may also be used for construction not in excess of $2,000. Pending revision of the April 1, 1964, edition of DD Form 1155r, delete clauses 8 and 9 thereof and the asterisked statement "applicable only to construction contracts for $2,000 or less for work within the United States".

§ 3.608–2 Order for supplies or services (DD Forms 1155, 1155r, 1155r–1, 1155c, 1155c–1, and 1155s).

(a) *Forms.* The following forms may be used to issue purchase orders:

(1) (i) DD Form 1155 (Order for Supplies or Services), which when used with DD Form 1155r (General Provisions of Purchase Order) in accordance with paragraph (b)(1) of this section or with DD Form 1155r–1 (General Provisions of Purchase Order—Foreign) in accordance with paragraph (b)(2) of this section, as appropriate, provides in one document—

(i) A purchase order, a blanket purchase agreement, delivery order under a contract, or delivery order on Government agencies outside the Department of Defense (see Part 5 of this chapter);

(ii) A receiving and inspection report;

(iii) A property voucher;

(iv) A public voucher;

(v) An imprest fund receipt; and

(vi) An invoice, if desired by the supplier.

(2) DD Form 1155c (Continuation Sheet) provides additional space (Standard Form 36 (Continuation Sheet) may be used in lieu of DD Form 1155c);

(3) DD Form 1155c–1 (Commissary Continuation Sheet) (for use on optional basis), provides columns suited for commissary procurements; and

(4) DD Form 1155s (Additional General Provisions, Modification, and Acceptance) used with the DD Form 1155 (see § 3.608–4).

The foregoing forms may be used as snap-out manifold forms, as cut sheets, or as reproducible masters. In addition, DD Form 1155r or DD Form 1155r–1 may be printed on the reverse of DD Form 1155.

(b) *Conditions for use.*—(1) *Use as a purchase order of not more than $2,500 in the United States, its possessions, and Puerto Rico.* DD Form 1155 is authorized for negotiated purchases of not more than $2,500 within the United States, its possessions, and Puerto Rico, provided:

(i) The procurement is unclassified.

(ii) No clause covering the subject matter of any clause set forth in this subchapter, other than clauses set forth in DD Form 1155r, and clauses referred to in § 3.606–3(b)(4), in subdivisions (iii) through (xiii) of this subparagraph, in paragraph (d) of this section, in § 3.608–3, and in § 3.608–4, are to be used.

(iii) Where the contract specifies the delivery of data, one of the clauses set forth in §§ 9.203 through 9.206 of this chapter shall be added as appropriate in accordance with the instructions contained in Subpart B, Part 9 of this chapter.

(iv) When required by Subpart D, Part 6 of this chapter, the clause set forth in § 6.403 of this chapter shall be added.

(v) The Priorities, Allocations, and Allotments clause (see § 7.104–18 of this chapter) may be inserted in the Schedule where required.

(vi) When required by Subpart F, Part 4 of this chapter, Humane Slaughter of Livestock, the procedures set forth in § 4.604 of this chapter shall be followed.

(vii) Where inspection and acceptance are at origin, where contract administration is performed at origin, where delivery at multiple destinations is required, or where otherwise appropriate the Material Inspection and Receiving Report clause (see § 7.105–7 of this title) may be inserted in the Schedule.

(viii) Where Government property having an acquisition cost in excess of $25,000 is to be furnished (for use in performance of contract or for repair), the Government Property (Fixed Price) clause in § 13.702 of this chapter shall be inserted in the Schedule. Where Government property having an acquisition cost not in excess of $25,000 is to be furnished for use in performance of the contract or for repair, the Government-Furnished Property (Short Form) clause in § 13.710 of this chapter shall be inserted in the Schedule; provided that use of the clause shall be optional where the acquisition cost of property furnished for repair is not in excess of $2,500. Where a Government Property clause is inserted in the Schedule the contractor's signature shall be obtained by using DD Form 1155s.

(ix) Where the contract is for Military Assistance Program items, the "U.S. Products (Military Assistance Program)" certificate and clause (see §§ 6.703–3 and 6.703–4 of this chapter) shall be inserted in the Schedule, and clause 6 of the General Provisions (Foreign Supplies) deleted. In addition, the contractor's signature shall be obtained by using DD Form 1155s.

(x) The Commercial Warranty clause in § 1.324–2(c) of this chapter may be used in accordance with the provisions of that paragraph.

(xi) The clauses set forth in § 1.1208 of this chapter may be used in accordance with the provisions of that section.

(xii) Where the contract is for mortuary services:

(*a*) The following clauses shall be inserted in the Schedule—

(*1*) The Specification clause in § 7.1201–4 of this chapter;

(*2*) The Delivery and Performance clause in § 7.1201–7;

(*3*) The Subcontracting clause in § 7.1201–8;

(*4*) The Inspection clause in § 7.1201–10;

(*5*) The Professional Requirements clause in § 7.1201–12;

(*6*) The Facility Requirements clause in § 7.1201–13;

(*7*) The Preparation History clause in § 7.1201–14;

(*b*) The Additional Default Provision clause in § 7.1201–9 shall be inserted in the Schedule, with the following substitution for paragraph (a) and the first sentence of paragraph (b) of that clause:

(a) This clause supplements the "Termination for Default" clause of this contract.

(b) This contract may be terminated for default by written notice if during the performance of this contract:

(*c*) The Changes clause in § 7.1201–15 shall be substituted for paragraph 15 of the Additional General Provisions on DD Form 1155s.

(xiii) When required by Subpart H, Part 6 of this chapter, the clause in § 6.806–4 shall be added.

(2) *Use as a purchase order of not more than $5,000 outside the United States, its possessions, and Puerto Rico.* DD Form 1155, 1155r–1, and when required 1155s, are authorized for negotiated purchases of not more than $5,000 when such purchases are for supplies and services procured and used outside the United States, its possessions, and Puerto Rico, provided:

(i) The procurement is unclassified;

(ii) No clauses covering the subject matter of any clause set forth in this subchapter, other than clauses set forth in DD Form 1155r–1, are to be used, except that—

(*a*) Either the standard foreign Disputes clauses in § 7.103–12(b) of this chapter or that clause as modified in accordance with § 7.103–12(c) shall be inserted in the Schedule; and

(b) When the contract is translated into another language, the following clause shall be inserted in the Schedule:

INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (APRIL 1966)

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control.

and

(iii) The DD Form 1155s, properly modified to delete the Assignment of Claims clause, is used when the purchase exceeds $2,500.

The contracting officer may delete the Taxes clause in purchases under $1,000 if he determines that the administrative burden of securing relief from such taxes would be out of proportion to the relief obtained: *Provided*, That such clause shall be included in all contracts in support of NATO infrastructure programs involving the expenditures of funds under section 503(b) of the Foreign Assistance Act of 1961, as amended (see §11.403–1(a) of this chapter).

(3) *Use as a purchase order in excess of $2,500 by deployed units.* DD Form 1155, in conjunction with DD Form 1155s when appropriate, is authorized for purchases in excess of $2,500 but not more than $10,000 where negotiation is authorized by Subpart B of this Part, provided:

(i) The procurement is unclassified.

(ii) The procurement is accomplished by units which are deployed to remote areas away from established Department of Defense installations with procurement functions.

(iii) The mission involving the deployment action is directed by authority above the unit to be deployed.

(iv) The commander of the deployed unit determines the supplies and nonpersonal services to be procured are required for mission accomplishment and time does not permit requirements being satisfied through normal channels.

(v) The supplies or services are immediately available.

(vi) When required by § 7.104–15 of this chapter, the Examination of Records clause shall be added.

(vii) When required by Subpart D, Part 11 of this chapter, one of the clauses set forth in § 11.403 shall be added.

(viii) Authority will be used only from time of initial deployment or mission commencement of a unit until such time as normal channels of support for the unit are established.

(ix) One payment shall be made regardless of the number of deliveries or destinations.

* * * * *

§ 3.608–4 Use of DD Form 1155s With DD Form 1155, DD Form 1155r, and DD Form 1155r–1.

(a) DD Form 1155s (Additional General Provisions, Modification and Acceptance) used with DD Form 1155 and 1155r in accordance with § 3.608–2(b)(1), or with DD Forms 1155 and 1155r–1 in accordance with § 3.608–2(b)(2) in negotiated procurement provides:

(1) Additional general provisions;

(2) A block for modifications;

(3) A block for the contracting officer to mark if the contractor's written acceptance is requested; and

(4) A space for the contractor's signature when a written acceptance is requested.

* * * * *

(c) DD Form 1155s shall be used in conjunction with DD Forms 1155 and 1155r–1 for all purchases in excess of $2,500 which are made in accordance with § 3.608–2(b)(2).

(d) No additional clauses are authorized except as provided in § 3.608–2(b). A superseding DD Form 1155 shall not be used to issue a change to an outstanding purchase order.

§ 3.608–6 Use of DD Form 1155 as a delivery order.

* * * * *

(c) Duplication of the DD Form 1155r or DD Form 1155r–1 is not required when DD Form 1155 is used as a delivery order.

§ 3.608–7 Use of DD Form 1155 as a Public Voucher.

DD Form 1155 is authorized for use as a public voucher:

(a) Up to $2,500 when the form is used as a purchase order under § 3.608–2(b)(1),

(b) Up to $5,000 when the form is used as a purchase order by purchasing offices outside the United States, its possessions and Puerto Rico under conditions enumerated in § 3.608–2(b)(2),

(c) Up to $10,000 when the form is used as a purchase order by deployed units under conditions enumerated in § 3.608–2(b)(3),

(d) Without monetary limitation when the form is used as a delivery order, and

(e) Without monetary limitation as the basis for payment of an invoice against blanket purchase agreements.

PART 4—SPECIAL TYPES AND METHODS OF PROCUREMENT

8. In § 4.303–10, items 20, 21, 22, 23, 24, and 27 are revised to read as follows:

§ 4.303–10 Schedule of items.

* * * * *

Item 20. *Drayage (when other services are performed).* Service provided under this item shall include drayage as required beyond the zone(s) of performance included in the item specified in the order for service. Drayage shall be paid for at a rate per gross c.w.t. of shipment per mile of shipment over the shortest practicable route.

Zone _____ (Provide for additional zones as appropriate).
Estimated quantity _____ gross c.w.t.
Estimated total miles _____
Unit price per gross c.w.t. per mile $_____
Total amount $_____

Item 21. *Drayage (when other services not required).* Service under this item shall include drayage as ordered, when other services are not required, at a rate per gross c.w.t. of shipment per mile of shipment over the shortest practicable route. Service under this item includes the loading and unloading of goods, and placing of same in line-haul carrier terminals or military transportation shipping offices or both. An inventory of individual articles will be prepared when requested by the Contracting Officer.

Zone _____ (Provide for additional zones as appropriate).
Estimated quantity _____ gross c.w.t.
Estimated total miles _____
Unit price per gross c.w.t. per mile $_____
Total amount $_____

Item 22. *Recooperage of Type II and Type III containers as ordered by the contracting officer.*

Zone _____ (Provide for additional zones as appropriate).
Estimated quantity _____ containers
Each $_____ Total amount $_____

SCHEDULE II

INBOUND SERVICES

Item 23. *Complete service—inbound.* Service under this item provides pickup of unaccompanied baggage and loaded containers of household goods (except CONEX) from line-haul carrier's terminal, military installation shipping office, storage facility or the Contractor's plant, delivering them to the owner's residence, the uncrating and unpacking, and at the owner's residence as directed by the owner or his designated representative, servicing of major appliances and removing shipping containers, barrels, boxes, crates and debris from the owner's residence, and drayage of empty Government containers to Contractor's facility or place of storage as directed by the Contracting Officer. This service also shall include interim storage for not more than fifteen (15) days.

(a) *Household goods.*

Estimated quantity _____ lbs.
Unit price per gross c.w.t. $_____
Total amount $_____
Contractor's guaranteed daily capability _____ lbs.

(b) *Unaccompanied baggage.* This normally shall consist of foot lockers, trunks, and similar containers and may also include articles such as cribs, baby carriages, and collapsible playpens.

Estimated quantity _____ lbs.
Unit price per gross c.w.t. $_____
Total amount $_____
Contractor's guaranteed daily capability _____ lbs.

Item 24. *Complete unpacking service (inbound).* Service provided under this item shall be the same as that provided under Item 23 except that shipments shall be received at Contractor's plant, and drayage from line-haul carrier's terminal, military installation, storage or other Contractor facility is not required.

Zone _____ (Provide for additional zones as appropriate).

(a) *Household goods.*
Estimated quantity _____ lbs.
Unit price per gross c.w.t. $_____
Total amount $_____
Contractor's guaranteed daily capability _____ lbs.

(b) *Unaccompanied baggage.*
Estimated quantity _____ lbs.
Unit price per gross c.w.t. $_____
Total amount $_____
Contractor's guaranteed daily capability _____ lbs.

* * * * *

Item 27. *Storage.* Service provided under this item shall include storage-in-transit of containerized articles in excess of the interim period specified in Items 23, 24, 25, and 26

on inbound shipments, when specifically ordered by the Contracting Officer. Service required under this item shall not commence earlier than the 16th calendar day from date of receipt in Contractor's facility. Date of delivery from storage shall not be considered in computation of storage charges.

Zone _____ (Provide for additional zones as appropriate).

	Unit price (non-cumulative) per gross c.w.t.	*Estimated percentage of total quantity*
1–10 days ($	)_____	_____
11–20 days ($	)_____	_____
21–30 days ($	)_____	_____
31–45 days ($	)_____	_____
46–60 days ($	)_____	_____
61–90 days ($	)_____	_____
91–120 days ($	)_____	_____
121–150 days ($	)_____	_____
151–165 days ($	)_____	_____

Total amount $_____

Contractor's guaranteed monthly capacity _____ lbs.

* * * * *

PART 7—CONTRACT CLAUSES

9. In § 7.103–8, the existing text is designated as paragraph (a), and new paragraph (b) is added, as follows:

§ 7.103–8 Assignment of claims.

(a) *Clause.*

* * * * *

(b) When a contract is to be assigned pursuant to the above clause, the assignee shall forward to the administrative contracting officer, the disbursing officer, and the surety, if any, the notice and instrument of assignment in the number of copies indicated below:

(1) To the administrative contracting officer—a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The administrative contracting officer shall acknowledge receipt by signing and dating all copies of the notice of assignment and shall—

(i) File the true copy of the instrument of assignment and the original of the notice in the contract file,

(ii) Forward two copies of the notice to the disbursing officer designated in the contract to make payment,

(iii) Return a copy of the notice to the assignee, and

(iv) Advise the procuring contracting officer that the assignment has been made.

(2) To the surety or sureties, if any—a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The surety shall return three acknowledged copies of the notice to the assignee who shall forward two copies to the disbursing officer designated in the contract.

(3) To the disbursing officer designated in the contract to make payment—a true copy of the instrument of assignment and an original and one copy of the notice of assignment. The disbursing officer shall acknowledge and return to the assignee the copy of the notice and shall file the true copy of the instrument and original notice. The disbursing officer shall forward to the appropriate finance center, with the first invoice or voucher, a copy of the notice acknowledged by the administrative contracting officer and a copy acknowledged by the surety, if any, for filing with the contract. If the assignee releases the contractor from the assignment of claims under an existing contract, the contractor, in order to receive payment of the balance due under the contract, is required to file a written notice of such release, with a true copy of the instrument of release of assignment, with the parties with whom the assignee was required to file the notice and instrument of assignment. The disbursing officer shall acknowledge the notice of release to the assignee and shall forward one acknowledged notice of the release to the appropriate finance center for filing with the original contract. Acknowledgment by the contracting officer or the surety, if any, is not required.

10. In § 7.104–12(a), the clause heading and clause paragraph (e) are revised; in § 7.203–4, the clause in paragraph (b) is amended by revising the clause heading and clause paragraphs (h) and (j), and new subparagraph (6) is added to paragraph (c); and § 7.204–12 is revised, as follows:

§ 7.104–12 Military security requirements.

(a) * * *

MILITARY SECURITY REQUIREMENTS (APRIL 1966)

* * * * *

(e) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause and the security costs or time required for delivery under this contract are thereby increased or decreased, the contract price, delivery schedule, or both and any other provision of the contract that may be affected shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause in this contract.

* * * * *

§ 7.203–4 Allowable cost, fee, and payment.

* * * * *

(b) * * *

ALLOWABLE COST, INCENTIVE FEE, AND PAYMENT (APRIL 1966)

* * * * *

(h) When the work under this contract (including any supplies or services which are ordered separately under, or otherwise added to, this contract) is increased or decreased by contract modification or when any equitable adjustment in the target cost is authorized under any other clause of this contract, equitable adjustments in the target cost, target fee, minimum fee, maximum fee, or any or all of them, as appropriate, shall be set forth in an amendment or supplemental agreement to this contract.

* * * * *

(j) For the purpose of the adjustment of the fee in accordance with (i) above, the term "total allowable cost" shall not include allowable costs arising out of:

(i) Any of the causes covered by the clause hereof entitled "Excusable Delays" to the extent they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;

(ii) The taking effect, after the negotiation of the target cost of this contract, of a statute, court decision, written ruling or regulation which results in the Contractor's being required to pay or bear the burden of any tax or duty, or increase in the rate thereof;

(iii) Any direct cost attributed to the Contractor's assistance or participation in litigation as required by the Contracting Officer pursuant to a provision of this contract, including the furnishing of evidence and information requested pursuant to the clause hereof entitled "Notice and Assistance Regarding Patent and Copyright Infringement";

(iv) The procurement and maintenance of additional insurance not included in the target cost and required by the Contracting Officer pursuant to the clause hereof entitled "Insurance—Liability to Third Persons."

Except as otherwise specifically provided in this contract, all other allowable costs shall be included in the term "total allowable cost" for the purpose of the adjustment of the fee in accordance with (i) above.

* * * * *

(c) * * *

(6) The following shall be added to paragraph (j) of the clause set forth in paragraph (b) of this section if the contract contains one of the "Indemnification" clauses set forth in §§ 10.701(b)(1) and 10.702(b)(1):

(v) ; or any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk, against which the Government has expressly agreed to indemnify the Contractor (April 1966).

§ 7.204–12 Military security requirements.

In accordance with the requirements of § 7.104–12(a), insert the contract clause set forth in said paragraph, deleting paragraphs (e) and (f) therefrom and substituting therefor the following paragraphs (e) and (f).

(e) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such changes cause an increase or decrease in the estimated cost or the time required for the performance of this contract, the estimated cost, fee, delivery schedule, or any or all of them, as appropriate, and any other provision of the contract that may be affected, shall be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause of this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding paragraph (e) of this clause. The Contractor may insert in any such subcontract, and any subcontract entered into thereunder may contain, in lieu of paragraph (e) of this clause, provisions which permit equitable adjustments to be made in the subcontract price (or estimated subcontract cost and fee) or in the delivery schedule, or both, as appropriate, and any other provision of the contract that may be affected (as appropriate to the type of subcontract involved), on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved (April 1966).

11. Section 7.802–4 is redesignated as § 7.802–5, and a new § 7.802–4 is added, to read as follows:

§ 7.802–4 Payments clause for letter contracts.

PAYMENTS OF ALLOWABLE COSTS PRIOR TO DEFINITIZATION OF CONTRACT (APRIL 1966)

(a) Pending the placing of the definitive contract referred to herein, the Government shall currently reimburse the Contractor for all allowable expenditures made hereunder at the following rates:

(i) One hundred percent (100%) of such approved costs representing progress payments to Subcontractors under fixed-price type subcontracts: *Provided,* That payment by the Government to the Contractor shall not exceed seventy percent (70%) of the costs incurred by such Subcontractors.

(ii) One hundred percent (100%) of approved costs representing cost-reimbursement type subcontracts: *Provided,* That payments by the Government shall not exceed seventy percent (70%) of the costs incurred by Subcontractors; and

(iii) _____* percent (_____* %) of all other approved costs.

(b) For the purpose of determining the amounts payable to the Contractor hereunder, allowable items of cost shall be determined by the Contracting Officer in accordance with the statement of cost principles set forth in Part _____ of section XV of the Armed Services Procurement Regulation. In no event shall the total reimbursement made under this paragraph exceed _____* percent (_____* %) of the maximum amount of the Government liability otherwise set forth in this letter contract.

(c) Once each month (or at more frequent intervals, if approved by the Contracting Officer), the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(d) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (e) below, make payment thereon as approved by the Contracting Officer.

(e) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

§ 7.802–5 Definitization. [Redesignated]

PART 8—TERMINATION OF CONTRACTS

12. Section 8.208–4(a)(1) is revised, and in § 8.303, the introductory sentence of paragraph (b) is revised and paragraph (c) is revoked, as follows:

§ 8.208–4 Authorization for subcontract settlements without approval or ratification.

(a)(1) The contracting officer may, upon the written request of the prime contractor, authorize him in writing to conclude settlements of $10,000 or less (see § 8.101–1) of his terminated subcontracts, without approval or ratification by the contracting officer, if:

(i) The contracting officer is satisfied with the adequacy of the procedures used by the contractor in settling termination claims (including proposals for retention, sale, or other disposal of termination inventory) of his immediate and lower tier subcontractors (The contracting officer shall obtain the advice and recommendations of (*a*) the cognizant audit agency with respect to the adequacy of the contractor's audit administration, including personnel; and (*b*) the cognizant disposal office with respect to the adequacy of the contractor's procedures and personnel for the administration of property disposal matters.);

(ii) Any termination inventory included in determining the amount of the settlement will be disposed of in accordance with § 8.513, except that the disposition of such inventory shall not (*a*) be subject to review by the contracting officer under § 8.513–1 or § 8.513–3, or (*b*) be subject to § 8.513–4; *provided,* however, no industrial plant equipment included in such inventory shall be disposed of prior to screening pursuant to § 8.505; and

(iii) The settlement will be accompanied by a certificate substantially similar to the certificate set forth in the settlement proposal forms in § 8.802;

Provided, That the contracting officer shall not grant to the contractor any authority hereunder for settlements between $2,500 and $10,000 without the written approval as to that contractor of the Head of the Procuring Activity concerned, or of a deputy or principal assistant responsible for contract matters, or in the case of Defense Contract Administration Services Regions, the Region Commander. Except as provided in subparagraph (3) of this paragraph, authority granted to a prime contractor pursuant to this subparagraph by any contracting officer within the Department of Defense shall be applicable to all prime contracts of all procuring activities within the Department of Defense which have been terminated or modified by change orders. Such authorization may be exercised only in settling subcontracts which have been terminated as a result of termination for convenience or modification of the prime contract by the Government.

* * * * *

§ 8.303 Allowance for profit.

* * * * *

(b) *Factors to be considered.* In negotiating or determining profit, factors to be considered include:

* * * * *

(c) *Profit in settlements by determination.* [Revoked.]

13. In § 8.701, the clause in paragraph (a) is amended by revising the clause heading and clause paragraph (e), and paragraphs (c) and (d) are revised; and in § 8.706, the clause heading and clause paragraph (e) are revised, as follows:

§ 8.701 Termination clause for fixed-price contracts.

(a) * * *

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (APRIL 1966)

* * * * *

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, pay to the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) For completed supplies accepted by the Government (or sold or acquired as provided in paragraph (b)(vii) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(ii) The total of—

(A) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph (e)(i) hereof;

(B) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (A) above); and

(C) A sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8–303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(iii) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontract thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (i) and (ii) of this paragraph (e) shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly

* Insert a percentage no greater than seventy percent (70%) or in case of small business concerns seventy-five percent (75%).

assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (e) (i) and (ii) (A) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b) (vii).

* * * * *

(c) The following paragraphs shall be used in place of paragraphs (e) and (f) of the above clause when the contract is for construction in excess of $10,000.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree, as provided in paragraph (d), upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, pay to the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) With respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of—

(A) The cost of such work;

(B) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b) (v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of Work under this contract, which amounts shall be included in the cost on account of which payment is made under (A) above; and

(C) A sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8-303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(ii) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b) (ix); and any other reasonable cost incidental to determination of work under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (i) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (i) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b) (vii).

(f) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the principles for consideration of costs set forth in section XV, Part 4, of the Armed Services Procurement Regulation, as in effect on the date of this contract.

(d) In any contract for Architect-Engineer services in excess of $10,000, the clause in paragraph (a) of this section as modified by paragraph (c) of this section shall be used, the term "Architect-Engineer" shall be substituted for the term "Contractor", and the following paragraph (e) shall be used in place of paragraph (e) therein:

(e) In the event of the failure of the Architect-Engineer and the Contracting Officer to agree as provided in paragraph (d), upon the whole amount to be paid to the Architect-Engineer by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, pay to the Architect-Engineer the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) For completed work and services accepted by the Government, the price or prices specified in the contract for such work, less any payments previously made;

(ii) The total of—

(A) The costs incurred in the performance of the work and services terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to the work and services paid or to be paid for under paragraph (e) (i) hereof;

(B) The cost of settling and paying claims arising out of the termination of work or services under subcontracts or orders as provided in paragraph (b) (v) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of work or services delivered or furnished by subcontractors prior to the effective date of termination, which amounts shall be included in the costs payable under (A) above); and

(C) A sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8-303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the Architect-Engineer would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss; and

(iii) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b) (ix); and any other reasonable cost incidental to the termination of work under this contract, including expense incidental to the determination of the amount due to the Architect-Engineer as a result of the termination of work under this contract.

The total sum to be paid to the Architect-Engineer under (i) and (ii) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Architect-Engineer under (ii) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or a buyer pursuant to paragraph (b) (vii).

§ 8.706 Subcontract termination clause.

* * * * *

TERMINATION (APRIL 1966)

* * * * *

(e) In the event of the failure of the seller and the buyer to agree as provided in paragraph (d) upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, the buyer shall, subject to any Settlement Review Board approvals required by section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, pay to the seller the amounts determined by the buyer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) For completed supplies accepted by the buyer (or sold or acquired as provided in paragraph (b) (vii) above) and not theretofore paid for, forthwith a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(ii) The total of—

(A) The cost of such work, including initial costs and preparatory expenses allocable thereto, exclusive of any costs attributable to supplies paid or to be paid for under (i) above; and

(B) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b) (v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amount shall be included in the cost on account of which payment is made under (A) above; and

(C) A sum, as profit on (A) above, determined by the buyer pursuant to 8-303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the seller would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(iii) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of the property allocable to this contract.

The total sum to be paid to the seller under (i) and (ii) above shall not exceed the total contract price reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage and except to the extent that the buyer or the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the seller under (i) and (ii) (A) above the fair value as determined by the buyer of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the buyer or to a purchaser pursuant to paragraph (b) (vii).

* * * * *

PART 16—PROCUREMENT FORMS

14. Section 16.303 is revised to read as follows:

§ 16.303 Order for supplies or services (DD Forms 1155, 1155r, 1155r–1, 1155c, 1155c–1, and 1155s).

Order for supplies or services, DD Form 1155 series, shall be used to accomplish small purchases in accordance with § 3.608 of this chapter.

PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGULATIONS

15. In § 30.7, items numbered K–201 (a), K–202(a), K–203.2(viii), K–301, K–302(b)(3), K–303.2 (c) and (d), and K–303.4(b) are revised to read as follows:

§ 30.7 Appendix K—Preaward survey procedures.

* * * * *

K–201 *Procedure for requesting preaward survey.* (a) The purchasing office shall request a preaward survey on Pre-Award Survey of Prospective Contractor (DD Form 1524) (see F–200.1524), indicating in section III thereof, the scope of the survey desired. Factors requiring emphasis not enumerated in section III should be listed by the purchasing office under item "14" of that section. A survey may be requested by telegraphic communication containing the data required by sections I, II and III of the Form. A survey may be requested by telephone but shall be immediately confirmed on DD Form 1524. Unless previously furnished, a copy of the solicitation, and such drawings and specifications as deemed necessary by the purchasing office, shall be supplied with the preaward survey request.

* * * * *

K–202 *Scope of survey.* (a) A complete survey encompasses investigation, to the extent applicable to the proposed contract, of the factors listed in section III of DD Form 1524, together with other requirements of special inquiry as requested by the purchasing office, and submission of appropriate findings thereon.

* * * * *

K–203.2 *Designation of preaward survey monitor.* * * *

(viii) Arrange for required audit and other external assistance (for example, in those cases where contract award is dependent upon the contractor having an adequate cost accounting system for proper postaward administration of the contract, the cognizant audit agency shall be responsible for the system review, evaluation, and conclusive recommendation. DD Form 1524–4 is provided for this purpose.);

* * * * *

K–301 *Preliminary analysis.* The request (DD Form 1524, sections I, II, and III) shall be reviewed to establish basic administrative information and the factors to be investigated. The solicitation shall then be reviewed to ascertain those general and special requirements which have a significant bearing on determining contractor responsibility. Examples are the nature of the product, applicable specifications, delivery schedule, documentation requirements, and financing aspects.

K–302 *Development of information.* * * *

(b) *Development of additional data.* * * *

(3) In each case where review of available data discloses previous unsatisfactory contractor performance in any regard, the preaward survey shall specifically cover the extent to which action has been taken or planned by the contractor to avoid repetition. A narrative discussion shall be referenced in section III of DD Form 1524 and appended to the Form covering each deficiency area and furnishing details on the effect of each deficiency area on the contractor's ability to perform the prospective contract involved, together with reasons for all stated conclusions. Lack of evidence that the contractor was responsible for a failure to meet past contractual requirements does not necessarily indicate satisfactory performance. A persistent pattern of the contractor's need for costly and burdensome Governmental assistance (engineering, inspection, testing) that was provided in the Government's interest but not contractually required, shall be treated in the preaward survey as an element for separate narrative discussion to be appended to the Form.

* * * * *

K–303.2 *Production.* * * *

(c) *Ascertaining production resources.* The information necessary to prepare DD Form 1524–1 shall be obtained by discussion with appropriate management personnel of the prospective contractor. This information shall be verified, when necessary, by physical inspection of the manufacturing plant and evaluated in terms of suitability to manufacture the required item(s).

(d) *Relating production plans to production resources.* When necessary, the representatives of the prospective contractor shall be requested to advise how the production resources described in sections III, IV, V, and VI of DD Form 1524–1 will be allocated and utilized in order to achieve the target dates for the principal milestones. This shall include both in-house and subcontractor production resources. Pertinent to this is an analysis of projects and contracts which will compete for utilization of those resources within the same time frame as that specified by the prospective contractor's production plan. The information developed as a result of equating the production plan and production resources of the prospective contractor should enable the contract administration office to:

(i) Conclude whether the resources which the prospective contractor is planning to use are suitable for the job;

(ii) Determine whether the prospective contractor will be capable of properly controlling, maintaining and using Government-furnished property;

(iii) Determine whether the planning and scheduling of effort will result in timely accomplishment of the principal milestones;

(iv) Conclude whether achievement of the principal milestones will result in timely delivery.

K–303.4 *Financial.* * * *

(b) *Procedure.* Aspects to be considered in determining the prospective contractor's financial capability (DD Form 1524–3) include the following:

(1) The latest balance sheet and profit and loss statement shall be reviewed. The following are indicative of the soundness of the prospective contractor's financial structure:

(i) Rates and ratios;

(ii) Working capital as represented by current assets over current liability; and

(iii) Financial trends such as net worth, sales and profit.

(2) The method of financing the contract shall be evaluated. Where sources of outside financing, other than the Government, are indicated, their availability should be verified.

(3) When financial aid from the Government is to be obtained, the necessity should be verified. Review shall be made concerning the applicability of such financing as progress payments or guaranteed loans.

[Rev. 16, ASPR, Apr. 1, 1966] (Sec. 2202, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314)

L. H. WALKER, Jr.,
Brigadier General, U.S. Army,
Acting The Adjutant General.

[F.R. Doc. 66–6000; Filed, June 1, 1966; 8:45 a.m.]

Title 7—AGRICULTURE

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

SUBCHAPTER A—AGRICULTURAL CONSERVATION PROGRAMS

[ACP–1966, Supp. 5]

PART 701—NATIONAL AGRICULTURAL CONSERVATION

Subpart—1966

MISCELLANEOUS AMENDMENTS

The regulations governing the 1966 National Agricultural Conservation Program, 30 F.R. 11371, as amended, are further amended as follows:

1. Section 701.30 is amended by deleting all but the first sentence thereof.

2. Section 701.41 is amended by deleting all but the first sentence of paragraph (g) and by adding the following new sentence as the second sentence of the paragraph: "The term 'tenant' shall include a person who, as a member of a grazing association, participates in the operation of the grazing lands owned or leased by the association."

(Sec. 4, 49 Stat. 164, secs. 7 to 17, 49 Stat. 1148, as amended; 16 U.S.C. 590d, 590g–590q)

Signed at Washington, D.C., on May 26, 1966.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 66–6039; Filed, June 1, 1966; 8:48 a.m.]

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 728—WHEAT

Subpart—1967–68 Marketing Year

Sec.

728.301 Basis and purpose.
728.302 National marketing quota for wheat for 1967–68 marketing year.
728.303 1967 national acreage allotment for wheat.

AUTHORITY: §§ 728.301 to 728.303 issued under secs. 301, 332, 333, 335, 375, 52 Stat. 38, as amended 53, as amended, 54, as amended, 66, as amended, 76 Stat. 621; 7 U.S.C. 1301, 1332, 1333, 1335, 1375.

§ 728.301 Basis and purpose.

(a) The regulations contained in §§ 728.301 to 728.303 are issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, to (1) announce that a national wheat marketing quota shall not be in effect for the 1967–68 marketing year; (2) announce the amount of the

national marketing quota which would have been determined if a national quota had been proclaimed; and (3) proclaim the 1967 national acreage allotments for wheat.

(b) Section 332(d) of the Act provides that the Secretary shall not proclaim a national marketing quota for the crop of wheat planted for harvest in the calendar year 1967, and that farm marketing quotas shall not be in effect for such crop of wheat.

(c) Section 333 of the Act provides that the Secretary shall proclaim a national acreage allotment for each crop of wheat; and that "The amount of the national acreage allotment for any crop of wheat shall be the number of acres which the Secretary determines on the basis of the projected national yield and expected underplantings (acreage other than that not harvested because of program incentives) of farm acreage allotments will produce an amount of wheat equal to the national marketing quota for wheat for the marketing year for such crop, or if a national marketing quota was not proclaimed, the quota which would have been determined if one had been proclaimed."

(d) Section 332(b) provides that "The amount of the national marketing quota for wheat for any marketing year shall be an amount of wheat which the Secretary estimates (i) will be utilized during such marketing year for human consumption in the United States as food, food products, and beverages, composed wholly or partly of wheat, (ii) will be utilized during such marketing year in the United States for seed, (iii) will be exported either in the form of wheat or wheat products thereof, and (iv) will be utilized during such marketing year in the United States as livestock (including poultry) feed, excluding the estimated quantity of wheat which will be utilized for such purpose as a result of the substitution of wheat for feed grains under section 328 of the Food and Agriculture Act of 1962; less (A) an amount of wheat equal to the estimated imports of wheat into the United States during such marketing year and, (B) if the stocks of wheat owned by the Commodity Credit Corporation are determined by the Secretary to be excessive, an amount of wheat determined by the Secretary to be a desirable reduction in such marketing year in such stocks to achieve the policy of the Act: *Provided*, That if the Secretary determines that the total stocks of wheat in the Nation are insufficient to assure an adequate carryover for the next succeeding marketing year, the national marketing quota otherwise determined shall be increased by the amount the Secretary determines to be necessary to assure an adequate carryover: *And provided further*, That the national marketing quota for wheat for any marketing year shall be not less than one billion bushels." The amount of national marketing quota for wheat for the 1967–68 marketing year set out in § 728.302 and the 1967 national acreage allotment for wheat set out in § 728.303 were computed in accordance with the formulas in the Act.

(e) The considerations entering into the determination of the national marketing quota for wheat that would have been determined for the 1967–68 marketing year in the amount of 1,540 million bushels are set out in § 728.302. The projected national yield for the 1967 crop of wheat is determined to be 27.3 bushels per acre. The basis for this determination follows: The national yield per harvested acre of wheat during each of the 5 calendar years 1961 through 1965, as reported by the Statistical Reporting Service, USDA, was found to be 24.0, 25.1, 25.3, 26.3, and 26.9, respectively. The average of these five annual yields was computed to be 25.5. Based on a graphic projection of national annual wheat yields for a 16-year (1950–65) base period to determine trend in wheat yields and with consideration given to annual wheat yields in the various production areas, improved current production practices, abnormal weather, and expected harvested acreage, it was determined that the 5-year average of 25.5 should be adjusted upward to 27.3 for the purposes of the projected national yield for the 1967 crop of wheat. On the basis of a national quota of 1,540 million bushels, a national projected yield of 27.3 bushels per acre, and expected underplantings (acreage other than that not harvested because of program incentives) of 2.9 million acres, a national acreage allotment of 59.3 million acres was determined.

(f) The finding and determinations by the Secretary contained in §§ 728.302 and 728.303 have been made on the basis of the latest available statistics of the Federal Government as required by section 301(c) of the Act.

(g) Since farm marketing quotas will not be in effect for the 1967 crop of wheat, this document relates only to loans, grants, and benefits, and is therefore exempted from the notice, public procedure, and effective date provisions of section (4) of the Administrative Procedure Act.

§ 728.302 National marketing quota for wheat for 1967–68 marketing year.

(a) A national marketing quota for wheat shall not be in effect for the 1967–68 marketing year. In order that a national acreage allotment may be determined for the 1967 crop of wheat, it is necessary to determine the amount of the national wheat marketing quota which would have been determined if one had been proclaimed for the 1967–68 marketing year.

(b) Based upon (1) estimated human consumption in the United States during the 1967–68 marketing year of 530 million bushels of food, food products, and beverages, composed wholly or partly of wheat, (2) estimated use for seed in the United States during each marketing year of 75 million bushels, (3) estimated exports of wheat and wheat products during such marketing year of 850 million bushels, and (4) the estimated amount which will be utilized during such marketing year as livestock (including poultry) feed determined to be 50 million bushels, excluding the estimated quantity of 15 million bushels of wheat which will be utilized for such purpose as a result of the substitution of wheat for feed grains under section 328 of the Food and Agriculture Act of 1962; less estimated imports into the United States during such marketing year of 5 million bushels, the amount of the national marketing quota for wheat for the 1967–68 marketing year would be 1,500 million bushels. It is determined that stocks of wheat owned by the Commodity Credit Corporation are not excessive and no reduction in such stocks is necessary to achieve the policy of the Act. It is also determined that the total stocks of wheat in the Nation are insufficient to assure an adequate carryover for the 1968–69 marketing year. Therefore, the national quota for the 1967–68 marketing year which would otherwise be determined is increased by 40 million bushels to a total amount of 1,540 million bushels.

§ 728.303 1967 national acreage allotment for wheat.

Based upon the projected national yield of wheat of 27.3 bushels per acre which is hereby determined, and expected underplantings, the 1967 national acreage allotment which will make available a supply of wheat equal to the national marketing quota is determined to be 59.3 million acres, and a 1967 national acreage allotment in that amount is hereby proclaimed.

Effective date. Because of the need to determine State, county, and farm acreage allotments and notify producers of their farm acreage allotments in time for them to plan their seeding operations for the 1967 crop of wheat, this document shall become effective upon filing with the Director, Office of the Federal Register.

Issued at Washington, D.C., this 26th day of May 1966.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 66-6040; Filed, June 1, 1966; 8:48 a.m.]

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

SUBCHAPTER F—DETERMINATION OF NORMAL YIELDS AND ELIGIBILITY FOR ABANDONMENT AND CROP DEFICIENCY PAYMENTS

[§ 845.2; Supp. 5]

PART 845—MAINLAND CANE SUGAR AREA

Approved Local Areas for 1965 Crop

§ 845.7 Approved local areas for the 1965 crop.

For purposes of considering eligibility of farms for abandonment and crop deficiency payments on 1965-crop sugarcane pursuant to paragraph (c) of § 845.2, as amended, the local ASC parish committees in Louisiana and the ASC Glades County Committee in Florida have determined that the extent of crop damage as specified and provided in sub-

paragraph (1)(iii) of paragraph (c) of § 845.2 has occurred in the following parishes and local producing areas:

LOUISIANA

Parishes approved in their entirety

Ascension.	St. James.
Assumption.	St. John.
Lafourche.	St. Mary.
Plaquemines.	Terrebonne.
Pointe Coupee.	West Baton Rouge.
St. Charles.	

Individual local producing areas approved

Areas 2 and 3 in Iberville Parish.

FLORIDA

All of Florida.

Statement of bases and considerations. This supplement provides public notice of the parishes and local producing areas in Louisiana and Florida where due to drought, flood, storm, freeze, disease, or insects, the 1965 sugarcane crop has been damaged to the extent that farms located in whole or in part therein will be considered (as to location) for abandonment or deficiency payments. Producers on these farms who have not filed applications for Sugar Act payments with respect to acreage abandonment or crop deficiencies for which they may otherwise be eligible should apply for such payments before December 31, 1967, as provided in 7 CFR 892.1 (29 F.R. 9426).

(Sec. 403, 61 Stat. 923; 7 U.S.C. 1153, secs. 301, 302, 61 Stat. 929, 930, as amended; 7 U.S.C. 1131, 1132, P.L. 89-311)

Effective date. Date of publication.

Signed at Washington, D.C., on May 27, 1966.

CHAS. M. COX,
Acting Deputy Administrator, State and County Operations.

[F.R. Doc. 66-6041; Filed, June 1, 1966; 8:48 a.m.]

SUBCHAPTER K—GENERAL CONDITIONAL PAYMENTS PROVISIONS

PART 893—PUERTO RICO, 1966-67 AND SUBSEQUENT CROPS

Pursuant to the provisions of the Sugar Act of 1948, as amended, and effective upon publication in the FEDERAL REGISTER, Subchapter K, Chapter VIII, of Title 7 of the Code of Federal Regulations is amended by adding to Subchapter K a new Part 893, as above entitled, and by adding §§ 893.1 through 893.10 in such Part 893 as follows:

Sec.
893.1 Definitions.
893.2 Compliance with child labor provisions of the act.
893.3 Tenant and sharecropper protection.
893.4 Compliance with other conditions of payment.
893.5 Instructions and forms.
893.6 Filing application for payment.
893.7 Determination of eligibility and basis for payment, review and changes in determinations and appeals for review thereof.
893.8 Obtaining information regarding eligibility for payment.
893.9 Obtaining information prevented by producer.
893.10 Preservation of sugar production records.

AUTHORITY: The provisions of this Part 893 issued pursuant to sec. 302 of the Sugar Act of 1948, as amended (sec. 403, 61 Stat. 932; 7 U.S.C. 1153, secs. 301, 302, 61 Stat. 929, 930, as amended; 7 U.S.C 1131, 1132).

§ 893.1 Definitions.

(a) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the United States Department of Agriculture to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(b) "Deputy Administrator" means the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(c) "Director" means the person employed to be responsible for the day-to-day operations of the Agricultural Stabilization and Conservation Service Caribbean Area Office, or any employee of such office authorized to act on his behalf.

(d) "Area Office" means the Agricultural Stabilization and Conservation Service Caribbean Area Office.

(e) "District Office" means the Agricultural Stabilization and Conservation Service Caribbean District Office.

(f) "Person" means an individual, partnership, corporation, or association.

(g) "Producer" means a person who is the legal owner, at the time of harvest or abandonment, of a portion or all of a crop of sugarcane grown on a farm for the extraction of sugar or liquid sugar.

(h) "Farm" shall have the meaning set forth in Part 827 of this chapter.

(i) "Crop" means sugarcane which was or will be produced and processed (or abandoned) during the 2 consecutive calendar years used to designate a crop. The first calendar year represents the year in which the majority of growth of the cane to be harvested occurs and the second calendar year represents the year in which most of this cane is harvested and processed.

(j) "Act" means the Sugar Act of 1948, as amended.

§ 893.2 Compliance with child labor provisions of the Act.

(a) *Applicability.* As a condition for payment under the Act, and except for a member of the immediate family of a person who was the legal owner of not less than 40 percent of the crop at the time work was performed, no child under the age of 14 shall have been employed or permitted to work on the farm, whether for gain to such child or any other person, in the production, cultivation or harvesting of a crop of sugarcane with respect to which application for payment is made, nor be so employed or permitted to work for a longer period than 8 hours in any one day if between the ages of 14 and 16.

(b) *Deduction for noncompliance.* Payment authorized under the act may be made notwithstanding a failure to comply with the conditions set forth in paragraph (a) of this section, but the payments made with respect to any crop shall be subject to a deduction of $10 for each child for each day or a portion of a day during which such child was employed or permitted to work contrary to the provision of this section.

(c) *Proof of age.* The producer on a farm upon which a child is found by a representative of the area office to have worked or to be working in the production, cultivation or harvesting of a crop of sugarcane shall be required, upon request of the representative, to furnish proof of age of the child if such child is not a member of the immediate family of a person owning at least 40 percent of the crop of sugarcane at the time such work was performed. Proof of age may be established by,

(1) An age certificate issued pursuant to any child labor program carried out under Commonwealth or Federal supervision,

(2) A birth certificate or transcript thereof,

(3) A baptismal certificate showing the date of birth,

(4) A passport,

(5) An insurance policy, or

(6) A Bible record.

(d) *Providing child member of producer's immediate family.* If it is alleged that the child is a member of the immediate family of a person who owns such 40 percent of a crop, such person or a producer on the farm must establish such relationship to the satisfaction of the representative of the area or district office. "Member of the immediate family" is deemed to include children who constitute the household of a person when such person is responsible for and provides the support of such children either as parent or in place of the parent.

§ 893.3 Tenant and share cropper protection.

In addition to compliance with the conditions for payment prescribed by the act, eligibility for payment of any producer of sugarcane with respect to any crop shall be subject to the following conditions:

(a) The number of share tenants or sharecroppers engaged in the production of sugarcane of such crop on the farm of such producer shall not be reduced below the number so engaged with respect to the previous crop unless such reduction is approved by the Director. The Director shall approve such reduction when the reduction was the result of voluntary action of the share tenant or sharecropper, or was caused by reasons beyond the control of the producer.

(b) Such producer shall not have entered into any leasing or cropping agreement for the purpose of diverting to himself or any other producer any payments to which share tenants or sharecroppers would be entitled if their leasing or cropping agreements for the previous crop were in effect.

§ 893.4 Compliance with other conditions of payment.

All requirements of the act and the determinations issued pursuant thereto

with respect to wage rates, farm proportionate shares (if in effect) and in the case of a processor-producer, prices paid for sugarcane, shall be met.

§ 893.5 Instructions and forms.

The Deputy Administrator shall cause to be prepared for issuance to the area office such forms and internal management instructions as are necessary for carrying out regulations previously or hereafter issued.

§ 893.6 Filing application for payment.

(a) *Form to be used.* Application for payment authorized under Title III of the act with respect to sugarcane planted on a farm for harvest during a crop season shall be made on Form SU-150. The form shall be made available for signing by mail, at the area office, a district ASCS office, the producer's farm, or such other place as designated by the area office and the producer shall be notified by the district office of the place and the time the forms are available for signing.

(b) *Person eligible to receive payment.* Payment shall be made to the producer of the sugarcane. In the event of the death, disappearance, or incompetency of the producer, payment shall be made to the beneficiary designated in the application for payment by the producer, or if no such beneficiary is named, to the producer's legal representative or his heirs as determined by the Director.

(c) *Closing date for filing.* Form SU-150 must be filed no later than June 30 of the second calendar year after the calendar year in which the crop harvest was completed.

(d) *Exception to closing date requirement.* An application may be filed after the closing date if the Director determines that the applicant was prevented from filing by such date because of illness or other reasons beyond his control.

§ 893.7 Determination of eligibility and basis for payment, review and changes in determinations and appeals for review thereof.

Compliance with the conditions prescribed by the act and regulations for any payment authorized under Title III of the act, the facts constituting the basis for any such payment, and the amount thereof, shall be determined by the Director, such determination to be subject to review initiated by the Deputy Administrator and to approval or redetermination by the Deputy Administrator. Determinations by the Director or the Deputy Administrator shall be made and decided in accordance with the applicable provisions of the act and regulations issued by the Secretary thereunder, and on the facts in the individual case. The provisions apprising producers of their rights to request reconsideration or appeal from determinations affecting their eligibility for payments under the act and the procedures to follow in such instances including time limitations for filing appeals are contained in Chapter VII, Part 780 of this title. The procedures applicable to claims for unpaid wages are provided for under regulations pertaining thereto as issued by the Secretary, and contained in Part 867 of this chapter.

§ 893.8 Obtaining information regarding eligibility for payment.

Where it is necessary to obtain information to assist the Director in determining compliance with the conditions prescribed by the Act and regulations for any payment authorized under Title III of the Act, the facts constituting the basis for any such payment or the amount thereof, or to assist the Deputy Administrator in reviewing, upon appeal or upon their own initiative any such determination by the Director, any such information with respect to acreage or compliance shall be obtained to the extent possible as provided in the applicable provisions of Part 718 of Chapter VII of this title, as amended. In the absence of a provision in such Part 718 of this title for obtaining any such information, any employee of the area office designated by the Director to be qualified to perform such a duty may obtain such information.

§ 893.9 Obtaining information prevented by producer.

If the producer, or his representative, on any farm with respect to which application is made for any payment authorized under Title III of the Act prevents the obtaining of the information necessary to determine compliance with the conditions for any such payment, the facts constituting the basis of any such payment or the amount thereof, the conditions prescribed by the Act and regulations for any such payment shall be deemed not to have been met until such producer (including processor-producers) or his representative permits such information to be obtained.

§ 893.10 Preservation of sugar production records.

For the purpose of providing records to be made and preserved in the area office for use in establishing proportionate shares, when required:

(a) The subdivisions of any farm which is subdivided shall be credited with the actual sugar production record, if available, of each subdivision for the five crops immediately preceding the crop when such farm is subdivided, or

(b) If actual records are not available, the production record of the farm shall be divided among the subdivisions on a basis agreed upon by all persons concerned in the subdivision subject to the approval of the Director, or

(c) In the absence of actual records and such agreement, the Director shall determine the division of the farm's production record among the subdivisions, on the basis of acreage of sugarcane growing thereon or suitable for growing sugarcane.

(d) The production record for a reconstituted farm shall be the total of the production records for such 5-year period credited to the constituent parts of the farm.

(e) The sugar production record of any parcel of land which is to be utilized for purposes other than the production of sugarcane for sugar shall, upon written application by the owner to the Director within 5 years from the date of diversion to such other production purposes, be transferred to any other parcel or parcels of land owned by such applicant in Puerto Rico if the Director finds that the transfer of the production record will encourage a wise use of land resources, foster greater diversification of agricultural production and promote the conservation of soil and water resources in Puerto Rico, and the Director determines that such transfer of production record is in the public interest and will facilitate the sale or rental of the land for other productive purposes.

Statement of bases and considerations. In order to qualify for Sugar Act payments, sugarcane producers must comply with the conditions for payment specified in the Act, relating to wages, child labor, fair prices and farm proportionate shares (when such shares are determined by the Secretary to be in effect), and with the provisions of regulations implementing such conditions for payment and the provisions of the Act for the protection of tenants. In addition, certain general requirements must be met. Producers, to receive Sugar Act payments to which they are entitled, must file applications for payment, use approved forms, adhere to instructions and furnish information regarding eligibility for payment and the basis for payment. Heretofore, some of these provisions were incorporated in the annual determinations of proportionate shares. Inasmuch as proportionate shares may not be required every year, the regulatory provisions pertaining to child labor, tenant protection and the general requirements with respect to Sugar Act payments are included herein. This regulation also makes provision for the preservation of sugarcane production records of land diverted to productive purposes other than growing sugarcane, or which becomes a separate farm or part thereof.

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

Effective date. Date of publication.

Signed at Washington, D.C., on May 26, 1966.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 66-6042; Filed, June 1, 1966; 8:48 a.m.]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER C—EXPORT PROGRAMS

[Rev. I, Amdt. 10]

PART 1483—WHEAT AND FLOUR

Subpart—Flour Export Program—Cash Payment (GR-346) Terms and Conditions

MISCELLANEOUS AMENDMENTS

The Terms and Conditions of the Flour Export Program—Cash Payment

(GR–346) (25 F.R. 5816) as amended (25 F.R. 9939, 25 F.R. 10758, 27 F.R. 1753, 27 F.R. 4863, 27 F.R. 10351, 29 F.R. 4667, 29 F.R. 12010, 30 F.R. 6771 and 15319) are further amended as follows:

§ 1483.201 [Amended]

1. Section 1483.201 *General statement* is amended by adding after the words "United States" in the first sentence the word ", Hawaii".

§ 1483.205 [Amended]

2. Section 1483.205 *General conditions of eligibility* paragraph (a) is amended by adding after the words "United States" in the first sentence the word "Hawaii" and by amending paragraph (c) to read as follows:

(c) A sale of flour derived in whole or in part from wheat produced outside the United States, or flour milled outside the United States, Hawaii or Puerto Rico is not eligible for registration under the program. However, in the event the Director determines that ineligible flour is exported unintentionally, payment may be made but only on that portion which it is established to his satisfaction was milled in the United States, Hawaii or Puerto Rico from wheat produced in the United States.

3. Section 1483.209 *Flour exported prior to sale* paragraph (e) is amended to read as follows:

§ 1483.209 Flour exported prior to sale.

* * * * *

(e) The export payment rate applicable to such sale shall be that rate in effect at the time and date of export for the then current rate period which applies to the coast from which the flour was exported. If the exporter is unable to establish to the satisfaction of CCC the time and date of export and two payment rates are in effect on such day, the time of export shall be deemed to occur at the time the lower of the two payment rates is in effect.

4. Section 1483.225 *Notice of Sale,* paragraph (b) (2) (iv) and (ix) is amended to read as follows:

§ 1483.225 Notice of Sale.

* * * * *

(b) *Information required.* * * *

(2) * * *

(iv) Sale price per hundredweight not including the weight of any bags or other containers, but including in the price any commission and other charges necessary to the sale.

* * * * *

(ix) Name and residence address or bona fide business address of sales agent, if any, and rate of sales commission.

* * * * *

5. Section 1483.227 *Declaration of Sale and evidence of sale* paragraph (b) (1) (x) and (2) (viii) is amended to read as follows:

§ 1483.227 Declaration of Sale and evidence of sale.

* * * * *

(b) *Information required.* (1) * * *

(x) Applicable export payment rate per hundredweight of flour.

* * * * *

(2) * * *

(viii) Name and residence address or bona fide business address of sales agent, if any, and rate of sales commission.

* * * * *

§ 1483.241 [Amended]

6. Section 1483.241 *Cancellation of sale or failure to export* is amended by deleting in the first sentence of paragraph (c) the words "Canada or".

§ 1483.246 [Amended]

7. Section 1483.246 *Documents required as evidence of export* is amended by adding the following sentence to paragraph (a) (4): "In the case of flour to which a denaturant has been added, a certification of the weight of the denaturant added to flour in excess of one-eighth of 1 percent of the combined net weight of the flour and denaturant (after deducting the weight of any enrichment and additive other than the denaturant)" and by amending (a) (5) (iii) to read as follows:

(iii) A certification by the exporter that the flour was milled in the United States, Hawaii, or Puerto Rico from wheat produced in the United States.

§ 1483.251 [Amended]

8. Section 1483.251 *Refunds on flour* paragraph (g) is amended by adding after the words "United States" in the first sentence and "U.S." in the second sentence, the word ", Hawaii", by deleting the last sentence in subparagraph (2) and by amending the third and fourth sentences of subparagraph (3) to read as follows: "The refund rate applicable to such sale shall be the refund rate in effect at the time and date of export for the then current export rate period which applies to the coast of export from which the flour was exported. If the exporter is unable to establish to the satisfaction of CCC the time and date of export and two refund rates are in effect on such day, the time of export shall be deemed to occur at the time the higher of the two refund rates is in effect."

§ 1483.260 [Amended]

9. Section 1483.260 *Submission of offers* is amended to read as follows: "Offers to purchase CCC wheat may be submitted by letter, telegram or orally to the office shown in the CCC monthly sales announcement from which the exporter desires delivery."

§ 1483.266 [Amended]

10. Section 1483.266 *Export requirements* is amended to delete paragraph (f).

§ 1483.276 [Amended]

11. Section 1483.276 *Assignments and setoffs* is amended by changing the last sentence of paragraph (a) to read "Forms may be obtained from the Contracting Officer, CCC or the Kansas City ASCS Commodity Office".

§ 1483.278 [Amended]

12. Section 1483.278 *Submission of reports* is amended by adding after the words "Substaff USDA (AG) Washington, D.C." the following TWX numbers and TELEX number:

TWX: 202 965 0437: 202 965 0780: 202 965 0782
TELEX: 089 491

Exporters may use these TWX and TELEX numbers when giving a Notice of Sale.

13. Section 1483.280 is retitled "ASCS Commodity Office" and is amended to read as follows:

§ 1483.280 ASCS Commodity Office.

Information concerning this program may be obtained from the Director, Agricultural Stabilization and Conservation Service Office, U.S. Department of Agriculture, 8930 Ward Parkway, Post Office Box 205, Kansas City, Mo., 64141.

14. Section 1483.289 *Export and exportation* is amended to read as follows:

§ 1483.289 Export and exportation.

"Export" and "exportation" mean, except as hereinafter provided, a shipment of flour destined to a designated country, (a) from the United States, (b) from Hawaii or Puerto Rico, or (c) a shipment from Canada of flour which has been moved from the United States into Canada provided the identity of the flour is preserved until shipped from Canada. The flour so shipped shall be deemed to have been exported on the date which appears on the applicable on-board-export bill of lading or if shipment to the designated country is by truck or rail, on the date and the time the shipment clears the U.S. Customs. If the flour is lost, destroyed or damaged after loading on board an export vessel, exportation shall be deemed to have been made on the date of the on-board-export bill of lading or the latest date appearing on the loading tally sheet or similar documents if the loss, destruction or damage occurs subsequent to loading aboard vessel but prior to the issuance of the on board bill of lading: *Provided,* That if the "lost" or "damaged" flour remains in the United States (including Alaska, Hawaii, or Puerto Rico) it shall be considered as reentered flour under the regulations of this subpart. If flour exported from Canada is reentered into Canada and subsequently reexported, the flour shall be considered as having been exported at the time of the reexportation and not at the time of the original exportation. Exportation by or to a U.S. Government agency shall not qualify as an exportation under the provisions of this announcement unless exportation is by or to the Army and Air Force Exchange Service, a Navy Exchange or the Panama Canal Company.

NOTE TO EXPORTER: Since the export payment on any given quantity of flour is conditioned upon the exportation thereof to a designated country, exporters may find it desirable to carry insurance on the full domestic value of flour against any loss which may occur prior to the flour leaving this country by rail or truck or prior to loading on the export vessel.

§ 1483.291 [Amended]

15. Section 1483.291 *Flour* is amended by adding after the words "United States" where it first appears in the first sentence the word ", Hawaii".

§ 1483.293 [Amended]

16. Section 1483.293 *Ocean carrier* is amended by adding after the words "United States" in the first sentence the word ", Hawaii".

(Secs. 4 and 5, Stat. 1070 and 1072, 15 U.S.C. 714 b and c)

NOTE: The record keeping and reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Effective date. This amendment shall be effective on the date of filing this amendment with the Director, Office of the Federal Register.

Signed at Washington, D.C., on May 27, 1966.

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

[F.R. Doc. 66-6044; Filed, June 1, 1966; 8:48 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter II—National Bureau of Standards, Department of Commerce

SUBCHAPTER B—STANDARD REFERENCE MATERIALS

PART 230—STANDARD REFERENCE MATERIALS

Subpart D—Standards of Certified Properties and Purity

RADIOACTIVITY STANDARDS

Under the provisions of 15 U.S.C. 275a and 277, the following amendment relating to standard reference materials issued by the National Bureau of Standards is effective upon publication in the FEDERAL REGISTER. The amendment renews and revises standard reference material 4990-A.

The following amends Title 15 CFR Part 230:

Section 230.8-5 *Radioactivity standards* (b) (9) *Contemporary standard for carbon-14 dating laboratories* is amended to renew and revise standard 4990-A as follows:

Sample No.	Kind	Price
4990-B	Carbon-14 dating standard	$6.00

(Sec. 9, 31 Stat. 1450, as amended; 15 U.S.C. 277. Interprets or applies sec. 7, 70 Stat. 959; 15 U.S.C. 275a).

Dated: May 20, 1966.

A. V. ASTIN,
Director.

[F.R. Doc. 66-5996; Filed, June 1, 1966; 8:45 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 4—Department of Agriculture

PART 4-1—GENERAL

Subpart 4-1.6—Debarred, Suspended, and Ineligible Bidders

PART 4-6—FOREIGN PURCHASES

Subpart 4-6.51—Purchase From Foreign Firms or Individuals

MISCELLANEOUS AMENDMENTS

1. New sections are inserted as follows:

§ 4-1.650 Foreign firms or individuals.

§ 4-1.650-1 Purpose.

This section prescribes policies and procedures for Department cooperation with the Economic Defense Advisory Committee (EDAC), and other measures to safeguard the interests of the Department in its contractual relationships with foreign firms and individuals. The Department of Commerce publishes quarterly a comprehensive list of foreign individuals and firms (a) who are subject to administrative action by one or more Federal agencies, or (b) with whom all persons in the United States are prohibited from doing business. The principal purpose of this publication, called the Economic Defense List (EDL), is to control exports of strategic materials. The administrative actions which form the basis for inclusion in the EDL include denial of Government contracts, export licenses, benefits under AID programs, technical information, visas, loans, etc. The EDL also includes persons or firms who are "designated nationals" under Foreign Asset Control Regulations. All persons in the United States are prohibited from doing business with designated nationals. In addition to participation in the EDAC program, this section provides for screening of information provided by the Department of Defense, the General Accounting Office, and the General Services Administration, to identify undesirable potential contractors, cooperators, or grantees.

§ 4-1.650-2 Policy.

The policy of the Department is to cooperate in the EDAC program by (a) furnishing to the Committee the names of undesirable foreign individuals and firms involved in Department programs, and (b) to exclude from Department contractual relationships, as defined in § 4-1.650-3, undesirable foreign individuals and firms included in the EDL, except where essential activities would be substantially impaired thereby. It is the policy to similarly exclude undesirable foreign persons or firms reported in accordance with § 4-1.650-4, or included in the other lists referred to in § 4-1.650-5.

§ 4-1.650-3 Definitions.

As used herein a foreign firm or individual is one located or submitting a bid from an address outside the United States, including Puerto Rico, American Samoa, the Canal Zone, and the Virgin Islands. The term also includes firms known to have their principal places of business outside those areas regardless of the point from which bids are submitted. Contractual relationships, as used herein, means all purchases, sales, leases, cooperative agreements and grants, except over-the-counter purchases of $500 or less. Approval of subcontracts refers to approval which the prime contractor is required by his contract to obtain from the contracting agency.

§ 4-1.650-4 Reports.

Agencies of the Department will report to the Department Debarring Officer names of foreign individuals or firms which are considered on the basis of substantial evidence to have been involved in:

(a) Violations of laws or regulations administered by the agency relative to production, processing, labeling, grading, transportation, purchase, sale, or distribution of an agricultural commodity, insecticide, or other products;

(b) Diversion of agricultural commodities in violation of any contract with, or law or regulation administered by the agency;

(c) Fraudulent or unethical conduct, gross negligence, action adverse to U.S. Programs; or

(d) Other improprieties in connection with conduct of foreign trade involving the program mission of the agency, where the action reported is considered sufficient to render the firm or individual unsatisfactory as a trading partner for the United States.

The report should include a full explanation of the facts and circumstances upon which it is based, including copies of documents where applicable.

§ 4-1.650-5 Action by Department Debarring Officer.

The Department Debarring Officer will:

(a) Transmit the information reported under § 4-1.650-4 to the Economic Defense Advisory Committee, through the Department liaison representative.

(b) Retain on file the information reported under § 4-1.650-4.

(c) Maintain on file a current copy of the Economic Defense List, and the lists of offshore suppliers to whom contracts will not be awarded published by the Department of Defense.

(d) Take further action as indicated in § 4-1.650-6 whenever it is proposed to enter a contractual relationship with a foreign individual or firm.

§ 4-1.650-6 Clearance of foreign firms or individuals.

(a) *Checking published lists.* Agencies will check the Department list of debarred and suspended bidders (Plant and Operations Memorandum No. 24)

to see if the firm or individual proposed for a contractual relationship is listed thereon. This includes names listed by the Comptroller General and GSA. While foreign firms or individuals rarely appear on this list, they are subject to such listing. Exceptions to administrative debarments listed thereon may be made by the Department Debarring Officer. No exceptions may be made to other types of debarments included in this list.

(b) *Clearance with the Office of Plant and Operations.* Before entering into a contractual relationship or approving a subcontract with a foreign firm not listed in Plant and Operations Memorandum No. 24, agencies shall furnish the Office of Plant and Operations information as follows:

(1) The name and address of the individual or firm involved.

(2) The names and addresses of all known firms or individuals having a controlling interest or de facto control through other means of the proposed contractor, subcontractor, lessor, cooperator, or grantee.

In obtaining clearance for a proposed prime contract, any known foreign subcontractors to be employed in the work shall be included. However, it is not necessary to delay contracts while attempting to learn the names of prospective subcontractors.

(c) *Action by Office of Plant and Operations.* The Office of Plant and Operations will check the lists referred to in § 4–1.650–5 and advise, by telegraph or cable if requested, whether or not the proposed foreign individual or firm is listed. If it is, the agency will explore possible use of other individuals or firms and other alternatives. If essential activities would be substantially impaired through failure to enter into the proposed relationship with the listed foreign individual or firm, the agency will so advise the Office of Plant and Operations, with a full statement of the facts. The Department Debarring Officer will then determine and advise whether or not the proposed transaction may be made. He shall not authorize transactions with foreign nationals without permission of the Secretary of the Treasury. He shall not authorize transactions with foreign individuals or firms subject to administrative action by Washington headquarters of other agencies without consulting such headquarters.

2. A new Subpart is inserted as follows:

Subpart 4–6.51—Purchase From Foreign Firms or Individuals

Sec.
4–6.5100 Scope.
4–6.5101 Debarred or suspended foreign individuals or firms, are those subject to administrative action by other agencies.

§ 4–6.5100 Scope.

This subpart sets forth restrictions on purchases from foreign firms and individuals.

§ 4–6.5101 Debarred or suspended foreign individuals or firms, and those subject to administrative action by other agencies.

See restrictions in § 4–1.650 concerning transactions with foreign individuals or firms.

Done at Washington, D.C., this 26th day of March 1966.

JOSEPH M. ROBERTSON,
Assistant Secretary for Administration.

[F.R. Doc. 66–6038; Filed, June 1, 1966; 8:48 a.m.]

Chapter 8—Veterans Administration

MISCELLANEOUS AMENDMENTS TO CHAPTER

The following amendments are made in Chapter 8:

PART 8–1—GENERAL

1. In Part 8–1, § 8–1.302–3 (formerly § 8–2.404–2(b), as amended) is added to read as follows:

§ 8–1.302–3 Contracts between the Government and Government employees or business concerns substantially owned or controlled by Government employees.

Excepting those contracts which pertain to the sale of manual arts and occupational therapy products, Veterans Administration Contracting Officers will, prior to entering into a contract with Government employees or business concerns substantially owned or controlled by Government employees, make the following written determinations, approved by the head of the station:

(a) The requirements of the Government cannot reasonably be otherwise supplied.

(b) There is neither a conflict of interest nor a potential conflict of interest in the performance of such contract. These determinations will be made a part of the contract file.

PART 8–2—PROCUREMENT BY FORMAL ADVERTISING

2. In Part 8–2, § 8–2.404–2 is revised to read as follows:

§ 8–2.404–2 Rejection of individual bids.

Questions involving the responsiveness of a bid which cannot be resolved by the Contracting Officer may be submitted directly to the Comptroller General, accompanied by a copy of the pertinent documents. A copy of each submission will be forwarded to the Director, Supply Management Service.

(Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c), 72 Stat. 1114, 38 U.S.C. 210(c))

These regulations are effective immediately.

Approved: May 26, 1966.

By direction of the Administrator.

[SEAL] A. H. MONK,
Associate Deputy Administrator.

[F.R. Doc. 66–6025; Filed, June 1, 1966; 8:47 a.m.]

PART 8–1—GENERAL

Miscellaneous Amendments

1. Part 8–1, § 8–1.350 is amended to read as follows:

§ 8–1.350 Government commercial or industrial activities.

(a) For the purpose of these procurement regulations, a "Government commercial or industrial activity" is defined as an activity operated and managed by a Government agency and which produces a product or service for the Government's own use that is obtainable from a private source, i.e. bakery, laundry, dry-cleaning plant, etc.

(b) A Government commercial or industrial activity will not be initiated, reactivated, expanded, modernized or replaced which involves an additional capital investment of $25,000 or more, or additional annual costs of production of $50,000 or more, without the prior approval of the Administrator or his designee. Bureau of the Budget Circular A–76, dated March 3, 1966, sets forth the criteria for making the determination as to whether commercial or Government commercial activity source will be utilized for the required product or service.

(c) Products or services which involve less than $25,000 additional capital investment or $50,000 additional annual costs of production may be procured from a Government commercial or industrial activity, provided it is not necessary to initiate, reactivate, expand, modernize or replace such activity, or from commercial sources as deemed appropriate by the Contracting Officer and the official requesting the product or service. No cost comparison need be made unless there is reason to believe that inadequate competition or other factors are causing commercial prices to be unreasonable.

(d) When the head of a field station, department head or staff officer believes that the establishment, reactivation, expansion, modernization or replacement of a Government commercial or industrial activity would be advantageous to the Government, a request supported by a full justification will be forwarded through channels to the Administrator or his designee for a determination.

(e) In no instance will contracts be entered into in order to reduce or hold down Veterans Administration employment.

2. Section 8–1.350–3 is revoked.

§ 8–1.350–3 Exemptions. [Revoked]

(Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c) 72 Stat. 1114, 38 U.S.C. 210(c))

This regulation is effective immediately.

Approved: May 25, 1966.

By direction of the Administrator.

[SEAL] A. H. MONK,
Associate Deputy Administrator.

[F.R. Doc. 66–6025; Filed, June 1, 1966; 8:47 a.m.]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release 40–201, AS–103]

PART 211—INTERPRETATIVE RELEASES RELATING TO ACCOUNTING MATTERS (ACCOUNTING SERIES RELEASES)

PART 276—INTERPRETATIVE RELEASES RELATING TO INVESTMENT ADVISERS ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Nature of Examination Required To Be Made of Funds and Securities Held in Custody of Investment Advisers and Related Accountant's Certificate

Review of accountants' certificates filed under paragraph (a)(5) of Rule 206(4)–2 (17 CFR 275.206(4)–2) under the Investment Advisers Act of 1940, which requires that at least once a year an independent public accountant shall verify by actual examination all funds and securities of clients held by an investment adviser, indicates a wide variation in the scope of the examinations made and the content of the accountants' certificates. Under the circumstances, the Securities and Exchange Commission deems it appropriate to describe the nature of the examination to be made and the content of the accountant's certificate.

Rule 204–2(b) (17 CFR 275.204–2) under the Investment Advisers Act of 1940 specifically requires that an investment adviser who has custody or possession of funds and/or securities of any client must record all transactions for such clients in a journal and in separate ledger accounts for each client and must maintain copies of confirmations of all transactions in such accounts and a position record for each security in which a client has an interest. In addition, Rule 206(4)–2(a) provides, in general, that it shall constitute a fraudulent, deceptive, or manipulative act or practice for any investment adviser who has custody or possession of funds or securities of clients to do any act or to take any action with respect to any such funds or securities unless (1) all such securities are segregated, marked for identification, and held in safekeeping in a reasonably safe place; (2) the funds are deposited in one or more bank accounts, in the name of the investment adviser as agent or trustee for clients, which contain only clients' funds and certain appropriate records with respect thereto are maintained; (3) immediately after accepting such funds and securities the investment adviser notifies the client in writing of the place and manner in which they will be maintained; (4) not less frequently than once every 3-month period each client is sent an itemized statement showing the debits, credits, and transactions in his account during the period and the funds and securities held at the end of the period; and (5) at least once each calendar year all such funds and securities are verified in an unannounced examination by an independent public accountant and a certificate of the accountant reporting on such examination is filed with the Commission.[1]

In order to make an appropriate examination the independent public accountant, at a date chosen by him and without prior notice to the investment adviser, should make a physical examination of securities and obtain confirmation as appropriate; should obtain confirmation of funds on deposit in banks; and should reconcile the physical count and confirmations to the books and records. These books and records should be verified by adequate examination of the security records and transactions since the last examination and by obtaining from clients written confirmation of the funds and securities in the clients' accounts as of the date of the physical examination. If clients' accounts have been closed or securities or funds of such clients have been returned since the last examination, these should be confirmed on a test basis. Such additional audit procedures as the accountant deems necessary under the circumstances should, of course, also be performed.

The accountant's certificate should comply with the usual technical requirements as to dating, salutation, and manual signature and should include in general terms an appropriate description of the scope of the physical examination of the securities and examination of the related books and records. In addition, the certificate should set forth:

(a) The date of the physical count and confirmation of balances of clients' accounts;

(b) A clear designation of the place and manner in which funds and securities are maintained;

(c) Whether the examination was made without prior notice to the adviser; and

(d) The results of the examination including an expression of opinion as to whether, with respect to the rules under the Investment Advisers Act of 1940 (17 CFR Part 275), the investment adviser was in compliance with paragraph (a) (1) and (2) of Rule 206(4)–2 as at the examination date and had been complying with Rule 204–2(b) during the period since the prior examination date; and whether, in connection with the examination, anything came to the accountant's attention which caused him to believe that the investment adviser had not been complying with paragraph (a) (3) and (4) of Rule 206(4)–2 during the period since the prior examination date. Any material inadequacies found to exist in the books, records, and safekeeping facilities referred to in this paragraph (d) should be identified and any corrective action taken or proposed should be indicated.

The rule requires that the accountant's certificate be filed with the Commission promptly after the completion of the examination. It is suggested that the certificate be filed in duplicate at the regional office of the Commission for the region in which the adviser has his principal place of business.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

MAY 26, 1966.

[F.R. Doc. 66–6010; Filed, June 1, 1966; 8:46 a.m.]

[1] Rule 206(4)–2(a) is not applicable, however, to any investment adviser who is also registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 if (1) such broker-dealer is subject to and in compliance with Rule 15c3–1 (17 CFR 240.15c3–1) under the Securities Exchange Act of 1934, or (2) such broker-dealer is a member of an exchange whose members are exempt from Rule 15c3–1 under the provisions of paragraph (b)(2) thereof, and such broker-dealer is in compliance with all rules and settled practices of such exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 66–457; RM–865]

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

Ultrasonic Equipment

1. At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 25th day of May 1966;

2. The Commission has before it a petition from the Westinghouse Electric Corp., RM–865, for amendment of Part 18 of the rules to provide for prototype certification of ultrasonic equipment. The present rules permit nonlicensed operation of ultrasonic equipment if the equipment meets the technical specifications in the rules and if it has either been type approved or has been certificated at the site of installation to indicate that it does, in fact, meet the technical specifications.

3. On June 16, 1965, the Commission amended Part 18 of the rules to provide for a new prototype certification procedure for industrial heating equipment and simultaneously revised FCC Form 724 to accommodate this new procedure. Petitioner requests further amendment of Part 18 to provide for similar prototype certification for ultrasonic equipment. Such an amendment would be in accord with the Commission's plan for clarifying and simplifying the procedures in Part 18.

4. The Commission has reviewed the prototype certification procedure for industrial heating equipment and has determined that ultrasonic equipment may be prototype certificated under the same procedure. Therefore, Part 18 is being amended by adding a new § 18.83 which will provide for prototype certification of ultrasonic equipment.

5. A manufacturer wishing to obtain prototype certification of ultrasonic equipment will submit to the Commission's Washington office one copy of completed Part III of FCC Form 724, Certification Regarding Measurements, together with a report of measurements determining that the prototype equipment complies with the rules. The manufacturer may then identify production units which are similar to the prototype by providing a certification seal for each unit. In order to certificate these units, the purchaser will be required to complete and file with the Commission's Washington office, and also with the appropriate field office, Part I of FCC Form 724, Certification Regarding Operation (and, when applicable, Part II, Certification by Corporation Concerning Signature of Employee), certifying that the manufacturer's installation Instructions have been followed.

6. The effect of this amendment will be beneficial to both the Commission and the public since it will obviate the necessity for measuring radiation at each site where ultrasonic equipment similar to a certificated prototype is installed. Thus, where the prototype certification procedures are used, it will no longer be necessary to file with the Commission's Washington office, and the appropriate field office, copies of the multi-page measurements report which are presently required for each unit of ultrasonics equipment which is installed and operated. This will result in a saving of processing time and filing space for the Commission.

7. Since the amendment adopted herein imposes no new requirements but provides an additional procedure for certification of ultrasonic equipment, compliance with the notice, procedural, and effective date provisions of section 4 of the Administrative Procedure Act is unnecessary.

8. In view of the foregoing, and pursuant to authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended: *It is ordered*, That effective June 3, 1966, Part 18 of the Commission's rules is amended as set forth below and the proceedings in RM-865 are terminated.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

Released: May 27, 1966.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE, *Secretary.*

Part 18 is amended by the addition of new § 18.83:

§ 18.83 Prototype certification permitted.

(a) Provision for prototype certification is made on the basis that production units can be expected to exhibit the same radiation characteristics as those of the prototype. Acceptance of prototype certification is based on representations and measurements made by the manufacturer of ultrasonic equipment.

(b) Ultrasonic equipment may be prototype certificated under the same procedure provided for industrial heating equipment in §§ 18.125 and 18.126. The technical limitations for ultrasonic equipment in § 18.72 shall apply, and the report of measurements shall include a showing of capability of compliance with the requirements of § 18.72(e).

(c) Certification of ultrasonic equipment which carries the manufacturer's prototype certification label shall be made pursuant to § 18.116 (a) and (b).

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

[F.R. Doc. 66-6049; Filed, June 1, 1966; 8:49 a.m.]

[Docket No. 14895, etc.; FCC 66-456]

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

PART 74—EXPERIMENTAL, AUXILIARY AND SPECIAL BROADCAST SERVICES

PART 91—INDUSTRIAL RADIO SERVICES

Memorandum Opinion and Order Denying Petitions for Stay

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. The Commission has before it for consideration seven petitions for stay of the effective dates of the second report and order in Docket Nos. 14895, 15233, and 15971, 31 F.R. 4540, 2 FCC 2d 725, filed by: (1) Cox Broadcasting Corp. and Cox Cablevision Corp; (2) Cosmos Broadcasting Corp. and Cosmos Cablevision Corp.; (3) Television Communications Corp.; (4) Columbus Broadcasting Co., Inc., and Chattahoochee Valley CATV, Inc.; (5) Buckeye Cablevision, Inc.; (6) Newhouse Broadcasting Corp., New-Channels Corp., Delhi Video, Inc., Cabletron, Inc., and Cablevision Co. of Anniston; and (7) The Jerrold Corp., Jerrold Electronics Corp., Ottawa TV Cable Co., Inc., Streator TV Cable Co., Inc., Logansport TV Cable Co., Inc., Pontiac TV Cable Co., Inc., Greater Lafayette TV Cable Co., Inc., Florida TV Cable Inc., Amsterdam TV Cable Co., Gloversville TV Cable Co., Inc., Johnstown TV Cable Co., Inc., Mohican TV Cable Corp., Alpine Cable Television, Inc., Alice Cable Television Corp., McAllen Cable Television Corp., and Perfect TV, Inc. Petitioners request the Commission to stay enforcement of the rules promulgated in the second report until resolution of their concurrently filed petitions for reconsideration and until final adjudication of appeals from the second report or action by Congress, whichever should occur first.[1]

2. In support of their requests for stay, petitioners assert generally, without specific factual detail, that their interests and those of their subscribers will be immediately and irreparably adversely affected unless a stay is granted because petitioners may be forced to delete certain signals from their existing CATV systems, be denied the righ to carry certain signals on proposed CATV systems, and may lose considerable funds expended in connection with present and proposed CATV investments, all of which will injure the public's reception of mutiple television signals. It is further alleged that substantial legal questions are raised by petitioners' petitions for reconsideration with respect to the Commission's assertion of jurisdiction and the manner in which the rules were implemented. In view of the highly contested nature of the Commission's jurisdictional and other actions, the pending court appeals from the second report and the likelihood of further appeals, petitioners assert that the Commission should stay the effectiveness of the rules pending a decision on the several petitions for reconsideration and/or on the several appeals already filed and to be subsequently

[1] Except for Buckeye Cablevision, Inc., petitioners make identical points in their petitions for stay and reconsideration and request the same relief. Buckeye seeks a stay of enforcement of the rules and the cease and desist proceedings in Docket No. 16551, as to Buckeye, pending final orders determining the validity of such rules, the related enforcement proceedings against it, and its petition for waiver (File No. CATV 100-5).

filed, or until final determination by the Congress of legislative proposals in this field.

A. The Carriage and Nonduplication Rules

3. Although petitioners seek a stay of the effectiveness of all the rules promulgated in the second report and order, their petitions for reconsideration do not challenge the substantive provisions of the carriage and nonduplication rules. Apart from asserting generally that jurisdiction is lacking and that evidentiary hearing or oral testimony was required, petitioners direct their contentions primarily toward § 74.1107 of the rules governing distant signals in major markets.

4. A preliminary examination of the petitions for reconsideration does not disclose any substantial likelihood that petitioners will prevail on merits of their jurisdictional argument. The petitions merely reiterate contentions which we have already considered and rejected in the Second Report (2 FCC 2d at 728–734, 793–797). Nothing new has been presented to alter our conviction that "the case for present jurisdiction is a strong one" (2 FCC 2d at 733).

5. Nor are petitioners likely to prevail on the merits of their argument that promulgation of the rules on the basis of the rule making proceeding, without conducting a full evidentiary hearing or hearing oral argument, was violative of due process. As petitioners concede, the Administrative Procedure Act does not require oral testimony or oral argument in rule making proceedings. The due process requirement of the Fifth Amendment "is not technical"; "Argument may be oral or written", so long as there is a "hearing in a substantial sense". Morgan v. United States, 298 U.S. 468, 481; Inland Empire Council v. Millis, 325 U.S. 697, 710; FCC v. WJR, 337 U.S. 265. Petitioners do not point to any evidence or argument which they have been precluded from adducing. All interested persons were accorded a full opportunity to present factual material and policy arguments in written form and to reply to the comments of others before the rules were promulgated.

6. We concluded in Part I of the Second Report that a general evidentiary hearing on the carriage and non-duplication rules would serve no useful purpose (2 FCC 2d at 744). Moreover, the top 100 markets procedure adopted in § 74.1107 does accord the persons affected a full evidentiary hearing "in the context of the particular request and the particular situation", a procedure which we considered better suited to promote the public interest than a hearing of an overall nature (2 FCC 2d at 782). And provision has been made in § 74.1109 for evidentiary hearing, where appropriate, in individual situations involving the applicability of the carriage and nonduplication rules and in other appropriate situations not coming under the mandatory hearing requirement in § 74.1107(a).[2]

7. Petitioners have also failed to show that a stay of the effectiveness of the carriage and nonduplication rules is necessary to preserve them or the public from irreparable injury. We concluded in the First and Second Reports that these provisions generally are necessary to protect the public interest and "need impose no substantial burden on the ordinary CATV operator or his subscribers." First Report and Order in Docket Nos. 14895 and 15233, 38 FCC 683, 713–715; Second Report, 2 FCC 2d at 735–737, 747–749. The ad hoc procedures in Section 74.1109 afford an adequate avenue for obtaining appropriate relief in individual situations. Indeed, the rules were not made effective as to existing off-the-air systems for an additional 60-day period to facilitate requests for waiver, our aim being 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" (Second Report, 2 FCC 2d at 768, 789). See also, Memorandum Opinion and Order in Docket No. 15971, issued on April 21, 1966, FCC 66–354.[3] We emphasized 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" (Second Report, 2 FCC 2d at 753–754).

8. In light of the foregoing, we conclude that the public interest would be served by denial of the request for stay insofar as the general effectiveness of the carriage and nonduplication rules are concerned. Petitioners have given no indication of their individual circumstances in their petitions for stay nor have they petitioned for waiver.[3a] However, if hardship circumstances exist, petitioners' proper course is to pursue their available administrative remedy.

B. Section 74.1107

9. The petitions for reconsideration are principally directed toward § 74.1107 of the rules. This section prohibits any CATV system operating within the predicted Grade A contour of a television broadcast station in the 100 largest television markets (as ranked by American Research Bureau on the basis of net weekly circulation for the most recent year) from extending the signal of a television broadcast station beyond the Grade B contour of that station except upon a showing, made in evidentiary hearing and 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. The mandatory hearing requirement does not apply to service being supplied by a CATV system to its subscribers on February 15, 1966, the date on which the Commission issued a Public Notice announcing that such a rule was being adopted (FCC Public Notice 79927). Section 74.1107 was made effective upon publication in the Federal Register on March 17, 1966, pursuant to the Commission's finding that good cause existed for immediate effectiveness (Second Report, par. 147; section 4(c) of the Administrative Procedure Act).

10. Petitioners claim that good cause has not been shown for making the rule effective on publication in the Federal Register. They further assert that the rule by its terms is retroactive, arbitrary and unlawful in its application because the February 15, 1966 "grandfathering" date is geared to our Public Notice of February 15, 1966, which was not published in the Federal Register. In addition, petitioners urge that the Notice of Inquiry and Notice of Proposed Rule Making in Docket No. 15971 (30 F.R. 6078) did not afford specific notice of the grandfather date or of the substantive provisions of § 74.1107.

11. We believe it important to point up the issues presented. The first issue is whether there should be grandfathering and if so, the nature of such grandfathering. A second, and related, issue is whether good cause existed for making the rule effective upon publication in the Federal Register. We shall discuss these issues in turn and then treat the question of appropriate notice under the Administrative Procedure Act.

12. The grandfather issue: In the Second Report we found that serious questions are presented as to "whether CATV operations in major [television] markets may be of such a nature or significance as to have an adverse economic impact on the establishment or maintenance of UHF stations or to require these stations to face substantial competition of a patently unfair nature" and as to "the relationship, if any, of proposed CATV operations on large markets and the development of pay-TV in those

[2] While the Notice of Inquiry and Notice of Proposed Rule Making (1 FCC 2d 453, 477) indicated that the Commission "may" specify oral argument or oral testimony after study of the comments, it also provided a shorter time for comments on Part I and par. 50 of the rule making and stated that "the Commission may well spin-off portions of the rule making for early decision, since other portions may require lengthy consideration." We specifically stated that we would "reach an early determination" on par. 50 (1 FCC 2d at 472). In light of the comments on Part I and par. 50, the urgent need for prompt action in the public interest, and our disposition of these aspects, we decided against oral procedures on the spun-off portions. However, further oral or written procedures may be specified on those portions of Docket No. 15971 which were not resolved in the Second Report (see pars. 51–64 of the Notice).

[3] Where a petition for waiver of the carriage provisions is filed on or before June 17, 1966, or within 15 days after any subsequent request for carriage, the system need not carry the station pending the Commission's ruling on the petition. See § 74.1109(h) of the rules.

[3a] Petitioners Buckeye and Cosmos Cablevision Corp. have filed petitions for waiver of § 74.1107, but of § 74.1103.

markets" (Second Report, 2 FCC 2d at 781, 770–781).[4] We concluded that it is essential to examine such CATV operations before they become established or well entrenched (2 FCC at 782). We pointed out that such a procedure accords with the basic policy of the Communications Act to resolve important public interest questions before consequences possibly adverse to the public interest develop (ibid.). The crucial consideration was that unless the statutory policy is followed in this instance, any adverse consequences to the public would be irreparable. For, as we stated (2 FCC 2d at 782): "Once entrenched, it is difficult, if not wholly impracticable in 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."

13. We found, therefore, that there are important public interest questions to be resolved in these major market situations. Since that is so, we could have simply made our rule applicable upon its effective date to all CATV systems, without any grandfathering; or, as urged by some of the commenting parties, we might have grandfathered only those systems which commenced operation to their subscribers before April 23, 1965 (the date of issuance of our Notice of Proposed Rule Making in Docket No. 15971). The difficulty with such approaches, in our judgment, was the very substantial disruption to the CATV viewing public which could result from requiring a cessation of distant signal service in major markets significantly after CATV service had been initiated. Some appropriate form of grandfathering was therefore in order. Here again we might have chosen a date such as January 1, 1966, on the ground that there might not be too much disruption since systems which commenced operation after that date would not ordinarily have a great number of subscribers. Instead, we determined to take an approach even more liberal to the CATV industry, and adopted the February 15th grandfather date—the date on which the Commission reached informal agreement on its general policy in this area. There was widespread interest in our discussion, both in Congress and in the industries involved, and we therefore publicly announced the overall course we had determined upon.

14. There is thus no question of retroactivity, as urged by petitioners. The rules were made effective on March 17th, and affected the operation of systems as of that date—not before. The real issue put forth by petitioners in this respect is not retroactivity but that the Commission should have grandfathered all systems as they were operating on March 17th—the effective date of the rules (and the date of publication in the FEDERAL REGISTER). But, in our judgment, there are sound reasons militating against such a course.

15. Because of the rapid pace of CATV growth, even a postponement of several weeks might have irrevocably changed the existing situation to a substantial degree. As set forth in the Second Report (2 FCC 2d at 771):

> * * * 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.

It is now estimated that in the first 3 months of 1966, the period of issuance of the February 15th Notice and the Second Report, the number of operating systems increased to 1,629 and the number of franchises not yet operating to 1,207 (Television Digest, Apr. 4, 1966, CATV addenda, p. 1). We have also been advised by American Telephone & Telegraph Co. that Bell System Associated Cos. have effective tariffs in 37 States to furnish facilities to CATV systems which may or may not require local franchise authorization. Bell has 26 systems under construction, 50 firm orders, and over 300 letters of intent.

16. It is highly likely that a great number of the proposed systems not yet in operation are located within the Grade A service contours of stations in the top 100 markets and would bring in distant signals. For, whereas existing CATV service has been largely confined to smaller markets lacking three full network services, the CATV industry has shifted its attention to the larger communities and these are the "centers of the most intense CATV development now" (Second Report, 2 FCC 2d at 772, 740–742). Since February 15th, new operations have commenced or expanded into apparently new geographic areas in the vicinity of, or within, the cities of Toledo, San Diego, Cleveland, and Buffalo.[5]

17. Of particular concern in our decision to adopt the February 15th grandfathering date, is the tendency of some business entrepreneurs to make extraordinary efforts to commence operations before an announced deferred deadline which will confer grandfather rights. If the effective date of § 74.1107 had been postponed until 30 days after publication and the grandfathering line had been drawn either at that point or at the publication date, it is likely that many of the 1,207 franchised systems not yet in operation would have made extraordinary efforts to commence service to a token number of subscribers before the deadline, in order to be in a possible position to expand throughout the entire community without undergoing the hearing which we have found required by the public interest. It is reported, for example, in the April 4, 1966, edition of Cable Television Review (p. 3) that in Toledo, petitioner Buckeye, who is challenging the validity of the February 15th grandfathering date, "raced the clock prior to the March 16 FCC report and order deadline and was delivering signals to 52 homes 8 hours before the 17th" (Opposition of Storer Broadcasting Co. to Petition for Stay, p. 3).

18. Thus, the effect of grandfathering on the basis of the publication date or 30 days thereafter would have undoubtedly been an all-out effort to beat the deadline, and therefore a significant additional number of systems in operation in the top 100 markets. We have set out in the Second Report (par. 149) the difficult practical questions that may be raised in attempting to draw a line in the community to halt the expansion of a new system. See § 74.1107(d). It would clearly not serve the public interest to foster the development of a situation where the system just commences operation and we then attempt to act as quickly as possible to halt growth. We would be promoting disruption to the public and a chaotic situation, rather than orderly consideration of the important public interest questions raised prior to the commencement of service—the thrust of our major market, distant signals policy. In short, we simply do not believe that in a situation of rapid change we are precluded from taking immediate action to stay, pending hearing, the commencement of new operations which could be seriously detrimental to the public interest and which by the act of coming into being might preclude effective remedial action by the Commission—at least without substantial disruption to the public. Sound public interest considerations therefore existed for drawing the grandfathering line at February 15. We stress again that selection of this date was less stringent action than an earlier cutoff, and was designed to minimize any disruption in existing service to the CATV segment of the viewing public, while at the same time affording necessary protection against possible irreparable injury to the public interest from a pell-mell scramble for commencement of new operations in major markets during a hiatus.

19. Complaint concerning the lack of publication in the FEDERAL REGISTER of the Public Notice of February 15, 1966, misses the point. That Notice did not constitute Commission action and did not require any action or course of conduct by CATV systems. It simply announced, inter alia, the grandfathering date that had been decided upon in the Commission deliberations and which was to be incorporated in the regulations which were still to be issued. A party who com-

[4] We need not repeat here the detailed discussion in the First and Second Reports as to the injury to the public if UHF should fail a second time or as to the inability of CATV adequately to replace the lost service. See Second Report, 2 FCC 2d at 735–36, 744–775; Notice of Inquiry and Notice of Proposed Rule Making in Docket No. 15971, 1 FCC 2d 453, 468–471; First Report, 38 FCC 683, 699–701; Carroll Broadcasting Co. v. FCC, 228 F. 2d 440 (C.A.D.C.).

[5] These operations are presently the subject of Commission inquiry pursuant to § 74.1107 or § 74.1109 of the rules, or section 312(b) of the Communications Act.

menced new distant signal operations in major markets during the period between February 15 and March 17, 1966, when § 74.1107 became effective upon publication in the FEDERAL REGISTER, was not in violation of the rule during that period or subject to any sanction. All that the rule requires is that distant signal operations commenced after February 15 be suspended on and after March 17, 1966, pending the requisite hearing on the merits. In short, whatever the grandfathering date selected—April 23, 1965, as urged by some, January 1, 1966, or February 15—there was no legal requirement for immediate announcement of the date and immediate publication in the FEDERAL REGISTER. What was legally required was publication of the rule, with its grandfathering date, in the FEDERAL REGISTER, and this of course was done.

20. As a practical matter, we point out that we did announce in the Public Notice of February 15, 1966, the consensus which had developed in our meetings, both as to carriage and nonduplication requirements and the major market, distant signals policy (including the February 15 grandfathering date). That Notice, while not published in the FEDERAL REGISTER, was usually well-publicized.[6] Significantly, none of the petitioners assert that they were unaware of the February 15 grandfathering date, and it would strain credulity if they were.[7]

21. Good cause for effectiveness upon publication: Having determined upon a grandfathering date earlier than the date of publication in the FEDERAL REGISTER, good cause existed for making the rule (§ 74.1107) effective upon publication in the FEDERAL REGISTER. We could have followed normal procedure and waited until 30 days after publication in the FEDERAL REGISTER to proceed against systems commencing distant signal operation in the top 100 markets after February 15, 1966, and continuing after the effective date. But this would not have served any useful purpose or the public interest. Since grandfathering is pegged to the February 15 date, orderly procedure and the desirability of avoiding disruption as much as possible called for prompt Commission action against any system commencing operation after that date in violation of the rules, rather than the Commission waiting passively on the side lines for the 30-day period to expire. Here again, this would be true whether the grandfathering date was February 15th or some earlier date.[8]

22. The issue of appropriate notice: Our action was not taken without adequate prior notice to potential CATV operators and local franchising authorities. The Notice of Inquiry and Notice of Proposed Rule Making in Docket No. 15971, issued on April 23, 1965, and published in the FEDERAL REGISTER (30 F.R. 6078), put all persons on legal notice that the Commission might take action of a substantially similar nature. We set forth at some length the subject and issues involved in CATV operations "in areas with potential for independent stations," pointing out that: "Such areas include not only communities with four or more commercial channel assignments but also those areas where any new station would rely very substantially upon independent programing sources because of overshadowing by three network services from nearby communities" (Notice, 1 FCC 2d 453, at 471). In order to be "in a position to take definitive action," we specifically invited comment on a proposed rule to "prohibit the extension of the signal of any television station beyond its Grade B contour into a community" located in such areas "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" (1 FCC 2d at 472). Further, we indicated that this aspect of the proceeding might be spun off for early determination (pars. 50, 67, 1 FCC 2d at 472, 477).

23. We also invited "counterproposals as to possible alternative measures" and requested comments on "the proposals of petitioners" (1 FCC 2d at 476). The proposals of the rulemaking petitioners, which were described in the notice (1 FCC 2d at 454–463), included requests that the Commission: "adopt rules which would define the areas and zones normally to be served by television stations and prohibit the use of the stations' signals to serve other areas except upon prior consent of the Commission" (1 FCC 2d at 457); "stay immediately the commencement of operations by CATV's in those areas which now or in the near future will be served by three or more commercial stations pending the adoption of final rules to this effect," for the asserted reason that "once CATV franchises are granted in the larger markets and construction is commenced pursuant to those grants, the Commission will in fact have lost effective control of television allocations in those areas" because the "practical and legal difficulties * * * in attempting to reverse this situation would be virtually insurmountable" (1 FCC 2d at 462); "stay * * * microwave grants for CATV use" pending the adoption of a rule which would "permit a signal to be carried by CATV only if the community is located within a prescribed signal contour of the station carried, or is closer than a specified distance from the station," suggested to be "the grade B contour of the station carried, or a distance of 80–90 miles" (1 FCC 2d at 463, footnote 11); and "put on notice all persons who now operate or who propose to operate CATV systems that CATV operations, whether or not microwave relay is used, will be subject to regulation, and that some CATV systems may be required to modify or cut back their operations" (1 FCC 2d at 463).

24. As a further matter, the counterproposals which were submitted in the comments (and to which all parties were given an opportunity to respond) went directly to these matters. We have summarized these comments on paragraph 50 and the proposals made therein in the Appendix B to the Second Report (see 31 F.R. 4565–66), and will not repeat them here. The proposals of the American Broadcasting Co. (ABC), Westinghouse Broadcasting Co., Association of Maximum Service Telecasters (AMST), Midwest Television, Inc., and others clearly dealt with paragraph 50 of the notice and with the rules finally adopted.[9]

25. We stressed the factor of "notice" in the notice itself, so that persons proposing to operate CATV systems and franchising authorities would take account of the pending rule making in planning their future actions. We stated (1 FCC 2d at 477): "we believe it appro-

[6] For 2 or 3 weeks just before the Notice was issued the Commission had received a flood of letters and telephone calls from members of the public and Congress on behalf of constituents, which reflected widespread knowledge in the CATV industry that the Commission was about to act in this proceeding. On Feb. 15, the day the Notice was issued, the Commission held a press conference on the Notice, which was well-attended by members of the press and other interested persons in the industries involved. The provisions of the Notice were widely reported both by the general press and by the trade press. On Feb. 15 and within the next few days the Commission distributed almost 5,000 copies of the Notice to persons who requested copies or otherwise inquired as to the status of the proceeding.

[7] The National Community Television Association's newsletter of Feb. 18, 1966, sent to all the members of the Association, which include petitioners, discussed in great detail the Commission's Public Notice, referred specifically to the Feb. 15 grandfathering date, and attached the text of the Notice.

[8] Similarly, had we decided upon a later grandfathering date such as the date of publication in the FEDERAL REGISTER, the foregoing discussion in paragraphs 13–21 would be pertinent and would constitute good cause for immediate effectiveness of the § 74.1107 upon publication.

[9] Thus, ABC urged "the adoption of a rule prohibiting any person from transporting the signal of a TV station beyond its Grade B of four or more commercial Grade A assignments and receiving Grade A or better service from three or more commercial TV stations stating that such a rule would apply basically to all but three of the nation's top 100 markets * * *." (Id. at p. 4566.) AMST proposed the 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 * * * 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 also urged 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 Apr. 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 stated that an alternative would be to apply the rule to all CATV systems operating on the date of publication of the rule which thereafter substantially expand their lines or the number of their subscribers or which increase the number of stations carried. (Ibid.)

priate, as requested by one of the petitioners, to put all persons who now operate or 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." We concluded the portion of the notice dealing with proposed Commission action on CATV in major markets and overshadowed areas by stating (1 FCC 2d 472): "Finally, we believe that franchising authorities will give due regard to the fact that the matter is thus under Commission consideration."

26. There is no unusual variance between the proposals made in the notice and the provisions of section 74.1107. The requirement for evidentiary hearing merely sets forth the procedure for making the showing proposed in the notice. The use of the 100 largest television markets, as ranked by ARB, delineates the "areas with potential for independent stations"; with a few minor exceptions these markets constitute the "areas with four or more commercial channel assignments." [10] The use of the Grade A contour, which was suggested by several parties to the proceeding (Second Report, 2 FCC 2d at 791, 792) is a reasonable means of identifying not only "overshadowed" areas but also the area where CATV operations might have the severest impact on UHF stations in major markets (Second Report, footnote 63, 2 FCC 2d at 783). The questions of "effective date" and "grandfathering" were implicit components of the course of action proposed by the notice, which expressly noted and called for comments on the petitioners' requests for an immediate stay on the commencement of new operations pending determination of the merits because the "practical and legal difficulties" in subsequently "attempting to reverse the situation would be virtually insurmountable" (1 FCC 2d at 462, 476). As a further matter, the proposals or counterproposals submitted by the parties (par. 24 above) are also pertinent, although we think reliance upon them is unnecessary. See Owensboro-on-the-air v. FCC, 262 F. 2d 702 (C.A.D.C.), cert. den. 360 U.S. 911. Accordingly, the promulgation of section 74.1107 was preceded by sufficient legal notice within the meaning of section 4(a) of the Administrative Procedure Act.

27. *Conclusion.* Unlike the ordinary request for stay which seeks to preserve the status quo pending the outcome of a determination on the merits, a grant of the stay relief sought by petitioners would permit them and untold other CATV systems to irrevocably alter the status quo. Apart from petitioner Buckeye, it is not alleged that any of the petitioners commenced new distant signal service in the top 100 markets between February 15th and March 17th, or to date. Rather, petitioners seek a stay of § 74.1107 in order to commence new service which is not now being provided to subscribers. For the very reasons which led us to select the February 15th grandfathering date and to make § 74.1107 effective upon publication, it follows a fortiori that a stay would be unwarranted and contrary to the public interest. Indeed, in view of the much longer time period involved, the potential irreparable injury to the public would be magnified many times. By completion of the judicial review process, the operating systems in the 100 top markets would be too numerous and extensive to allow meaningful protection of the public interest through § 74.1107 even if its validity is sustained, as we believe it will be.

28. Petitioners have not shown any substantial likelihood of prevailing on the merits of their petitions for reconsideration. Nor have they shown any irreparable injury to themselves which would outweigh the public injury in the grant of a stay. It is asserted that considerable sums have been invested in obtaining franchises, preoperational expenses, and construction of system plants; that pole attachment rights from local utilities are affected and may be lost, as well as funds due on outstanding contractual commitments for plant equipment, performance bonds, etc.; and that franchise rights may be lost for failure to construct within time limits. But § 74.1107 does not preclude, or require a hearing for, construction or the commencement of operations limited to local signals or any other service not involving the carriage of distant broadcast signals. Nor does the section flatly prohibit the carriage of distant signals; it provides rather that "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 full evidentiary hearing, determines that the requisite showing has been made." Since petitioners may obtain relief upon conclusion of the hearing, the mere requirement for hearing does not cause irreparable injury. Virginia Petroleum Jobbers Assn. v. Federal Power Commission, 259 F. 2d 921, 925 (C.A.D.C.).[11] There may well be, of course, some loss of potential subscriber fees in the interim. However, in the circumstances we cannot regard private injury of this nature as sufficient to overcome the crucial possibility of substantial irreparable injury to the public.

29. Moreover, if application of the hearing requirement of § 74.1107 would be unduly inequitable or inappropriate in the unusual situation, a waiver can be sought. Petitioners point out that because of the distances between stations in some hyphenated markets, a station may be considered a distant signal in its own market. Or a system may be required to carry the Grade B signals of VHF stations in a community but be precluded, without hearing, from carrying a low powered UHF station in the same community.[12] There may be instances, of course, where a hearing is not necessary to protect the public interest and where strict application of the rule would produce anomalous results.[13] We think, nevertheless, that the criteria of § 74.1107 generally reach the situations of concern (see Second Report, pars. 118–127, 144; fns. 54, 57; 2 FCC 2d at 772–777, 783). While exceptions may be made for good cause shown, this should be upon petition for waiver which will permit Commission consideration of the particular circumstances prior to the commencement of distant signal operations.

30. In sum, we think that the rules are valid and that the public interest requires

[10] ARB market rankings are widely used by the television industry and have been used by the Commission in other rule making proceedings. See, e.g., Notice of Proposed Rule Making and Memorandum Opinion and Order in Docket No. 16068, 30 F.R. 8166; Public Notice No. 60894, December 18, 1964. The Fifth Report and Memorandum Opinion and Order in Docket No. 14229, 2 FCC 2d 527, promulgating a revised table of UHF television channel assignments, summarized the assignments made in the top 100 markets, as ranked by ARB, as follows (2 FCC 2d at 551): "Thus, with minor exceptions, the top 25 markets have 6 or more unreserved assignments; the 26th to 75th markets have 5 or more unreserved assignments; the 76th to 100th markets have 4 or more unreserved assignments; and the 101st to 150th markets have 3 or more unreserved assignments." See also, Fourth Report and Order in Docket Nos. 14229 et al., 30 F.R. 7711.

[11] If the franchises impose some time limit within which distant signals must be carried, petitioners have not shown that relief cannot be obtained from the franchising authorities for a delay occasioned by factors beyond their control. As noted in par. 25 above, our April 1965 Notice expressly cautioned franchise authorities as to the possibility of Commission action in this area. The Federal regulation is, in any event, controlling.

[12] We note, however, that the community of the VHF stations may be a separate major market, thus bringing into play the considerations discussed in fn. 69 of the Second Report, 2 FCC 2d at 786. In other words, protection of the public interest may necessitate some appropriate temporary relief as to the VHF signals rather than waiver of the rule to permit carriage of the UHF signal without hearing.

[13] We note that petitioners challenge the use of the predicted Grade B contour as a measure of a distant signal. However, the use of propagation curves to measure television service contours is customary in Commission proceedings and has been judicially recognized as valid. Wilton E. Hall & Greenville Television Co. v. FCC, 237 F. 2d 567, 573–575 (C.A.D.C.). Under the rules, the predicted Grade B contour may be refuted by an adequate showing of the actual contour. The availability of signals through the use of ordinary home receiving equipment is entirely different, we believe, from the situation where signals would not be available to the public but for the use of highly sophisticated CATV equipment which may include a tall antenna structure placed on the highest elevation in the area. Frank K. Spain, d.b.a. Microwave Service Co., Tupelo, Miss., 2 FCC 2d 905, 907–908. See also Second Report, fn. 63, 2 FCC 2d at 783.

that they be continued in effect. The rules cannot be simply ignored by persons who disagree or believe that an exception should be made in their instance. The proper procedure is to obtain a court stay of the effectiveness of the rules or a waiver from the Commission. Those who commence operation in violation of the rules, as a substitute for either procedure, do so at their own risk and will be responsible for any disruption to the public caused by the cease and desist and enforcement procedures which the Commission will be forced to pursue. Such operations will have to stop prior to Commission consideration of the merits and will not be taken into account in that consideration.[14]

31. In light of the foregoing: *It is ordered*, this 25th day of May 1966, that the petitions for stay are denied.

Released: May 27, 1966.

FEDERAL COMMUNICATIONS COMMISSION,[15]

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 66-6058; Filed, June 1, 1966; 8:50 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Airspace Docket No. 65-EA-87]

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

Alteration of Control Area and Reporting Point

On March 31, 1966, a notice of proposed rule making was published in the FEDERAL REGISTER (31 F.R. 5132) stating that the Federal Aviation Agency was considering amendments to Part 71 of the Federal Aviation Regulations that would alter Control 1144 and the Cod Intersection reporting point.

Interested persons were afforded an opportunity to participate in the proposed rule making through submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., July 21, 1966, as hereinafter set forth.

1. Section 71.163 (31 F.R. 2050) is amended as follows:

Control 1144 is amended to read:

Control 1144 that airspace vicinity of Nantucket, Mass., within an area bounded by a line beginning at latitude 41°06'00" N., longitude 70°09'10" W., to latitude 41°25'35" N., longtiude 70°09'35" W., to latitude 41°26'00" N., longtiude 69°15'00" W., to latitude 41°46'00" N., longitude 68°00'00" W., to latitude 41°46'00" N., longitude 68°00'00" W., to the point of beginning, excluding the portion below 2,000 feet MSL except that airspace which lies within the confines of Federal airways.

2. In § 71.209 (31 F.R. 2287), Cod INT is amended to read:

Cod INT: INT of Nantucket, Mass., CONSOLAN 089° True bearing and the W boundary of New York Oceanic Control Area at latitude 41°16'50" N., longitude 68°00'00" W.

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

Issued in Washington, D.C., on May 25, 1966.

T. MCCORMACK,
Acting Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 66-6001; Filed, June 1, 1966; 8:45 a.m.]

[Airspace Docket No. 66-CE-36]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Area

The purpose of this amendment to § 73.43 of the Federal Aviation Regulations is to reduce the designated altitudes of the Lake Superior, Minn., Restricted Area R-4305 from "Surface to flight level 500" to "Surface to flight level 450."

Records for 1964 and 1965 indicate that R-4305 was utilized only from the surface to flight level 450. Therefore, the requirement for a flight level of 500 does not exist and this amendment lowers the ceiling of this restricted area to flight level 450. The Department of the Air Force concurs in this action.

Since this amendment will restore airspace to the public use, notice and public procedure are unnecessary and this amendment may be made effective without regard to the 30-day period preceding effectiveness.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective upon publication in the FEDERAL REGISTER, as hereinafter set forth.

In § 73.43 (31 F.R. 2319), R-4305 Lake Superior, Minn., "Designated altitudes: Surface to flight level 500." is deleted and "Designated altitudes: Surface to flight level 450." is substituted therefor.

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

Issued in Washington, D.C., on May 25, 1966.

WILLIAM E. MORGAN,
Acting Director, Air Traffic Service.

[F.R. Doc. 66-6002; Filed, June 1, 1966; 8:45 a.m.]

[Airspace Docket No. 66-WE-14]

PART 75—ESTABLISHMENT OF JET ROUTES

Alteration and Revocation of Jet Routes

On March 29, 1966, a notice of proposed rule making was published in the FEDERAL REGISTER (31 F.R. 5078) stating that the Federal Aviation Agency (FAA) proposed to revoke in its entirety Jet Route No. 140 which extends from Salt Lake City, Utah, to Denver, Colo., and to realign Jet Routes No. 30 and 56 from Provo, Utah, and Salt Lake City, respectively, to Denver.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., July 21, 1966, as hereinafter set forth.

Section 75.100 (31 F.R. 2346) is amended as follows:

1. In Jet Route No. 56 "Kremmling, Colo." is deleted and "Meeker, Colo." is substituted therefor.

2. In Jet Route No. 30 "Myton, Utah; Kremmling, Colo." is deleted and "Meeker, Colo." is substituted therefor.

3. Jet Route No. 140 is revoked.

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

Issued in Washington, D.C., on May 25, 1966.

T. MCCORMACK,
Acting Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 66-6005; Filed, June 1, 1966; 8:45 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 203—BRIDGE REGULATIONS

Bayou Lafourche, La.

Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499), § 203.245 is hereby amended with respect to paragraph (j) by amending subparagraph (3), deleting the State of Louisiana, Department of Highways bridges across Bayou Lafourche at Thibodaux and Labadieville and revising subparagraph (4) to permit the highway bridge at Thibodaux and all bridges above, to

[14] For these reasons, and those set forth in our Order of April 27, 1966, in Docket No. 16551, Buckeye's petition for stay of the effectiveness of the rules pending final orders determining their validity and its petition for waiver (File No. CATV 100-5) will be denied. See also FCC 66-449 and FCC 66-455, adopted this day.

[15] Dissenting statement of Commissioner Bartley filed as part of original document.

remain in a closed position, effective 30 days after publication in the FEDERAL REGISTER, as follows:

§ 203.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(j) *Waterways discharging into Gulf of Mexico west of Mississippi River.*

* * * * *

(3) Bayou Lafourche, La.; Texas and New Orleans Railroad Co. bridge at Lafourche. At least 48 hours' advance notice required.

(4) Bayou Lafourche, La.; The State of Louisiana, Department of Highways bridge at Thibodaux and all bridges above. The draws need not be opened for the passage of vessels, and the special regulations contained in paragraphs (b) to (e), inclusive, of this section shall not apply to these bridges.

* * * * *

[Regs., May 6, 1966, ENGCW-ON] (Sec. 5, 28 Stat. 362; 33 U.S.C. 499)

LAWRENCE H. WALKER, JR.,
Brigadier General, U.S. Army,
Acting The Adjutant General.

[F.R. Doc. 66-5999; Filed, June 1, 1966; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 1013]

[Docket No. AO–286–A8]

MILK IN SOUTHEASTERN FLORIDA MARKETING AREA

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

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Southeastern Florida marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, by the third day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Fort Lauderdale, Fla., on March 3–4, 1966, pursuant to notice thereof which was issued February 10, 1966 (31 F.R. 2730).

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

1. Expansion of the marketing area.
2. Class prices.
3. Butterfat differentials.
4. Location differentials.
5. Classification.
6. Enabling a cooperative to be the handler on bulk tank milk.
7. Diversion of producer milk.
8. Miscellaneous and conforming changes.

This decision is concerned only with a portion (Class I price) of Issue 2. The remainder of that issue and all other issues at the hearing will be considered in a further decision.

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

2. *Class prices*—(a) *Class I price.* The Class I price through June 1967 should be computed by adding $3.20 to a basic formula price. The Minnesota-Wisconsin manufacturing milk price series, which is the basic formula for determining the Class I price for Tampa Bay and 65 other Federal milk orders, should be the basic formula for the Southeastern Florida order.

The method of adding a differential to a basic formula price in determining the Class I price gives appropriate consideration to the economic factors underlying changes in the general level of prices for milk and manufactured dairy products. Basically, prices for milk used for fluid purposes have a direct relationship to the prices paid for milk used for manufacturing purposes.

A differential over manufacturing milk prices is necessary to cover the extra costs of meeting quality requirements in the production of market milk and transportation costs to the fluid market and to furnish the necessary incentive for dairy farmers to produce and deliver adequate supplies for the needs of the market.

Producers proposed that the Class I price be computed by adding a specific differential to the Minnesota-Wisconsin manufacturing milk price series. This series is based on prices paid at a large number of manufacturing plants in the two states. Plant operators report the total pounds of manufacturing grade milk received from farmers, the total butterfat content and the total dollars paid to dairy farmers for such milk f.o.b. plants. These prices are reported on a current month basis and the announced Minnesota-Wisconsin price is available by the fifth day of the following month. The various Federal order markets in which the Minnesota-Wisconsin price series is used as a basic formula price include markets that serve as sources of supplemental milk for Southeastern Florida handlers.

The Class I price is now obtained by adding or subtracting a monthly supply-demand adjustment to $6.625. The price thus obtained may not, however, exceed by more than $4.00 the Midwest condensery price or be less than that price plus $2.75. For the 4 years through December 1965, the Southeastern Florida Class I price averaged $6.37. For 1962, it was $6.38; $6.39 in 1963; $6.33 in 1964; and $6.39 in 1965.

Producers proposed that the Class I price be the Minnesota-Wisconsin price for the preceding month plus an average differential of $3.30. Such differential would be $3.15 March through July and $3.40 August through February. As proposed by producers, the supply-demand provisions of the order would be discontinued. Producers claim that their proposed Class I price, which is 30 cents above Tampa Bay, is necessary to maintain an appropriate alinement with the Tampa Bay Class I price. In further support of an increased Class I price, producers state that their cost prices f.o.b. the Southeastern Florida market for supplemental milk supplies in the past year were higher than the order Class I prices.

Handlers opposed any change in the Class I pricing provisions that would increase the level of the Class I price. They contend that the supplies of milk for the market are generally ample and that there has been no perceptible decline in production relative to the market's Class I requirements. Handlers also pointed out that relatively negligible quantities of milk were imported from outside sources on an annual basis to meet the market's Class I needs. In response to producers' claim that the importation of supplies indicated that production for the market was not adequate, handlers argue that the increased production on an annual basis locally to replace the imports would be uneconomical for producers. They stated further that producers are aware of this and consider it to be in their best interest to maintain the current rate of production relative to the market's requirements. Handlers had no objection to using the Minnesota-Wisconsin milk price series as the basic formula price, providing the Class I price would be no higher than the Minnesota-Wisconsin price for the preceding month plus $3.00 modified by the present supply-demand provisions of the order.

The present method of determining the Southeastern Florida Class I price is inappropriate under current marketing conditions. Maintaining a stated amount ($6.625) as a basic Class I price fails to give consideration to the basic economic factors affecting milk prices. Class I prices in nearby Tampa Bay and in other Federal orders (including those that serve as alternative sources of supply for Southeastern Florida handlers) are based on the market prices of manufacturing grade milk. As the prices for manufacturing milk increase, as they have in recent months, the increase is reflected in the Class I prices in practically all Federal orders except Southeastern Florida.

On an annual basis, the Minnesota-Wisconsin series as a basic formula was relatively stable from 1962, when it averaged $3.12, to 1965 when it was $3.26. Since the fall of 1965, however, when production nationally declined precipitously, the Minnesota-Wisconsin price, as did other manufacturing milk prices, rose sharply. For December 1965 and January and February 1966, the Minnesota-Wisconsin prices of $3.47, $3.47, and $3.58 averaged 25 cents above the $3.29, $3.25, and $3.22 prices for the corresponding months a year earlier. These prices, as all other Minnesota-Wisconsin prices referred to herein, are on a 3.5-percent butterfat basis.

Since the Class I price for the current month is announced by the fifth day of the month, the basic formula price should be the Minnesota-Wisconsin price for the preceding month. For the 4-year period ending November 1965, the Minnesota-Wisconsin price averaged $3.16. As a basic formula for the 4 years, it would have averaged $3.12 in 1962, $3.10 in 1963, $3.17 in 1964, and $3.26 in 1965. The Southeastern Florida Class I price averaged $6.37 for the same 4-year period. If the Minnesota-Wisconsin price plus $3.20 as herein proposed were the effective Class I price in 1962 through 1965, it would have obtained an average price of $6.36, approximately the same as the average order price for the 4-year period.

The $3.20 Class I differential herein proposed is 20 cents above the comparable differential in the Tampa Bay order. However, the Tampa Bay order provides that its Class I price may not be higher than the Southeastern Florida Class I price for the same month. Because of the recent sharp increase in the Minnesota-Wisconsin price series (on which the Tampa Bay Class I price is based) the Tampa Bay Class I price, since its inception, has been the same as the Southeastern Florida Class I price. Southeastern Florida producers claim that it is inappropriate to maintain the prices in these two orders at the same level. Tampa Bay, they state, is closer to the alternative sources of supply, from which supplemental milk must be obtained, and argue that this justifies Southeastern Florida Class I price 30 cents higher than that for Tampa Bay.

The Southeastern Florida Class I price must give appropriate recognition to the competition of Southeastern Florida and Tampa Bay handlers, both in the procurement of supplies and in Class I sales. A majority of the milk under both the Southeastern Florida and Tampa Bay orders is produced in an area that is about equally accessible to both markets. Hence, a Southeastern Florida Class I price that is too low in relation to the Tampa Bay Class I price would place Southeastern Florida handlers at a disadvantage in keeping producers in this area where the milksheds for the two markets overlap. Likewise, a wide difference between the Southeastern Florida and Tampa Bay Class I prices would give an unwarranted advantage to handlers in the "under-priced" market.

The Tampa Bay marketing area's being closer to alternative sources of supply does not per se justify a substantially higher Southeastern Florida Class I price. On the other hand, a disparate difference between the Class I price in these markets over an extended period of time could result in chaotic marketing conditions in the area. The 30-cent spread between the Tampa Bay and Southeastern Florida Class I price requested by producers would tend to contribute to this end.

In urging that the present supply-demand provisions be eliminated from the order, producers emphasized that a supply-demand formula should be based on the producer deliveries and Class I sales for a larger region than the Southeastern Florida market, such as the aggregate receipts and sales for Southeastern Florida and Tampa Bay. The Tampa Bay order has been fully effective only since January of this year. Hence, adequate data are not yet available on which to base a supply-demand formula that would be applicable to that order. Consideration was given to this fact when establishing the Class I pricing provisions in the Tampa Bay order. It was concluded at that time that a supply-demand formula should not be incorporated into the order before at least 1 year's data on supply and sales had been accumulated. For that reason, the Tampa Bay Class I price was made effective for only the first 18 months of the order, through June 1967. It is appropriate, therefore, that the proposed Southeastern Florida Class I price not be made applicable beyond that month. This will make it possible to consider comprehensively the Class I pricing structure of the two orders at a public hearing to provide for Class I pricing after June 1967. At that time, sufficient data will be available to give adequate consideration to a single supply-demand formula for the two orders.

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

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

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

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

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

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

1. In § 1013.50, paragraphs (b) and (c) are revoked and paragraph (a) is revised to read as follows:

§ 1013.50 Class prices.

* * * * *

(a) *Class I price.* From the effective date of this paragraph through June 1967, the Class I price shall be the basic formula price for the preceding month plus $3.20.

(b) [Revoked].

(c) [Revoked].

* * * * *

2. Add a new § 1013.50–a to read as follows:

§ 1013.50–a Basic formula price.

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

Signed at Washington, D.C., on May 27, 1966.

CLARENCE H. GIRARD,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 66-6046; Filed, June 1, 1966; 8:49 a.m.]

[7 CFR Part 1062 etc.]

MILK IN CERTAIN MARKETING AREAS

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Part	Marketing area	Docket Nos.
1062	St. Louis	AO 10-A35.
1031	Northwestern Indiana	AO 170-A20.
1032	Suburban St. Louis	AO 313-A11.
1038	Rock River Valley	AO 194-A13.
1039	Milwaukee	AO 212-A19.
1044	Michigan Upper Peninsula	AO 299-A10.
1045	Northeastern Wisconsin	AO 334-A9.
1051	Madison	AO 329-A5.
1061	St. Joseph, Mo	AO 327-A8 RO 2.
1063	Quad Cities-Dubuque	AO 105-A23.
1064	Greater Kansas City	AO 23-A28 RO 2.
1067	Ozarks	AO 222-A20.
1070	Cedar Rapids-Iowa City	AO 229-A14.
1071	Neosho Valley	AO 227-A18.
1073	Wichita	AO 173-A17 RO 1.
1074	Southwest Kansas	AO 249-A7 RO 1.
1078	North Central Iowa	AO 272-A9.
1079	Des Moines	AO 295-A10.
1094	New Orleans	AO 103-A23.
1096	Northern Louisiana	AO 257-A12.
1097	Memphis	AO 219-A18.
1099	Paducah	AO 183-A16.
1102	Fort Smith	AO 237-A14.
1103	Mississippi	AO 346-A2.
1104	Red River Valley	AO 298-A8.
1106	Oklahoma Metropolitan	AO 210-A20.
1108	Central Arkansas	AO 243-A15.
1120	Lubbock-Plainview	AO 328-A5.
1126	North Texas	AO 231-A26.
1127	San Antonio	AO 232-A15.
1128	Central West Texas	AO 238-A17.
1129	Austin-Waco	AO 256-A11.
1130	Corpus Christi	AO 259-A14.
1132	Texas Panhandle	AO 262-A12.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held at the Gateway Hotel (Statler), 822 Washington Boulevard, St. Louis 1, Mo., beginning at 9:30 a.m., c.d.t., on June 7, 1966, with respect to proposed amendments to the tentative marketing agreements and to the orders, regulating the handling of milk in the St. Louis, Northwestern Indiana, Suburban St. Louis, Rock River Valley, Milwaukee, Michigan Upper Peninsula, Northeastern Wisconsin, Madison, St. Joseph, Mo., Quad Cities-Dubuque, Greater Kansas City, Ozarks, Cedar Rapids-Iowa City, Neosho Valley, Wichita, Southwest Kansas, North Central Iowa, Des Moines, New Orleans, Northern Louisiana, Memphis, Paducah, Mississippi, Red River Valley, Oklahoma Metropolitan, Central Arkansas, Lubbock-Plainview, North Texas, San Antonio, Central West Texas, Austin-Waco, Corpus Christi, Texas Panhandle and Fort Smith marketing areas to reflect appropriate Class I prices in light of economic and marketing conditions anticipated for the next few months. With respect to the orders regulating the handling of milk in the Wichita, Southwest Kansas, Greater Kansas City and St. Joseph, Mo., marketing areas, this hearing represents a reopening for the limited purposes stated herein of public hearings previously held under docket Nos. AO 173-A17, AO 249-A7, AO 23-A28, and AO 327-A8, respectively.

The public hearing is for the purpose of receiving evidence with respect to the economic and emergency marketing conditions which relate to the appropriate levels of Class I prices to be established for the months of July through December 1966 under each of the aforesaid orders. At the hearing, evidence also will be received on the question of whether the due and timely execution of the functions of the Secretary imperatively and unavoidably requires the omission of a recommended decision in connection with any emergency amendatory action that may be required with respect to any of the aforesaid orders.

This notice is issued on representation by producers that emergency action is necessary to avert present or potential milk shortages.

The aforesaid proposals have not received the approval of the Secretary of Agriculture.

Signed at Washington, D.C., on May 27, 1966.

CLARENCE H. GIRARD,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 66-6062; Filed, June 1, 1966; 8:50 a.m.]

[7 CFR Part 1133]

[Docket No. AO 275-A13]

MILK IN INLAND EMPIRE MARKETING AREA

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

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Inland Empire marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, by the 3d day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Spokane, Wash., on May 17, 1966, pursuant to notice thereof which was issued May 9, 1966 (31 F.R. 6986).

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

1. Diversion of producer milk; and
2. Need for emergency action.

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

1. *Diversion of producer milk.* The present diversion provisions should be revised to increase the amount of milk which may be diverted from 25 percent to 35 percent of the total producer milk delivered to pool plants, including eligible diversions, during each of the months of April, May, June and July.

The provisions of the present order which permit two or more cooperative associations to have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has filed in writing with the market administrator a request for such computation, should be continued.

Previous to August 1, 1965, the order permitted unlimited diversions during the months of December through June. Official notice is taken of suspension orders issued by the Assistant Secretary on July 8, 1964, and by the Under Secretary on June 17, 1965, which permitted unlimited diversions of producer milk for the months of July 1964 and July 1965, respectively.

Presently, producer milk may be diverted in an amount limited to 15 percent of the total producer milk delivered to pool plants, including eligible diversions, in each of the months of September, October, and November and 25 percent in all other months of the year.

Receipts of producer milk in the Inland Empire marketing area have increased 543,000 pounds per month or approximately 3.7 percent during the first 4 months of 1966 in comparison to producer receipts during this same period 1 year ago. Class I use of producer milk decreased 293,500 pounds per month or about 2.7 percent during the first 4 months of 1966 in comparison to Class I use of like receipts 1 year ago.

The association stated that it had conducted a survey of its producers to obtain an estimate of its member producer's production during the coming months. On the basis of this survey of expected production and the trend in Class I use, the cooperative believes that an increase in the diversion percentage from 25 percent to 35 percent is necessary for the needs of the association.

The proponent cooperative association estimated that its producer receipts during the month of May 1966 would be 300,000 pounds greater than its producer receipts in April of this year. It further estimated that its producer receipts in June 1966 would be about 6,500,000 pounds, an increase of almost 600,000 pounds over its receipts for the month of April. This would be 800,000 pounds or 14 percent greater than its receipts in June of 1965.

Pool plants in the Inland Empire marketing area have limited manufacturing facilities for utilizing producer milk in Class III uses. Producer milk which is in excess of handlers' fluid milk needs and the capacity of manufacturing facilities of the pool plants must be disposed of to nonpool plants for manufacturing. During the period of January 1964 through April 1966, about 40 percent of the producer milk classified as Class III was manufactured in pool plants. The remaining 60 percent of the producer milk receiving a Class III classification was moved to nonpool plants having manufacturing facilities.

The amount of milk moved to nonpool plants during the period of January 1964 through April 1966 averaged 1,500,000 pounds per month. These movements varied from a low of 390,000 pounds in March 1965 to a high of 3,750,000 pounds in June of 1964.

The milk which is in excess of the needs of the pool plants may be moved to nonpool plants either by diversion or by transfer. The movement of producer milk to nonpool plants by means of interplant transfers is much more costly and inefficient than the movement of such milk by diversions. In most instances the interplant transfers require that milk be transported from the farm to pool plants located in Spokane and then moved to nonpool plants located outside the marketing area. Frequently the farms are located closer to the manufacturing plant. Thus diversion not only saves the cost of receiving and reloading the milk at a pool plant but it usually results in greatly reduced hauling costs.

The cooperative association which requested the increase in the percentage of milk which may be diverted handles most of the reserve supplies of milk for the market. In April 1966, this association diverted 2,222,396 pounds of milk which amounted to 92 percent of the producer milk moved to nonpool plants for Class III use.

The proponent cooperative association diverted 14, 25, 39, and 22 percent of its total member milk for the months of April, May, June, and July 1965, respectively. The combined diversions of the proponent cooperative association and the other association supplying the market for the months of April, May, June, and July 1965 amounted to 10, 21, 32, and 16 percent, respectively, of their total member milk. The combined diversions of the two cooperative associations for April 1966 amounted to 22 percent of their combined deliveries, which is more than twice the percentage diverted 1 year ago.

It is evident from the percentage of milk which was diverted during the past year and from the large increase in diversions for the month of April 1966 over those of 1 year ago that the present diversions permitted by the order will be inadequate for the months of June and July of this year. If present trends continue, the present provisions will be inadequate in future years to accommodate the market situation during the entire period of flush production. Therefore, the diversion percentages should be increased to 35 percent during each of the months of April, May, June, and July.

The need for diverting excess milk received at a pool plant which receives its entire milk supply from nonmember producers is similar to that of the cooperative associations. Thus the percentage of diversions which are permitted a cooperative association are equally applicable in the case of a pool plant. Accordingly, proprietary handlers should be permitted to divert up to 35 percent of the milk received at and diverted from such pool plant during each of the months of April, May, June, and July from producers who are not members of a cooperative association which is diverting milk of its member producers during such month.

The other cooperative association supplying the market offered no testimony at the hearing, but filed a brief supporting the requested increase in the percentage of milk which might be diverted. No testimony was received at the hearing in opposition to increasing the percentage of producer milk which may be diverted.

2. *Need for emergency action.* The proponent cooperative association stated that amendatory action was definitely needed to increase the amount of allowable diversions permitted during the months of June and July 1966. Testimony given on behalf of the association indicated that the present diversion limitation of 25 percent for the month of May 1966 would not be adequate. The representative of the association stated, however, that the cooperative would be able to remain within the diversion limit for May of this year by moving milk from producers which would be in excess of the diversion limits by use of interplant transfers.

Although proponents claimed that an emergency marketing condition existed, such condition is not sufficiently grave to warrant the omission of a recommended decision. Relief for the months of June and July will not be delayed by issuance of a recommended decision in this matter.

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

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

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

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

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

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

Revise § 1133.12(c) (1) and (2) to read as follows:

§ 1133.12 Producer milk.

* * * * *

(c) * * *

(1) A cooperative association may divert for its account, pursuant to paragraph (b) (1) of this section, the milk of any member producer eligible for diversion. The total quantity of milk so diverted, however, may not exceed 15 percent in the months of September, October, and November, 25 percent in the months of December, January, February, March, and August, and 35 percent in the months of April, May, June, and July, of its total member milk received at all pool plants and diverted therefrom during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has filed in writing with the market administrator a request for such computation;

(2) A handler operating a pool plant may divert for his account, pursuant to paragraph (a) (2) of this section, milk of any producer eligible for diversion, other than a member of a cooperative association which diverts milk pursuant to subparagraph (1) of this paragraph. The total quantity of milk so diverted,

however, may not exceed 15 percent in the months of September, October, and November, 25 percent in the months of December, January, February, March, and August, and 35 percent in the months of April, May, June, and July, of the milk received at and diverted from such pool plant during the month from producers who are not members of a cooperative association which diverts milk pursuant to subparagraph (1) of this paragraph;

* * * * *

Signed at Washington, D.C., on May 27, 1966.

CLARENCE H. GIRARD,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 66-6045; Filed, June 1, 1966; 8:49 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

[15 CFR Part 9]

SEAT BELTS FOR USE IN MOTOR VEHICLES

Proposed Standards

Notice is hereby given that the changes set forth below are proposed in the standards for seat belts for use in motor vehicles published in the FEDERAL REGISTER on July 1, 1965, in conformance with Public Law 88-201, approved December 13, 1963 (77 Stat. 361).

These proposed changes pertain to the hardware only. The requirements for attachment hardware will be upgraded through increased strength requirements for fasteners and through certain changes in their corrosion resistance. Additional requirements for buckles are added to reduce the probability of false latching and to provide adequately for unlatching. The buckles are required to function properly after the corrosion-resistance test. Changes are made to reduce the likelihood of retractors being used improperly, and requirements for nonlocking retractors are added.

These proposed changes were developed after consultation with the Society of Automotive Engineers and were discussed finally during a March 25, 1966, meeting with the Hardware Subcommittee of the SAE Motor Vehicle Seat Belt Committee.

The proposed changes were agreed to unanimously by the members of the Ad Hoc Government Committee on Seat Belts on April 13, 1966.

Prior to the final adoption and publication of the amendments proposed herein, consideration will be given to any comments and suggestions pertaining thereto which are submitted in writing, in duplicate, to the Director, National Bureau of Standards, U.S. Department of Commerce, Washington, D.C., 20234, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER.

Dated: May 17, 1966.

A. V. ASTIN,
Director,
National Bureau of Standards.

1. Amend § 9.3 (c), (e), (f), (l), and (m) to read:

§ 9.3 General requirements.

* * * * *

(c) *Upper torso restraint.* A Type 2 or 3 seat belt assembly shall provide upper torso restraint without shifting the pelvic restraint into the abdominal region. An upper torso restraint shall be designed to minimize vertical forces on the shoulders and spine. Hardware for upper torso restraint shall be so designed and located in the seat belt assembly that the possibility of injury to the occupant is minimized. An automatic locking retractor shall not be included in an upper torso restraint. A Type 2-a shoulder belt shall comply with applicable requirements for a Type 2 seat belt assembly in §§ 9.3 to 9.6, inclusive.

* * * * *

(e) *Release.* A Type 1 or Type 2 seat belt assembly shall be provided with a buckle or buckles readily accessible to the occupant to permit his easy and rapid removal from the assembly. A Type 3 seat belt assembly shall be provided with a quickly recognizable and easily operated release arrangement, readily accessible to an adult. Buckle release mechanism shall be designed to minimize the possibility of accidental release. A buckle with release mechanism in the latched position shall have only one opening in which the tongue can be inserted on the end of the buckle designed to receive and latch the tongue.

(f) *Attachment hardware.* A seat belt assembly shall include all hardware necessary for installation in a motor vehicle in accordance with SAE Recommended Practice, Motor Vehicle Seat Belt Installations—SAE J800b, published by the Society of Automotive Engineers, 485 Lexington Avenue, New York, N.Y., 10017, except that seat belt assemblies designed for installation in motor vehicles equipped with seat belt anchorages shall not require underfloor hardware, but shall have 7/16-20 UNF-2A, 1/2-13 UNC-2A, or nonthreaded fasteners as required by the particular vehicle. The hardware shall be designed to prevent attaching bolts and other parts becoming disengaged from the vehicle in service. Reinforcing plates or washers furnished for universal floor installations shall be of steel, free from burrs and sharp edges on the peripheral edges adjacent to the vehicle, not less than 0.06 inch or 1.5 millimeter in thickness nor less than 4 square inches or 25 square centimeters in projected area. The distance between any edge of the plate and the edge of the bolt hole shall be at least 0.6 inch or 15 millimeters and any corner shall be rounded to a radius of not less than 0.25 inch or 6 millimeters, or cut at a 45-degree angle along a hypotenuse not less than 0.25 inch or 6 millimeters in length.

* * * * *

(l) *Installation instructions.* A seat belt assembly or retractor shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle except for a seat belt assembly installed in a motor vehicle by an automobile manufacturer. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles, and shall include at least those items in SAE Recommended Practice, Motor Vehicle Seat Belt Installations—SAE J800b, published by the Society of Automotive Engineers.

(m) *Usage and maintenance instructions.* A seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components. The instructions shall show the proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened. Instructions for a nonlocking retractor shall include a caution that the webbing must be fully extended from the retractor during use of the seat belt assembly unless the retractor is attached to the free end of webbing which is not subjected to any tension during restraint of an occupant by the assembly. Instructions for Type 2a shoulder belt shall include a warning that the shoulder belt is not to be used without a lap belt.

2. Amend § 9.5 (a), (b), (c), (d), (h), and (j) to read:

§ 9.5 Requirements for hardware.

(a) *Corrision resistance.* Attachment hardware of a seat belt assembly after being subjected to the conditions specified in § 9.8(a) shall be free of ferrous corrosion on significant surfaces except for permissible ferrous corrosion at peripheral edges or edges of holes on underfloor reinforcing plates and washers, or such hardware at or near the floor shall be protected against corrosion by at least a Type KS electrodeposited coating of nickel or copper and nickel and other attachment hardware shall be protected by a Type QS electrodeposited coating of nickel or copper and nickel, in accordance with Tentative Specifications for Electrodeposited Coatings of Nickel and Chromium on Steel, ASTM Designation: A166-61T, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pa., 19103, but such hardware shall not be racked for electroplating in locations subjected to maximum stresses. Surfaces of buckles, retractors and metallic parts, other than attachment hardware, of a seat belt assembly after subjection to the conditions specified in § 9.8(a) shall be free of ferrous or nonferrous corrosion which may be transferred, either directly or by means of the webbing, to the occupant or his clothing when the assembly is worn. After test, buckles shall conform to applicable requirements in paragraphs (d) to (g) of this section.

(b) *Temperature resistance.* Plastic or other nonmetallic hardware parts of a seat belt assembly when subjected to the conditions specified in § 9.8(b) shall not warp or otherwise deteriorate to cause the assembly to operate improperly or

fail to comply with applicable requirements in this section and § 9.6.

(c) *Attachment hardware.* Eye bolts, shoulder bolts, or other bolts used to secure the pelvic restraint of a seat belt assembly to a motor vehicle shall withstand a force of 10,000 pounds or 4,540 kilograms when tested by the procedure specified in § 9.8(c)(1), except that attachment bolts of a seat belt assembly designed for installation in specific models of motor vehicles in which the ends of two or more seat belt assemblies can not be attached to the vehicle by a single bolt shall have a breaking strength of not less than 5,000 pounds or 2,270 kilograms. Other attachment hardware designed to receive the ends of two seat belt assemblies shall withstand a tensile force of at least 6,000 pounds or 2,720 kilograms without fracture of any section when tested by the procedure specified in § 9.8(c)(2). A seat belt assembly having single attachment hooks of the quick-disconnect type for connecting webbing to an eye bolt shall be provided with a retaining latch or keeper which shall not move more than 0.08 inch or 2 millimeters in either the vertical or horizontal direction when tested by the procedure specified in § 9.8(c)(3).

(d) *Buckle release force.* The buckle of a Type 1 or Type 2 seat belt assembly shall release when a force of not more than 30 pounds or 14 kilograms is applied, and the buckle of a Type 3 seat belt assembly shall release when a force of not more than 20 pounds or 9 kilograms is applied as prescribed in § 9.8 (d). A buckle designed for pushbutton application of buckle release force shall have a minimum area of 0.7 square inch or 4.5 square centimeters with a minimum linear dimension of 0.4 inch or 10 millimeters for applying the release force, or a buckle designed for lever application of buckle release force shall permit the insertion of a cylinder 0.4 inch or 10 millimeters in diameter and 1.5 inches or 38 millimeters in length to at least the midpoint of the cylinder along the cylinder's entire length in the actuation portion of the buckle release.

* * * * *

(h) *Nonlocking retractor.* The webbing of a seat belt assembly shall extend from a non-locking retractor within 0.25 inch or 6 mm of maximum length when a tension is applied as prescribed in § 9.8(h). A nonlocking retractor on upper-torso restraint shall be attached to the nonadjustable end of the assembly, the reel of the retractor shall be visible to an occupant of the assembly, and the maximum retraction force shall be less than 50 percent of the adjustment force measured by the procedure specified in § 9.8(e), unless the retractor is attached to the free end of webbing which is not subjected to any tension during restraint of an occupant by the assembly.

* * * * *

(j) *Emergency-locking retractor.* An emergency-locking retractor used on a Type 1 or Type 2 seat belt assembly shall lock before the webbing extends 1 inch or 2.5 centimeters when the retractor is subjected to an acceleration of 0.5 gravity or 5 meters per second per second, and shall exert a retraction force of not less than 1.5 pounds or 0.7 kilogram when attached to a pelvic restraint or shall exert a retraction force of not less than 0.45 pounds or 0.2 kilogram nor more than 2.0 pounds or 0.9 kilogram when attached to an upper torso restraint under zero acceleration when tested by procedures specified in § 9.8(j).

* * * * *

3. Amend § 9.8 (a), (c), (h), and (k) to read:

§ 9.8 Test procedures for hardware.

(a) *Corrosion resistance.* Three seat belt assemblies shall be tested by Standard Method of Salt Spray (Fog) Testing, ASTM Designation: B 117–64, published by the American Society for Testing and Materials. The period of test shall be 50 hours for all attachment hardware at or near the floor, consisting of two periods of 24 hours exposure to salt spray followed by 1 hour drying and 25 hours for all other hardware, consisting of one period of 24 hours exposure to salt spray followed by 1 hour drying. In the salt spray test chamber, the parts from the three assemblies shall be oriented differently, selecting those orientations most likely to develop corrosion on the larger areas. At the end of test, the seat belt assembly shall be washed with water to remove the salt. After drying for at least 24 hours under standard laboratory conditions specified in § 9.7(a) attachment hardware shall be examined for ferrous corrosion on significant surfaces, that is all surfaces that can be contacted by a sphere 0.75 inch or 2 centimeters in diameter, and other hardware shall be examined for ferrous and nonferrous corrosion which may be transferred, either directly or by means of the webbing, to a person or his clothing during use of a seat belt assembly incorporating the hardware.

NOTE: This test shall not be required on hardware made from corrosion-resistant steel containing at least 11.5 percent chromium, nor on attachment hardware protected with an electrodeposited coating of nickel or copper and nickel as prescribed in § 9.5(a).

* * * * *

(c) *Attachment hardware.* (1) Attachment bolts used to secure the pelvic restraint of a seat belt assembly to a motor vehicle shall be tested in the following manner: To one head of a testing machine described in § 9.7(b), two or more belt sections shall be attached. At the free end of each belt section, attachment hardware from the seat belt assembly (i.e., sister hooks, etc.) shall be attached. The attachment hardware shall be fastened by the bolt in a fixture on the other head of the testing machine as shown in Figure 3, which has a standard $\frac{7}{16}$–20 UNF–2B or ½–13 UNC–2B threaded hole in a hardened steel plate at least 0.4 inch or 1 centimeter in thickness; the axis of this threaded hole forms a 45 degree angle with the line of pull of the belt sections. The bolt shall be installed with 2 full threads exposed from the fully seated position with the attachment hardware from the two belt sections attached. The appropriate force required by § 9.5(c)(1) shall be applied. A bolt from each of three seat belt assemblies shall be tested.

(2) Attachment hardware, other than bolts, designed to receive the ends of two seat belt assemblies shall be subjected to a tensile force of 6,000 pounds or 2,720 kilograms in a manner simulating use. The hardware shall be examined for fracture after the force is released.

(3) Single attachment hook for connecting webbing to any eye bolt shall be tested in the following manner: The hook shall be held rigidly so that the retainer latch or keeper, with cotter pin or other locking device in place, is in a horizontal position as shown in Figure 4. A force of 150±2 pounds or 68±1 kilograms shall be applied vertically as near as possible to the free end of the retainer latch, and the movement of the latch by this force at the point of application shall be measured. The vertical force shall be released, and a force of 150±2 pounds or 68±1 kilograms shall be applied horizontally as near as possible to the free end of the retainer latch. The movement of the latch by this force at the point of load application shall be measured. Alternatively, the hook may be held in other positions provided the forces are applied and the movements of the latch are measured at the points indicated in Figure 4.

* * * * *

(h) *Nonlocking retractor.* After the retractor is cycled 10 times by full extension and retraction of the webbing, the retractor and webbing shall be suspended vertically and a force of 4 pounds or 1.8 kilograms shall be applied to extend the webbing from the retractor. The force shall be reduced to 3 pounds or 1.4 kilograms when attached to a pelvic restraint or to 2 pounds or 0.9 kilogram when attached to an upper-torso restraint. The residual extension of the webbing shall be measured by manual rotation of the retractor drum or by disengaging the retraction mechanism. Measurements shall be made on three retractors.

NOTE: This test shall not be required on a nonlocking retractor attached to the free-end of webbing which is not subjected to any tension during restraint of an occupant by the assembly.

* * * * *

(k) *Performance of retractor.* After completion of the corrosion-resistance test described in paragraph (a) of this section, the webbing shall be fully extended and allowed to dry for at least 24 hours under standard laboratory conditions specified in § 9.7(a). The retractor shall be examined for ferrous and nonferrous corrosion which may be transferred, either directly or by means of the webbing, to a person or his clothing during use of a seat belt assembly incorporating the retractor, and for ferrous corrosion on significant surfaces if the retractor is part of the attachment hardware. The webbing shall be withdrawn manually and allowed to retract for 25 cycles. The retractor shall be mounted in an apparatus capable of ex-

tending the webbing fully, applying a force of 20 pounds or 9 kilograms at full extension, and allowing the webbing to retract freely and completely. The webbing shall be withdrawn from the retractor and allowed to retract repeatedly in this apparatus until 2,500 cycles are completed. The retractor and webbing shall then be subjected to the temperature resistance test prescribed in paragraph (b) of this section. The retractor shall be subjected to 2,500 additional cycles of webbing withdrawal and retraction. Then, the retractor and webbing shall be subjected to dust in a chamber similar to one illustrated in Figure 8 containing about 2 pounds or 0.9 kilogram of coarse grade dust conforming to the specification given in SAE Recommended Practice, Air Cleaner Test Code–SAE J 726a, published by the Society of Automotive Engineers. The dust shall be agitated every 20 minutes for 5 seconds by compressed air, free of oil and moisture, at a gage pressure of 80±8 pounds per square inch or 5.6±0.6 kilograms per square centimeter entering through an orifice 0.060±0.004 inch or 1.5±0.1 millimeters in diameter. The webbing shall be extended to the top of the chamber and kept extended at all times except that the webbing shall be subjected to 10 cycles of complete retraction and extension within 1 to 2 minutes after each agitation of the dust. At the end of 5 hours, the assembly shall be removed from the chamber. The webbing shall be fully withdrawn from the retractor manually and allowed to retract completely for 25 cycles. An automatic-locking retractor or a nonlocking retractor attached to pelvic restraint shall be subjected to 5,000 additional cycles of webbing withdrawal and retraction. An emergency-locking retractor or a nonlocking retractor attached to upper torso restraint shall be subjected to 45,000 additional cycles of webbing withdrawal and retraction between 50 and 100 percent extension. The locking mechanism of an emergency locking retractor shall be actuated at least 10,000 times within 50 to 100 percent extension of webbing during the 50,000 cycles. At the end of test, compliance of the retractors with applicable requirements in § 9.5 (h), (i), and (j) shall be determined. Three retractors shall be tested for performance.

4. Amend § 9.9(a)(2) and (5), (b)(4), and (c)(3) and add new (a)(7), (b)(6), and (c)(4) to read:

§ 9.9 Test procedures for assembly performance.

(a) *Type 1 seat belt assembly.* * * *

(2) The attachment hardware furnished with the seat belt assembly shall be attached to the anchorage bar. The anchor points shall be spaced so that the webbing is parallel in the two sides of the loop. The attaching bolts shall be parallel to, or at an angle of 45 or 90 degrees to the webbing, whichever results in an angle nearest to 90 degrees between webbing and attachment hardware except that eye bolts shall be vertical, and attaching bolts or nonthreaded anchorages of a seat belt assembly designed for use in specific models of motor vehicles shall be installed to produce the maximum angle in use indicated by the installation instructions, utilizing special fixtures if necessary to simulate installation in the motor vehicle. Rigid adapters between anchorage bar and attachment hardware shall be used if necessary to locate and orient the adjustment hardware. The adapters shall have a flat support face perpendicular to the threaded hole for the attaching bolt and adequate in area to provide full support for the base of the attachment hardware connected to the webbing. If necessary, a washer shall be used under a swivel plate or other attachment hardware that would crush or damage the webbing as the attaching bolt is tightened.

* * * * *

(5) After the buckle is released, the webbing shall be examined for cutting by the hardware. If the yarns are partially or completely severed in a line for a distance of 10 percent or more of the webbing width, the cut webbing shall be tested for breaking strength as specified in § 9.7(b) locating the cut in the free length between grips. If there is insufficient webbing on either side of the cut to make such a test for breaking strength, another seat belt assembly shall be used with the webbing repositioned in the hardware. A tensile force of 2500±25 pounds or 1135±10 kilograms shall be applied to the components or a force of 5000±50 pounds or 2270±20 kilograms shall be applied to an assembly loop. After the force is removed, the breaking strength of the cut webbing shall be determined as prescribed above.

* * * * *

(1) If a seat belt assembly has a buckle in which the tongue is capable of inverted insertion, one of the three assemblies shall be tested with the tongue inverted.

(b) *Type 2 seat belt assembly.* * * *

(4) After the buckle is released in tests of pelvic and upper torso restraints, the webbing shall be examined for cutting by the hardware. If the yarns are partially or completely severed in a line for a distance of 10 percent or more of the webbing width, the cut webbing shall be tested for breaking strength as specified in § 9.7(b) locating the cut in the free length between grips. If there is insufficient webbing on either side of the cut to make such a test for breaking strength, another seat belt assembly shall be used with the webbing repositioned in the hardware. The force applied shall be 2500±25 pounds or 1135±10 kilograms for components of pelvic restraint, and 1500±15 pounds or 680±5 kilograms for components of upper torso restraint. After the force is removed, the breaking strength of the cut webbing shall be determined as prescribed above.

* * * * *

(6) If a seat belt assembly has a buckle in which the tongue is capable of inverted insertion, one of the three assemblies shall be tested with the tongue inverted.

(c) *Type 3 seat belt assembly.* * * *

(3) After the buckle is released, the webbing shall be examined for cutting by the hardware. If the yarns are partially or completely severed in a line for a distance of 10 percent or more of the webbing width, the cut webbing shall be tested for breaking strength as specified in § 9.7(b) locating the cut in the free length between grips. If there is insufficient webbing on either side of the cut to make such a test for breaking strength, another seat belt assembly shall be used with the webbing repositioned in the hardware. A tensile force shall be applied to the components as follows: Webbing in pelvic or upper torso restraint—700 pounds or 320 kilograms; webbing in seat back retainer or webbing connecting pelvic and upper torso restraint to attachment hardware—1,500 pounds or 680 kilograms. After the force is removed, the breaking strength of the cut webbing shall be determined as prescribed above.

(4) If a seat belt assembly has a buckle in which the tongue is capable of inverted insertion, one of the three assemblies shall be tested with the tongue inverted.

5. Amend § 9.11 to read as follows:

§ 9.11 Effective date.

The standards prescribed herein shall become mandatory after December 31, 1966, and until this date shall be optional alternatives to the standards published in the FEDERAL REGISTER on July 1, 1965.

6. Amend Figure 3 as follows:

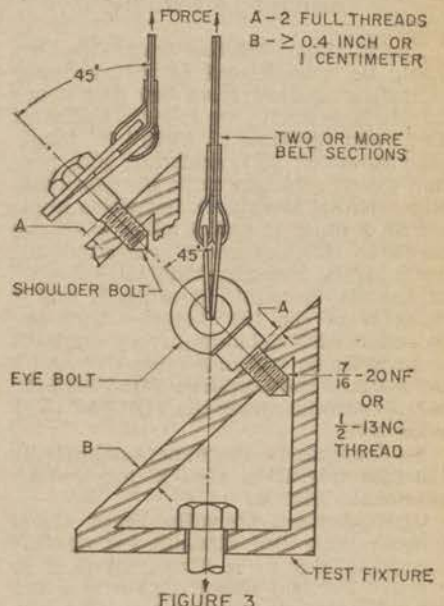


FIGURE 3

[F.R. Doc. 66-5997; Filed, June 1, 1966; 8:45 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 71]

[Airspace Docket No. 66-SO-38]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Agency is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Meridian (Key Field), Miss., control zone and transition area.

The Meridian (Key Field) control zone is described in § 71.171 (31 F.R. 2065).

The control zone would be redesignated as within a 5-mile radius of Key Field (latitude 32°19'58" N., longitude 88°45'05" W.); within 2 miles each side of the Meridian ILS localizer S course extending from the 5-mile radius zone to the Meridian RBN; within 2 miles each side of the Meridian VORTAC 155° radial extending from the 5-mile radius zone to 13.5 miles SE of the VORTAC; within 2 miles each side of the Meridian VORTAC 310° radial extending from the 5-mile radius zone to 6 miles NW of the airport.

Alterations to the dimensions of the control zone extensions are required by applicable criteria.

The proposed amendment would provide additional controlled airspace along the northwest extension, required for the protection of aircraft departing Key Field during climb to 700 feet above the ground.

The proposal will permit a reduction in the size of controlled airspace along the southeast extension. This airspace is for the protection of aircraft executing instrument approach procedures during descent below 1,000 feet above the surface.

The Meridian (Key Field) transition area is described in § 71.181 (31 F.R. 2149).

The Meridian 700-foot transition area would be redesignated as that airspace extending upward from 700 feet above the surface within an 11-mile radius of Key Field (latitude 32°19'58" N., longitude 88°45'05" W.), excluding that portion which coincides with the Meridian, Miss. (NAAS Meridian) transition area; within 8 miles E and 5 miles W of the Meridian ILS localizer S course extending from the Meridian RBN to 13 miles S of the RBN; within 8 miles E and 5 miles W of the 191° bearing from the Meridian RBN extending from the RBN to 13 miles S; within 8 miles SW and 5 miles NE of the Meridian VORTAC 315° radial extending from the VORTAC to 13 miles NW.

An increase in the dimensions of the 700-foot transition area is required by applicable criteria.

The proposed transition area would provide controlled airspace for aircraft departing Key Field during climb from 700 to 1,200 feet above the surface, and for aircraft executing instrument approach procedures during descent from 1,500 to 1,000 feet above the surface.

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, Attn: 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.

These amendments are proposed under section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)).

Issued in East Point, Ga., on May 24, 1966.

WILLIAM M. FLENER,
Acting Director, Southern Region.

[F.R. Doc. 66-6003; Filed, June 1, 1966; 8:45 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 65-AL-21]

CONTROL ZONE, CONTROL AREA EXTENSION, AND TRANSITION AREA

Proposed Alteration, Revocation, and Designation

The Federal Aviation Agency is considering amendments to Part 71 of the Federal Aviation Regulations which would alter controlled airspace in the vicinity of Yakataga, Alaska.

As parts of these proposals relate to the navigable airspace outside the United States, this notice is submitted in consonance with the ICAO International Standards and Recommended Practices.

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 International Civil Aviation (ICAO), which pertains to the establishment of air navigation facilities and services necessary to promoting the 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 operated 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.

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, Alaskan Region, Attention: Chief, Air Traffic Division, Federal Aviation Agency, 632 Sixth Avenue, Anchorage, Alaska, 99501. 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.

To implement the provisions of CAR Amendments 60-21/60-29 in the Yakataga Airport terminal area, the Federal Aviation Agency has under consideration the following amendments to part 71:

a. The Yakataga control zone would be altered to comprise that airspace within a five (5) mile radius of the Yakataga Airport (latitude 60°05' N., longitude 142°30' W.); and within 2 miles each side of the southwest course of the Yakataga R.R., extending from the 5-mile radius zone to the intersection of the southwest course of the Yakataga R.R. and the east course of the Hinchinbrook, Alaska, R.R. This control zone would be effective from 0545 to 2145 hours, local time, daily.

b. The Yakataga, Alaska, control area extension would be revoked.

c. The Yakataga, Alaska, transition area would be designated as that airspace extending upward from 1,200 feet above the surface within five (5) miles northwest and eight (8) miles southeast of the Yakataga R.R., southwest course,

extending from seven (7) miles northeast to thirteen (13) miles southwest of the intersection of the southwest course of the Yakataga R.R. and the east course of the Hinchinbrook, Alaska, R.R.; and within five (5) miles each side of the Yakataga R.R. southeast course, extending from the R.R. to the intersection of the southeast course of the Yakataga R.R. and the west course of the Yakutat, Alaska, R.R.

The actions proposed herein would provide protection for aircraft executing prescribed instrument approach, missed approach, holding, and departure procedures for the Yakataga Airport. Upon designation of the Yakataga transition area, the need for the Yakataga control area extension would no longer exist.

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, 1510) and Executive Order 10854 (24 F.R. 9565).

Issued in Washington, D.C., on May 25, 1966.

T. McCORMACK,
Acting Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 66-6004; Filed, June 1, 1966; 8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 1, 21, 23, 73, 74, 81, 87, 89, 91, 93, 95, 97]

[Docket No. 16591]

CERTAIN TRANSMITTING FACILITIES

Order Extending Time for Filing Comments

In the matter of amendment of Parts 1, 21, 23, 73, 74, 81, 87, 89, 91, 93, 95, and 97 of the Commission's rules to require prior coordination with the U.S. Department of Agriculture and the Department of the Interior when desiring to install or modify transmitting facilities on certain lands under the jurisdiction of those Departments; Docket No. 16591.

1. On April 15, 1966, the Commission issued a notice of proposed rule making (FCC-336) in the above proceeding. Interested parties were authorized to file comments with respect thereto by June 1, 1966, and reply comments by June 15, 1966.

2. On May 20, 1966, Southern California Mobile Radio Association petitioned the Commission to extend the time for filing comments and reply comments from June 1 and June 15, 1966, respectively, to August 1 and August 15, 1966, respectively. Petitioner contends that the Commission's proposal would have far-reaching effect upon members of the petitioning association as well as the licensed systems served by such members, particularly in certain counties in Southern California. It is claimed that the time provided in the Commission's proposal for the filing of comments is not sufficient to obtain the views and coordinate the comments of the association's members.

3. In view of the above, it is believed that some extension of time is warranted. However, it is noted that the Commission's notice of proposed rule making provided 45 days for the filing of comments, and that there is a need for the disposition of this matter at the earliest date possible. Therefore, the public interest would not be served by a grant of the full 2 months extension of time requested.

4. *Accordingly, it is ordered,* This 26th day of May 1966, that, pursuant to authority contained in section 0.251(b) of the Commission's rules, the time for filing of comments and reply comments in the above proceeding is extended from June 1 and June 15, 1966, respectively, to July 1 and July 15, 1966, respectively.

Released: May 26, 1966.

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

[F.R. Doc. 66-6056; Filed, June 1, 1966; 8:50 a.m.]

[47 CFR Part 73]

[Docket No. 16661; FCC 66-460]

TELEVISION BROADCAST STATIONS, SILVER CITY, N. MEX.

Table of Assignments

1. During the negotiations with the Government of Mexico in mid-1962, regarding television broadcast assignments in the United States-Mexico border area it was found that additional assignments of VHF channels could be made on both sides of the border. In an effort to secure an equitable division of these remaining VHF channels and to preserve them for possible future use, both countries chose certain communities primarily for record purposes in which to list assignments although there was no current demand for such channels and no firm basis for assuming a future demand. Most of these additional channels were not restricted to the community selected for record purposes and could be sited over a fairly large area and still comply with the minimum geographic separations specified in the Commission Rules.

2. One such assignment, Channel 6, was made at Silver City-Truth or Consequences, N. Mex., announcement of which was included in a Report and Order adopted in August 1962. The hyphenated entry was used since Channel 6 could not be used in either Silver City or Truth or Consequences because of existing cochannel assignments at Tucson, Ariz., and Carlsbad, N. Mex., but could be located between the two cities. The standard reference points in the two cities were established for the computation of distances and served to protect the assignment against encroachment by possible future transmitter locations in Mexico. However, the inclusion of these reference points in our Table of Assignments places restrictions on the effective use of other cochannel assignments in the Table.

3. On the basis of present assignments, Channel 6 could be assigned anywhere in a narrow area stretching from the Mexican border north of Palomas, Chihuahua to Socorro, N. Mex., and then curving northwestward to the vicinity of Winslow, Ariz. While we may anticipate that a need for the channel may arise in the future somewhere in this area, it would be impossible to select with any certainty any single community in this area as the likely location of a future TV station. Furthermore, the selection of a community would establish a record reference point for the computation of distance and could jeopardize the future availability of the channel at other places and continue to impede the effective use of other assignments already in the Table. Omission of the assignment from the Table of Assignments would provide a basis for protecting it over the entire area in which it may now be used and at the same time avoid conflicts with justifiable locations or relocations of other stations on the same or adjacent channels.

4. One such conflict is before us now. The Board of Regents of the Universities and State Colleges of Arizona, licensee of KUAT, Channel 6, Tucson, Ariz., wishes to modify its present facilities by relocating its transmitter and increasing power. The site chosen is on Mount Bigelow from which location KUAT will be able to triple the population it serves and advance its plans to provide educational television broadcast service to all the people of the State. The chosen site would not comply with the minimum geographic separations. The Board filed a petition for reconsideration of the Fifth Report and Order in Docket No. 14229 in which the hyphenated listing of Silver City-Truth or Consequences was changed to Silver City. However, restoring the hypenated listing or changing it to list only Truth or Consequences would not solve their problem since the contemplated new site for KUAT would be short spaced to the main Post Office locations in both cities. The Association of Maximum Service Telecasters has opposed the KUAT application because of the shortage, unless at the same time Channel 6 is deleted from Silver City and it is made clear that any use of Channel 6 in that general area will meet all mileage separations.

5. Under the circumstances, there appears to be no valid reason for retaining the Channel 6 listing at either Silver City or Truth or Consequences, N. Mex., for use of a maximum facility assignment. Omission of the assignment will not preclude future restoration of Channel 6 to the Table at a time when and place where a need arises within the area in which Channel 6 may be assigned in full compliance with the minimum geographic separations required by the rules. In the meantime there appears to be a need for such service as can be provided in this sparsely settled area. Our recent rule change which

would permit 100 watt translators on unused VHF channels was designed as an interim step to provide service in just such areas.[1] Therefore while we propose to discontinue the availability of Channel 6 for maximum facilities at Silver City we shall leave it in the table for the present with a footnote indicating that it is available for 100 watt translator use only.

6. Channel 10 is also assigned to Silver City but reserved for education. It does not appear, however, that there will be an interest in operating an educational station in this area for some time. On the other hand it is quite likely that there will be economic support for a second 100 watt translator operation in the area. Therefore, we are also proposing in this Notice to remove the reservation from Channel 10. At the present time there are a total of 17 assignments reserved for educational use in the State of New Mexico. Of these, 6 are in the VHF and 11 are in the UHF portion of the TV spectrum. In the event the proposed elimination of the educational reservation on Channel 10 at Silver City is adopted, there would remain a total of 16 educational reservations in the State. Moreover, since Silver City is in an area where UHF assignments are possible, such an educational reservation could be made in the future if the need arises.

7. Accordingly, under the authority contained in sections 4(i), 303 and 307(b) of the Communications Act of 1934, as amended, it is proposed to amend § 73.606(b) of the Commission rules by revising the Table of Assignments in Silver City to read as follows:

City	*Channels*
Silver City, N. Mex	6 [1], 10+
* * *	* * *

[1] Available for 100 watt translator use only.

8. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules and regulations interested parties may file comments on or before July 5, 1966, and reply comments on or before July 15, 1966. All submissions by parties to this proceeding, or by persons acting on behalf of such parties, must be made in written comments, reply comments, or other appropriate pleadings.

9. In accordance with the provisions of § 1.419 of the Commission's rules and regulations, an original and 14 copies of all written comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

Adopted: May 25, 1966.

Released: May 27, 1966.

FEDERAL COMMUNICATIONS COMMISSION,[2]

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 66-6057; Filed, June 1, 1966; 8:50 a.m.]

[1] On Mar. 18, 1966, an application was received for a 100 watt translator on Channel 6 at Silver City by WGAL Television, Inc., proposing to rebroadcast its Albuquerque station KOAT-TV.

[2] Commissioner Lee dissenting.

[47 CFR Part 73]

[Docket No. 16662; FCC 66-479]

CERTAIN FM BROADCAST STATIONS

Table of Assignments

In the matter of amendment of § 73.202, *Table of Assignments*, FM Broadcast Stations (Leitchfield, Ky., Rolla and Columbia, Mo., Bakersfield, Calif., Sandusky, Mich., Enterprise and Troy, Ala., Ladysmith, Wis., and Ironwood, Mich., Sturgeon Bay, Wis., Morris, Minn., Jerseyville, Ill., Augusta, Ga., Brewton and Andalusia, Ala., Wickenburg, Ariz., Potsdam, N.Y., and New Albany, Ohio; Docket No. 16662, RM-957, RM-940, RM-941, RM-878, RM-944, RM-948, RM-949, RM-956, RM-958, RM-959.

1. Notice is hereby given of proposed rule making in the above-entitled matter, concerning amendments of the FM Table of Assignments contained in § 73.202(b) of the Commission's rules. All proposed assignments are alleged and appear to meet the spacing requirements of the rules. All those proposed assignments which are within 250 miles of the United States-Canada border require coordination with the Canadian Government under the terms of the Canadian-United States FM Agreement of 1947 and the Working Arrangement of 1963. Except as noted, all channels proposed to be deleted are unoccupied and unapplied for, and all population figures are from the 1960 U.S. Census.

2. *RM-957. Leitchfield, Ky.* This request filed on May 3, 1966, by Rough River Broadcasting Co., Inc., licensee of WMTL(AM), Leitchfield, Ky., is for a first Class A assignment (Channel 285A) to Leitchfield, without any other changes in the Table. Leitchfield has a population of 2,982 and its county (Grayson) has a population of 15,831. Its only radio station (WMTL) is a daytime-only operation. Grayson County, of which Leitchfield is the county seat and largest community, is largely rural in nature but does have various industries.

3. We are of the view that comments should be invited on petitioner's proposal as follows:

City	Channel No.	
	Present	Proposed
Leitchfield, Ky		285A

4. *RM-940. Rolla, Mo.* On March 24, 1966, The Show-Me Broadcasting Co., licensee of Station KTTR(AM), Rolla, Mo., petitioned for rule making to assign Channel 287 to Rolla by making a needed change in Columbia, Mo., as follows:

City	Channel No.	
	Present	Proposed
Rolla, Mo.	232A	232A, 287 [1]
Columbia, Mo.	244A, 288A	244A, 252A

[1] In Docket No. 16535 it was proposed to assign either Channel 288A or 292A to Bolivar, Mo. Since Bolivar is only 95 miles from Rolla, where the adjacent channel to 288A is proposed, the subject proposal is in conflict with the first alternative Bolivar proposed.

Rolla has a population of 11,132 and the county in which it is located (Phelps) has a population of 25,396. It is the county seat and largest community in the county. The sole FM assignment, Channel 232A is authorized to Station KCLU-FM. Rolla also has one Class IV AM station (licensed to petitioner) and one day-time-only station. Petitioner submits that Rolla has a need for a Class C assignment since it is the center of a rural area and is distant from any substantial centers of population. Aside from Columbia (75 miles away), the nearest population centers are Jefferson City (50 miles), St. Louis (95 miles), and Springfield (100 miles). Petitioner also urges that the assignment of Channel 287 to Rolla would provide service to an area of 2,268 square miles that now receives no primary FM service, as well as a large area at night which does not have nighttime AM service, and that it would aid the general area by providing information concerning emergencies, weather conditions, and agricultural news during the early morning and late nighttime periods.

5. Our policy has been to place Class B or C channels in the larger cities and metropolitan areas and Class A channels in the smaller communities. However, we have made exceptions to this general policy in those cases where the small community is in a large rural area and far removed from population centers. Rolla may be the type of community which warrants a departure from the general policy in this regard and so we invite comments on the petitioner's proposal set out above. We also invite comments on whether the proposed additional assignment would not preclude future needed assignments in other communities and whether we should mix a Class A and C assignment in the same city.

6. *RM-941. Bakersfield, Calif.* In a petition filed on March 28, 1966, Thunderbird Broadcasting Co., licensee of radio Station KUZZ(AM), Bakersfield, Calif., requests the addition of Channel 300 to Bakersfield without any other changes in the Table. Bakersfield, the county seat of Kern County, has a population of 56,848 and Kern County has a population of 291,984. There are three Class B assignments in that city, all of which are in operation, and eight AM stations, two of which are daytime-only operations. Petitioner submits figures to show the great population, industrial, and agricultural gains which have been made over the past years. It urges that Bakersfield needs and can support a fourth FM station. Finally, it points out that the recent action of the Commission in moving Channel 300 from Lancaster to San Clemente, Calif., in Docket No. 16212 (FCC 66-190), makes the proposed assignment technically feasible.

7. KGEE, Inc., licensee of Stations KGEE and KGEE-FM, Bakersfield, Calif., opposes the petition of Thunderbird on the grounds that the market is already overcrowded with radio broadcast and TV stations, that the proposal to add Channel 300 to Bakersfield would thus waste a channel, and that the peti-

tioner has not shown that the geography of the area precludes reception of outside signals. KGEE submits data purporting to show that the AM–FM stations in the market have shown losses since 1955. In a reply to this opposition Thunderbird submits that the financial data based on FCC annual reports may be adequate for a general comparison of markets, but unless one checks the accounting details for individual stations, the overall summaries are not conclusive. Thunderbird also urges that any points in the opposition which are relevant can be considered by the Commission after comments are received in response to a notice of proposed rule making.

8. We have carefully considered petitioner's proposal and the opposition of KGEE and are of the view that the petitioner's proposal merits rule making in order that all interested parties may submit their views and relevant data. Comments are therefore invited on the following proposal:

City	Channel No.	
	Present	Proposed
Bakersfield, Calif.	231, 243, 268	231, 243, 268, 300

9. *RM–878. Sandusky, Mich.* In a petition filed on November 4, 1965, and amended on January 6, and February 1, 1966, Sanilac Broadcasting Co., applicant for a new AM broadcast station in Sandusky, Mich., requests the assignment of Channel 221A to Sandusky by shifting this channel from Bad Axe, Mich. Petitioner further states that in the event the Commission believes that the assignment at Bad Axe should be replaced, it proposes that Channel 269A could be moved to Bad Axe from Tawas City and that this could be replaced by the assignment of Channel 221A. The proposals are summarized as follows:

City (all in Michigan)	Channel No.	
	Present	Proposed
Alternative 1:		
Bad Axe	221A	
Sandusky		221A
Alternative 2:		
Bad Axe	221A	269A
Sandusky		221A
Tawas City	269A	
Alternative 3:		
Bad Axe	221A	269A
Sandusky		221A
Tawas City	269A	221A

10. Sandusky, Mich., is a community of 2,066 persons and the county in which it is located has a population of 32,314 persons. Petitioner states that Sanilac County, located centrally in the so-called "Thumb area" of Michigan, is devoted almost entirely to agricultural activities, that there is no radio station in it, and that the proposed station is needed to provide local service, market and weather reports, and emergency communications. Finally, petitioner submits that the proposal will conform to all the separation requirements of the rules and the Working Arrangement of 1963 concerning FM assignments along the Canadian-United States border, provided a site for the proposed station at Sandusky on Channel 221A is located about 5 miles west of the community.

11. Thumb Broadcasting Co., licensee of Station WLEW(AM), Bad Axe, Mich., opposes the Sanilac proposals. Thumb Broadcasting states that it is preparing an application for Channel 221A at Bad Axe and that any proposal which would delete this assignment without replacement should be denied since Bad Axe (population 2,998) is a larger community than Sandusky. It points out that the substitute assignment of Channel 269A to Bad Axe would not conform to the United States-Canadian FM Agreement in that it would greatly reduce the spacing to Channel 269 at Wingham, Ontario, from its present separation to Tawas City.

12. We are of the view that the first alternative proposal of Sanilac should not be adopted since it would remove an assignment from a larger community. The second and third alternatives also cannot be adopted in view of the spacing problem with a Canadian assignment which the Sandusky replacement would involve. However, we believe that the assignment of a first FM channel to Sandusky would serve the public interest if it is possible without violating any rules or depriving another community of such an assignment. It appears that Channels 249A or 276A may be assigned to Sandusky in conformance with the spacing rules. As to Channel 276A, the Canadian authorities, in preliminary negotiations, have indicated a willingness to accept this assignment. In view of the above, we deny the proposals made by Sanilac Broadcasting Co. in its petition RM–878 but instead invite comments on the following:

City	Channel No.	
	Present	Proposed
Sandusky, Mich.		249A or 276A

13. *RM–944. Enterprise and Troy, Ala.* On April 6, 1966, Wiregrass Broadcasting Co., licensee of radio Station WIRB(AM), Enterprise, Ala., filed a petition requesting the addition of Channel 245 to Enterprise by deleting it from Troy, Ala., as follows:

City	Channel No.	
	Present	Proposed
Enterprise, Ala.	228A	228A, 245
Troy, Ala.	245, 289	289

Enterprise has a population of 11,410 and the county in which it is located has a population of 30,583. It has a daytime-only AM station, licensed to petitioner, and one Class A FM assignment, for which no application has been filed. It is located about 28 miles WNW of Dothan, Ala. Troy has a population of 10,234 and its county has a population of 25,987. In addition to the two Class C FM assignments, neither of which have been applied for, it has an unlimited time AM station. Petitioner submits that the population of Enterprise has increased at a much greater rate than has that of Troy, that the Army Aviation Center at Fort Rucker, 8 miles distant, has been enlarged and that a junior college has recently commenced operation in Enterprise, and that it plans to file an application for Channel 245 in the event the proposal is adopted. For these reasons, petitioner urges that the proposal is in accord with the rules and would serve the public interest.

14. We are of the view that comments should be invited on petitioner's proposal as outlined above, in order that all interested parties may submit their views and relevant data. We also invite comments on the proposed mixing of Class A and C assignments in the same community, a situation we have tried to avoid where possible.

15. *RM–948. Ladysmith, Wis.* On April 18, 1966, Flambeau Broadcasting Co., licensee of radio Station WLDY, Ladysmith, Wis., filed a petition requesting the assignment of Channel 225 to Ladysmith by substituting Channel 295 for 226 at Ironwood, Mich., as follows:

City	Channel No.	
	Present	Proposed
Ladysmith, Wis.	288A	225, 288A
Ironwood, Mich.	226, 259	259, 295

Ladysmith (population 3,584) is the county seat and largest community in Rusk County (population 14,794). It has a Class IV AM station, licensed to petitioner and an unoccupied Class A FM assignment. It is located in a rural section of Northern Wisconsin, the nearest large city being about 50 miles distant (Eau Claire) and the nearest metropolitan area at about 103 miles (Duluth-Superior). Petitioner urges that it is anxious to serve smaller outlying villages from which it draws support for its AM station but that this cannot be done with a Class A FM station, and that the proposal conforms to all the separation rules.

16. Since Ladysmith is located in a large rural area far removed from population centers, it may be the type of community which merits a departure from our policy of assigning Class A channels to the smaller communities and Class B or C channels to large cities and metropolitan markets. However, we do not believe that two assignments are warranted in this small community. We are therefore inviting comments on the following proposal:

City	Channel No.	
	Present	Proposed
Ladysmith, Wis.	288A	225
Ironwood, Mich.	226, 259	259, 295

17. *RM–949. Sturgeon Bay, Wis.* On April 21, 1966, Federalist, Ltd., a prospective applicant for a new FM station in Sturgeon Bay, Wis., filed a petition requesting the addition of Channel 230 or 231 to Sturgeon Bay as follows:

City	Channel No.	
	Present	Proposed
Sturgeon Bay, Wis.	240A	230 or 231, 240A

Sturgeon Bay has a population of 7,353 and its county, Door County, has a population of 20,685. It is the county seat and largest community in the county. The sole FM assignment has been authorized to the licensee of the sole AM station in the community, a daytime-only operation. Petitioner urges that a second FM assignment is needed to provide the area with an independent FM service, that the proposal conforms to all the rules, and that it intends to file for and construct a new station if the request is granted. Petitioner points out that Channel 231 is to be preferred over 230 since the actual separations to other stations and assignments is greater on the former channel. Channel 230 at Sturgeon Bay would also be very close to the minimum required to Channel 227 at Escanaba, Mich.

18. Sturgeon Bay is not a very large community and we are not convinced that a second FM assignment is merited. However, if the petitioner or any other interested party can show that the assignment of Channel 231 will not preclude its assignment, or that of any of the six adjacent channels, in other communities in which there may be a future need for such an assignment, we will give favorable consideration to the request, in the event it is found to serve the public interest in other respects. Comments are therefore invited on the following proposal:

City	Channel No.	
	Present	Proposed
Sturgeon Bay, Wis.	240A	231, 240A

19. *RM–956. Morris, Minn.* This petition, filed on May 3, 1966, by Clifford L. Hedberg, licensee of Station KMRS (AM), Morris, Minn., requests the substitution of Class C Channel 294 or 298 for Class A Channel 232A at Morris. Morris has a population of 4,199 and is the largest community and county seat of Stevens County, which has a population of 11,262. Morris is about 80 miles from St. Cloud and about 135 miles from Minneapolis. It has a Class IV AM station, licensed to petitioner, but no application has been filed for the Class A FM channel assigned to it. Petitioner submits that Morris is the center of a large rural area and that its AM station cannot even serve the county due to its restricted service range, especially during nighttime hours. He urges that a Class C assignment is appropriate for this community, and that with such an assignment it would be possible to serve the large rural area around Morris, and that he will apply for such a station in the event it is adopted.

20. Morris is a small community; however, since it is the center of a large rural area and is situated far removed from any population centers, we are of the view that it may be the type of community which warrants a departure from our general policy of assigning Class B or C channels to the large cities or metropolitan areas and only Class A channels to the smaller communities. Of the two channels proposed, Channel 294 would not conform to our minimum spacing requirements since it would not be the required 65 miles from the assignment of Channel 292A at Ortonville, Minn. We are therefore inviting comments on the following:

City	Channel No.	
	Present	Proposed
Morris, Minn.	232A	298

21. *RM–958. Jerseyville, Ill.* On May 5, 1966, Tri-County Broadcasting Co., Inc., licensee of Station WJBM(AM), Jerseyville, Ill., filed a petition for rule making requesting the assignment of Channel 281 to Jerseyville, Ill., without any other changes in the Table. Jerseyville has a population of 7,420 and its county (Jersey County) has a population of 17,023. WJBM is the only radio station in Jersey County and in the two adjoining counties and operates daytime only. Petitioner submits that the only manner in which it can improve the service of WJBM to the three counties is by the proposed assignment. It urges that Jerseyville merits a Class B assignment since there is no Class A channel available, since it would provide service to three rural counties with a population of over 40,000 persons, and since it is distant from large centers of population in Illinois. In an engineering attachment, a showing is made that the assignment of Channel 281 to Jerseyville will not preclude any needed future assignments in other communities in view of existing stations and assignment in communities in the general area.

22. Jerseyville appears to be the type of community which merits the assignment of a Class A channel. However, in view of the unavailability of a Class A assignment and the situation of this community with respect to the surrounding rural area and its distance from large cities and metropolitan areas in its State, we are inviting comments on petitioner's proposal as follows:

City	Channel No.	
	Present	Proposed
Jerseyville, Ill.		281

23. *RM–959. Augusta, Ga.* In a petition filed on May 5, 1966, Broadcasting Associates of America, Inc., licensee of Station WGUS(AM), North Augusta, S.C., requested the deletion of Channel 275 from Augusta, Ga., and the addition of Channels 272A and 276A to that city as follows:

City	Channel No.	
	Present	Proposed
Augusta, Ga.	275, 282, 289	272A, 276A, 282, 289

Augusta has a population of 70,626. It has five AM stations, one of which is a daytime-only station. Two of the three Class C FM assignments (282 and 289) are in operation and no applications have been filed for the remaining assignment. Petitioner points out that, in order to meet the required minimum spacings, a station on Channel 275 would have to be located about 18 miles out of the city. It urges that the assignment of two Class A channels would remove this inconvenience, and would permit savings and efficiencies by permitting use of existing tower sites. It is recognized that the mixing of Class A and C channels is not conducive to creating competitive equality among the stations, but petitioner submits that the proposed assignments would be more satisfactory in view of the severe limitation on selection of a site on the assigned Class C channel.

24. Since the proposed assignment of two Class A assignments in lieu of the one Class C would make available an additional frequency in this area in which assignments are rather scarce, and since it would make the selection of sites easier for applicants, we are of the view that comments should be invited on the proposal and that the mixing of Class A and C assignments may be warranted in this case.

25. *Changes on Commission's own motion.* In addition to those proposals advanced by interested parties, we wish to make additional changes on our own motion. Channel 296A was inadvertently assigned to Brewton, Ala., at spacings below the minimums required. No other Class A assignment can be made to Brewton without other changes in the Table. However, Channel 292A can be assigned to that community if Channel 293, assigned and unoccupied at Andalusia, Ala., is deleted. Andalusia, a community of 10,263 persons, has been assigned Channel 251 and also has a Class IV AM station in operation. Likewise, Channel 261A at Wickenburg, Ariz., is short-spaced to an assignment for which an application has been tendered for filing. Channel 256 at Potsdam does not meet the required spacing to an existing station on an adjacent channel in Burlington, Vt. Lastly, Channel 280A was assigned to New Albany, Ohio, upon request of an interested party on the basis of a showing which claimed that the minimum spacings would be met. However, a station in Portsmouth, Ohio was assumed to be located in Zone I but actually is situated in Zone II. Thus, the

assignment does not meet the requirements of the rules and must be deleted. We invite comments, therefore, on the following:

City	Channel No.	
	Present	Proposed
Andalusia, Ala.	251, 293	251
Brewton, Ala.	296A	292A
Wickenburg, Ariz.	261A	288A
Potsdam, N.Y.	256	257A
New Albany, Ohio	280A	----------

26. Authority for the adoption of the amendments proposed herein is contained in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

27. Pursuant to applicable procedures set out in Section 1.415 of the Commission's rules, interested persons may file comments on or before June 27, 1966, and reply comments on or before July 8, 1966. All submissions by parties to this proceeding or persons acting in behalf of such parties must be made in written comments, reply comments or other appropriate pleadings.

28. In accordance with the provisions of Section 1.419 of the rules, an original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission.

Adopted: May 25, 1966.

Released: May 27, 1966.

FEDERAL COMMUNICATIONS COMMISSION,[2]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 66-6058; Filed, June 1, 1966; 8:50 a.m.]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 170]

[Ex Parte No. MC-37 (Sub-No. 2)]

MINNEAPOLIS-ST. PAUL COMMERCIAL ZONE

Redefinition of Limits

MAY 27, 1966.

Redefinition of the limits of the Minneapolis-St. Paul, Minn., commercial zone, heretofore defined in Ex Parte No. MC-37, Commercial Zones and Terminal Areas, 48 M.C.C. 441 at page 453.

Petitioner: Minneapolis Traffic Association. Petitioner's representative: Eugene J. Mielke, 701 Second Avenue South, Minneapolis, Minn., 55402.

By petition filed May 11, 1966, Minneapolis Traffic Association requests the Commission to reopen the above proceeding for the purpose of redefining the limits of the Minneapolis-St. Paul, Minn., commercial zone, which were most recently defined on July 19, 1948, in *Commercial Zones and Terminal Areas*, 48 M.C.C. 441 at page 453 (49 CFR 170.26), so as to include therein Plymouth and Bloomington, Minn.

No oral hearing is contemplated at this time, but anyone wishing to make representations in favor of, or against, the above proposed revision of the limits of the Minneapolis-St. Paul, Minn., commercial zone, may do so by the submission of written data, views, or arguments. To the extent possible, representations in favor of the proposed revision should include suggested wording for incorporating the proposed additions into the existing description. An original and five copies of such data, views, or arguments shall be filed with the Commission on or before July 5, 1966.

Notice to the general public of the matter herein under consideration will be given by depositing a copy of this notice in the office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 66-6033; Filed, June 1, 1966; 8:47 a.m.]

[2] Commissioner Cox dissenting in part.

Notices

DEPARTMENT OF STATE

Agency for International Development

CAPITAL PROJECTS GUIDELINES

Borrower Procurement of Goods and Services of U.S. Source and Origin

The Agency for International Development has prepared a publication entitled "AID Capital Projects Guidelines" which describes the criteria that will generally govern AID approval of contracts and contractors in connection with borrower procurement for capital projects financed from dollar loans under the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 et seq.) in cases where the loan is limited to the financing of goods and services of United States source and origin. These guidelines do not apply to commodity transactions which are governed by AID Regulation No. 1, as amended, 22 CFR Part 201. Neither do they apply to procurement contracts to which the United States is a party, including contracts governed by the AID Procurement Regulations, 41 CFR Ch. 7.

The publication entitled "AID Capital Projects Guidelines" may be obtained without charge by making requests to the following office:

Distribution Branch, Agency for International Development, Washington, D.C., 20523.

Specific criteria to be applied to a particular case are governed by the loan agreement and pertinent letters of implementation and related documents. Information as to the criteria which will be applied under a particular loan may be obtained, in Washington, from the AID regional bureau which has cognizance over the loan. Inquiries should be made, as appropriate, to:

The Assistant Administrator, Bureau for Near East and South Asia.
The Assistant Administrator, Bureau for Africa.
The Assistant Administrator, Bureau for Far East.
The Assistant Administrator, Bureau for Latin America.

Their address is: Agency for International Development, Washington, D.C., 20523.

WILLIAM S. GAUD,
Deputy Administrator.

MAY 12, 1966.

[F.R. Doc. 66-6035; Filed, June 1, 1966; 8:48 a.m.]

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T.D. 66-113; Customs Delegation Order 24]

DEPUTY REGIONAL COMMISSIONER OF CUSTOMS, REGION II, NEW YORK

Delegation of Authority

MAY 26, 1966.

By virtue of authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 F.R. 7241), all functions, rights, privileges, powers, and duties delegated to district directors of customs and to regional commissioners of customs by Customs Delegation Order No. 22 (T.D. 56470, 30 F.R. 11180) and delegated to the assistant regional commissioners for Customs Region II, New York, by Customs Delegation Order No. 23 (T.D. 66-100, 31 F.R. 7150), are hereby delegated also to the deputy regional commissioner of customs for Customs Region II, New York, effective on the date that the creation of the office of regional commissioner for that region becomes effective under Treasury Department Order No. 165-17 (T.D. 56464, 30 F.R. 10913).

[SEAL] LESTER D. JOHNSON,
Commissioner of Customs.

[F.R. Doc. 66-6022; Filed, June 1, 1966; 8:47 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

COLORADO

Modification of Grazing Districts Nos. 2 and 7; Correction

The legal description of lands in the third paragraph of F.R. Doc. 66-4951, appearing on page 6794 of the issue for May 6, 1966, Vol. 31, No. 88 under the following townships and sections should read:

6TH PRINCIPAL MERIDIAN, COLORADO

T. 9 S., R. 85 W.,
Secs. 3 to 10, inclusive; secs. 14 to 23, inclusive; and secs. 26 to 35, inclusive.
T. 7 S., R. 87 W.,
Secs. 1 to 11, inclusive; secs. 14 to 23, inclusive; and secs. 26 to 35, inclusive.
T. 6 S., R. 91 W.,
Sec. 36, E½ and E½W½.

CHARLES H. STODDARD,
Director.

MAY 26, 1966.

[F.R. Doc. 66-6007; Filed, June 1, 1966; 8:46 a.m.]

ALASKA

Notice of Proposed Withdrawal and Reservation of Lands

MAY 24, 1966.

The Department of the Air Force has filed the above application for the withdrawal of the lands described below, from all forms of appropriation under the public land laws including the mining and mineral leasing laws.

The applicant desires the land for protection of water supply at an Air Force Station.

For a period of thirty (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, 555 Cordova Street, Anchorage, Alaska, 99501.

The Department's regulations (43 CFR 2311.1-3(c)) provide that 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.

The authorized officer 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 applicant agency.

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, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application are:

TATALINA AIR FORCE STATION

Commencing at a point on the west boundary of an area withdrawn by Public Land Order 731, which is also the northeast corner of an area withdrawn by Public Land Order 815, at approximate latitude 62°55'44" N., longitude 156°01'12" W.; thence west, 600 feet, to a point which is the southwest corner of an area withdrawn by Public Land Order 1740, said point being the True Point of Beginning for this description; thence west,

4,680 feet, to a point which is the northwest corner of an area withdrawn by Public Land Order 815; thence north, 3,960 feet to a point; thence east, 5,280 feet to a point which is the northwest corner of an area withdrawn by Public Land Order 731; thence south, 3,421.9 feet to a point which is the northeast corner of an area withdrawn by Public Land Order 1740; thence west, 600 feet to a point which is the northwest corner of said area; thence south 538.1 to the point of beginning.

Containing 472.59 acres, more or less.

BURTON W. SILCOCK,
State Director.

[F.R. Doc. 66-6008; Filed, June 1, 1966; 8:46 a.m.]

Bureau of Reclamation

[Public Notice 1]

BOSTWICK PARK PROJECT, COLORADO

Land Class Equivalents

1. Section 2 of the Act of September 2, 1964, 78 Stat. 852, provides that "on the said projects, the limitation on lands held in single ownership which may be eligible to receive project water from, through, or by means of project works shall be one hundred and sixty acres of Class 1 land as defined for the Bostwick Park Project (participating project of the Colorado River Storage Project) or the equivalent thereof in other land classes as determined by the Secretary of the Interior."

2. Article 21 of contract No. 14-60-400-4421 between the United States and the Bostwick Park Water Conservancy District dated March 18, 1966, provides that "Computation of the equivalent of one hundred sixty (160) acres of Class 1 land shall be based on factors which shall be set forth in a Public Notice issued by the Secretary of the Interior and which shall become effective on the date said Public Notice is published in the FEDERAL REGISTER."

3. Accordingly, I have determined and hereby establish that, in computing the equivalent of one hundred and sixty acres of Class 1 land in the Bostwick Park Water Conservancy District of the Bostwick Park Reclamation Project, each acre of Class 2 land shall be counted as eighty-five one-hundredths of an acre, and each acre of Class 3 land shall be counted as sixty-five one-hundredths of an acre.

STEWART L. UDALL,
Secretary of the Interior.

MAY 25, 1966.

[F.R. Doc. 66-6009; Filed, June 1, 1966; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

MAINLAND CANE SUGAR AREA

1967 Crop Proportionate Shares; Notice of Hearing

Notice is hereby given that the Secretary of Agriculture, acting pursuant to the Sugar Act of 1948, as amended, is preparing to conduct a public hearing to receive views and recommendations from all interested persons on the need for establishing proportionate shares for the 1967 sugarcane crop in the Mainland Cane Sugar Area (Louisiana and Florida).

In accordance with the provisions of paragraph (1), subsection (b) of section 302 of the Sugar Act of 1948, as amended, the Secretary must determine for each crop year whether the production of sugar from any crop of sugarcane in the area will, in the absence of proportionate shares, be greater than the quantity needed to enable the area to meet its quota and provide a normal carryover inventory, as estimated by the Secretary for such area for the calendar year during which the larger part of the sugar from such crop normally would be marketed. Such determination may be made only after due notice and opportunity for an informal public hearing.

The hearing on this matter will be conducted at the Eden Roc Hotel, Miami Beach, Fla., beginning at 10 a.m. on June 14, 1966.

Views and recommendations are desired on all phases of the proportionate share program. They may be submitted in writing, in triplicate, at the hearing, or may be mailed to the Director, Sugar Policy Staff, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C., 20250, postmarked not later than July 1, 1966. Interested persons will be given the opportunity at the hearing to appear and submit orally data, views and arguments in regard to the establishment of proportionate shares.

Restrictions on the marketing of sugarcane in the area are in effect for the 1966 crop. Estimates of sugar production for that crop indicate that the marketing quota for the area will be exceeded by about 50,000 tons.

All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

Signed at Washington, D.C., on May 27, 1966.

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

[F.R. Doc. 66-6043; Filed, June 1, 1966; 8:48 a.m.]

DEPARTMENT OF COMMERCE

Bureau of International Commerce

[File No. 23(65)-61]

JOSEF LEO GRUBER

Order Denying Export Privileges for Indefinite Period

In the matter of Josef Leo Gruber, sometimes known as Josef Leopold Gruber, trading as "Opera" Tonaufnahmestudio Josef Leo Gruber, 72 Penzingerstrasse, Vienna XIV, Austria, respondent; File No. 23(65)-61.

The Director, Investigations Division, Office of Export Control, Bureau of International Commerce, U.S. Department of Commerce, has applied for an order denying to the above-named respondent all export privileges for an indefinite period because the said respondent failed to furnish answers to interrogatories and failed to furnish certain records and other writings specifically requested, without good cause being shown. This application was made pursuant to § 382.15 of the Export Regulations (Title 15, Chapter III, Subchapter B, Code of Federal Regulations).

In accordance with the usual practice, the application for an Indefinite Denial Order was referred to the Compliance Commissioner, Bureau of International Commerce, who after consideration of the evidence has recommended that the application be granted. The report of the Compliance Commissioner and the evidence in support of the application have been considered.

The evidence presented shows that the respondent, Josef Leo Gruber, sometimes known as Josef Leopold Gruber, is in the sound recording business in Vienna, Austria, and does business under the name of "Opera" Tonaufnahmestudio Josef Leo Gruber; that the respondent received certain strategic recording equipment which had been exported by a supplier from the United States. The aforesaid Investigations Division is conducting an investigation into the disposition by said respondent of said commodities. It is impracticable to subpoena the respondent, and relevant and material interrogatories and request to furnish certain specific documents relating to his disposition of said commodities were served on him pursuant to § 382.15 of the Export Regulations. Said respondent has failed to furnish answers to said interrogatories or to furnish the documents requested, as required by said section and has not shown good cause for such failure. I find that an order denying export privileges to said respondent for an indefinite period is reasonably necessary to protect the public interest and to achieve effective enforcement of the Export Control Act of 1949.

Accordingly, it is hereby ordered:

I. All outstanding validated export licenses in which respondent appears or participates in any manner or capacity are hereby revoked and shall be returned forthwith to the Bureau of International Commerce for cancellation.

II. The respondent, his representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or which are otherwise subject to the Export Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of

a party to any validated export license application; (b) in the preparation or filing of any export license application or reexportation authorization, or any document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control document; (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data in whole or in part exported or to be exported from the United States; and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondent, but also to his agents, employees, and partners, and to any person, firm, corporation, or business organization with which the respondent now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or services connected therewith.

IV. This order shall remain in effect until the respondent provides responsive answers, written information and documents in response to the interrogatories heretofore served upon him or gives adequate reasons for failure to do so, except insofar as this order may be amended or modified hereafter in accordance with the Export Regulations.

V. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Bureau of International Commerce, shall do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondent or any related party, or whereby the respondent or related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States, by, to, or for any such respondent or related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

VI. A copy of this order shall be served on respondent.

VII. In accordance with the provisions of § 382.15 of the Export Regulations, the respondent may move at any time to vacate or modify this Indefinite Denial Order by filing with the Compliance Commissioner, Bureau of International Commerce, U.S. Department of Commerce, Washington, D.C., 20230, an appropriate motion for relief, supported by substantial evidence, and may also request an oral hearing thereon, which, if requested shall be held before the Compliance Commissioner, at Washington, D.C., at the earliest convenient date.

This order shall become effective May 31, 1966.

Dated: May 24, 1966.

RAUER H. MEYER,
Director, Office of Export Control.

[F.R. Doc. 66-6034; Filed, June 1, 1966; 8:48 a.m.]

ATOMIC ENERGY COMMISSION

STATE OF ALABAMA

Proposed Agreement for Assumption of Certain AEC Regulatory Authority

Notice is hereby given that the U.S. Atomic Energy Commission is publishing for public comment, prior to action thereon, a proposed agreement received from the Governor of the State of Alabama for the assumption of certain of the Commission's regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

A resume, prepared by the State of Alabama and summarizing the State's proposed program, was also submitted to the Commission and is set forth below as an appendix to this notice. A copy of the program, including proposed Alabama regulations, is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., or may be obtained by writing to the Director, Division of State and Licensee Relations, U.S. Atomic Energy Commission, Washington, D.C., 20545. All interested persons desiring to submit comments and suggestions for the consideration of the Commission in connection with the proposed agreement should send them, in triplicate, to the Secretary, U.S. Atomic Energy Commission, Washington, D.C., 20545, within 30 days after initial publication in the FEDERAL REGISTER.

Exemptions from the Commission's regulatory authority which would implement this proposed agreement, as well as other agreements which may be entered into under section 274 of the Atomic Energy Act, as amended, were published as Part 150 of the Commission's regulations in FEDERAL REGISTER issuances of February 14, 1962, 27 F.R. 1351; April 3, 1965, 30 F.R. 4352; September 22, 1965, 30 F.R. 12069; and March 19, 1966, 31 F.R. 4668. In reviewing this proposed agreement, interested persons should also consider the aforementioned exemptions.

Dated at Washington, D.C., this 27th day of May 1966.

For the Atomic Energy Commission.

W. B. MCCOOL,
Secretary.

PROPOSED AGREEMENT BETWEEN THE U.S. ATOMIC ENERGY COMMISSION AND THE STATE OF ALABAMA FOR DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY AND RESPONSIBILITY WITHIN THE STATE PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

Whereas, the U.S. Atomic Energy Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act) to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under chapters 6, 7, and 8 and section 161 of the Act with respect to byproduct materials, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, the Governor of the State of Alabama is authorized under Act Number 582, Regular Session, 1963, to enter into this Agreement with the Commission; and

Whereas, the Governor of the State of Alabama certified on April 25, 1966, that the State of Alabama (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and

Whereas, the Commission found on ------ that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemption from licensing of those materials subject to this Agreement; and

Whereas, this agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

ARTICLE I. Subject to the exceptions provided in Articles II, III, and IV, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. Byproduct materials;

B. Source materials; and

C. Special nuclear materials in quantities not sufficient to form a critical mass.

ART. II. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

ART. III. Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

ART. IV. This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

ART. V. The Commission will use its best efforts to cooperate with the State and other agreement states in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

ART. VI. The Commission and the State agree that it is desirable to provide for reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

ART. VII. The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that such termination or suspension is required to protect the public health and safety.

ART. VIII. This Agreement shall become effective on October 1, 1966, and shall remain in effect unless, and until such time as it is terminated pursuant to Article VII.

Done at Montgomery, State of Alabama, in triplicate, this day of _____.

For the United States Atomic Energy Commission.

_____, _____.

For the State of Alabama.

GEORGE C. WALLACE,
Governor.

POLICIES AND PROCEDURES FOR THE CONTROL OF RADIATION

FOREWORD

The 1963 Regular Session of the Legislature of the State of Alabama enacted a Radiation Control Law which authorizes the Governor of Alabama to enter into an agreement with the U.S. Atomic Energy Commission for the purpose of assuming from the Commission certain regulatory functions for the use of byproduct material, source material, and special nuclear material in quantities not sufficient to form a critical mass. Among other provisions, the Radiation Control Law authorizes the State:

(1) To institute and maintain a regulatory program for all sources of ionizing radiation so as to provide for (a) compatibility with the standards and regulatory programs of the Federal Government, (b) a single, effective system of regulation within the State, and (c) a system consonant insofar as possible with those of other states; and

(2) To institute and maintain a program to permit development and utilization of sources of ionizing radiation for peaceful purposes consistent with the health and safety of the public.

Act 582, Regular Session, 1963, establishes the State Board of Health as the state radiation control agency for regulating, licensing, and inspecting sources and uses of radioactive materials including radium and accelerator produced isotopes, and machines and devices producing ionizing radiation. A Radiation Advisory Board of Health consisting of nine members appointed by the Governor was established under the provisions of this Act to advise the State Board of Health in carrying out the provisions of the law.

In this narrative a chronology outlining the development of the present system of radiation protection and control in Alabama will be presented along with plans, practices, and policies which will be undertaken by the Agency.

History. The Alabama State Department of Public Health became initially involved in limited control and study of the uses of ionizing radiation in 1953 when the Bureau of Sanitation made a study of fluoroscopic shoe fitting machines in Alabama. The possession or use of these machines is now prohibited by regulations adopted by the State Board of Health.

In 1957, the State of Alabama, Water Improvement Commission, which is housed within the Alabama State Department of Public Health, became interested in the levels of radioactivity in the streams of the State. Accordingly, plans were made, equipment purchased, and stream sampling stations were established throughout the State. During the summer of 1958, samples were collected from these sampling stations and analyzed for gross alpha and beta activity. This activity has continued since that time. In 1964, this activity was taken over and expanded by the newly formed Division of Radiological Health—an organizational division of the Bureau of Sanitation.

In 1963, a physical survey was conducted of all known dental X-ray units in the State; and, when necessary, filtration and collimation were added to bring them into compliance with the recommendations of the American Academy of Oral Roentgenology. A total of 945 dental X-ray units were surveyed. Currently, all dental X-ray units which are registered with the Agency are in compliance with the recommendations for filtration and collimation of the American Academy of Oral Roentgenology.

The Jefferson County Board of Health organized a radiological health program in 1962 and initiated a physical survey of all medical X-ray units during the same year. Since this time, a program has been in progress to bring all of the medical X-ray units in Jefferson County into compliance with the recommendations contained in National Bureau of Standards Handbook 76. Presently, over 98 percent of the 340 units in Jefferson County are in compliance with these recommendations.

In 1964, all X-ray units in the State were registered. Units were located by letters to all members of the healing arts profession listed in the roster of the Medical Association of the State of Alabama and to selected industries as shown in the Directory of Industries published by the Alabama State Chamber of Commerce. Following registration, the Division of Radiological Health performed a physical survey of the medical X-ray units in Alabama, except those in Jefferson County which had been previously surveyed. A total of 828 radiographic and 439 fluoroscopic units were inspected. Letters were written to the owners of deficient units requesting that the deficiencies noted in the survey be corrected. On May 19, 1965, the State Board of Health adopted rules and regulations governing the use of X-rays in the healing arts.

A radium leak testing program was conducted jointly by personnel of the Alabama State Department of Public Health and the Jefferson County Board of Health in Jefferson County during 1964. This program revealed that 4 of the 10 radium facilities in Jefferson County had leaking or contaminated sources. The following year personnel of the Alabama State Department of Public Health extended this leak testing program to all counties in the State. Of the additional 30 facilities, a total of 13 were found to have leaking or contaminated sources of radium. All owners of leaking or contaminated sources of radium voluntarily disposed of the leaking radium or had it reencapsulated.

Shortly after its establishment in 1963, the Division of Radiological Health became interested in Project Dribble. This project was a joint undertaking of the U.S. Department of Defense and the U.S. Atomic Energy Commission in which a 5 kiloton nuclear device was detonated in a salt dome located near Hattiesburg, Miss. The Division was concerned with the possibility that the detonation might vent and thus spread radioactive fallout in Alabama. Although the U.S. Public Health Service was responsible for off-site monitoring during this project, the Division of Radiological Health established a sampling program to determine the quantity of radioactive materials present in the air, in milk from samples collected throughout the State, and in the streams of the State both prior to and following the detonation. No venting occurred following the detonation but valuable experience was gained by laboratory personnel.

Members of the staff of the Alabama State Department of Public Health have accompanied members of the AEC staff on their inspections of licensees within the State for many years. Within the last 3 years, Alabama personnel have accompanied AEC inspectors on 81 percent of the inspections within the State. During this period they have become familiar with the inspection of licensees of radioactive materials. Also during this period, staff members have accompanied AEC personnel on investigations of incidents involving radioactive materials in Alabama. Further experience was gained when on several occasions staff members were requested to locate lost radium needles.

Program description. The State Board of Health was designated by Act 582, Regular Session, 1963, as the State Radiation Control Agency in Alabama and has the authority for regulating, licensing, and inspecting sources and uses of radioactive materials and machines and devices producing ionizing radiation. The radiation control program will be carried out by the Division of Radiological Health—an organizational division of the Bureau of Sanitation. Through an understanding with the Agency, medical X-ray registration and inspection activities may be conducted at the county level; however, licensing and inspection of radioactive materials will be conducted exclusively by the Agency.

The Agency is responsible for responding to emergency situations and is adequately staffed with qualified personnel. Emergency supplies and equipment to carry out this responsibility are available. Communications within the Agency and with county health departments have been established. Arrangements will be made with the State Highway Patrol to provide prompt notification of any transportation accident involving radioactive materials.

Licensing and registration. The radiation control program of the State of Alabama will regulate all sources of ionizing radiation including radium, accelerator-produced nuclides in non-exempt quantities, and machine-produced radiation such as medical and dental X-ray units. All X-ray units have been registered with the Agency. Specific licenses will be issued to authorize the possession and use of radioactive materials, including radium and accelerator-produced nuclides, in quantities not exempted or generally licensed by the Agency. Criteria for the possession of byproduct, source, and special nuclear materials will be compatible with those established by the U.S. Atomic Energy Commission.

The licensing program will be essentially the same as that presently used by the U.S. Atomic Energy Commission. The Agency will utilize applicable criteria contained in Atomic Energy Commission publications as general guides in the evaluation of license applications. The director and assistant director of the Division of Radiological Health will evaluate all license applications. Other individuals will assist in this function as they acquire competence through experience and training. Prelicensing visits will be made when determined necesasry. For routine applications, both medical and nonmedical, the State Health Officer will issue specific licenses on behalf of the State Board of Health.

A Medical Advisory Committee will advise the State Board of Health through the State Health Officer on nonroutine medical uses of radioactive materials. This Committee currently consists of four radiologists and an internist who are experienced in the medical use of radioisotopes.

Inspections. Staff personnel will conduct inspections of licensees and registrants to determine compliance with regulations promulgated by the Agency and to determine the adequacy of the radiation protection program. Inspections will be performed under the supervision of the assistant director of the Division of Radiological Health. A radiation physicist and two radiation specialists will perform inspections of radiation producing machines. Three radiation physicists assigned to the radioactive materials program will perform all materials inspections. Inspection personnel are qualified by training in the field of radiological health to perform these inspections. Materials inspections will be compatible with those now performed by the Division of Compliance of the U.S. Atomic Energy Commission.

Staff members will be kept current on developments in the field of radioactive materials by continued training in appropriate courses conducted by the USAEC and USPHS. The following frequency for the inspection of licensees in Alabama is proposed but may be either increased or decreased depending upon individual circumstances and the experience of the Agency.

Industrial radiographers—once each 6 months.

Operations involving waste disposal—once each 6 months.

Academic—once each 12 months.

Medical and hospital—once each 12 months.

Other categories—depending on the hazards associated with the program.

It is anticipated that all specific licensees will be inspected at least once each calendar year. The inspections may be announced or unannounced, except prelicensing evaluations will be scheduled.

Before the termination of each inspection, the inspector will confer with the licensee to discuss the results of his inspection, presenting oral recommendations or suggestions if indicated. The inspector will submit in writing comprehensive reports to the Director of the Division of Radiological Health relating facts and circumstances observed during the inspection. The report will enumerate violations, if any, and include recommendations. Recommendations made by field personnel will be subject to the critical review of senior staff members of the Division of Radiological Health. The licensee will be notified of the results of the inspection, including any indicated recommendations, by letter from the Agency as soon as practical.

Enforcement. If during the course of an inspection only minor items of noncompliance such as failure to label, improper signs, etc., are noted and the licensee agrees to correct the items of noncompliance at the time of the inspection, these items of noncompliance will be reviewed during the course of the next inspection.

If items of noncompliance of a more serious nature are found, the licensee will be required to correct such items within a specified period of time. The licensee will be required to inform the Agency in writing within thirty days, or less if specified, of the corrective action taken and the date the corrective action was completed. Follow-up inspections may be conducted by the Agency or the matter may be reviewed at the next regular inspection of the licensee to insure that adequate corrective action has been accomplished. In certain cases, items of noncompliance may be enforced by administrative procedures such as amending the license.

Under the provisions of Act Number 582 of the Alabama Law, Regular Session, 1963, the Agency has authority to initiate immediate legal action against a licensee who is in violation of the rules and regulations issued under the provisions of this Act. If in the opinion of the Agency a person is engaged in or is about to engage in any act or practice in violation of the provisions of this Act or rules and regulations issued thereunder, the State's Attorney General at the request of the Agency may make application for a court order enjoining such acts or practices or direct compliance with the rules and regulations promulgated under the provisions of this Act.

If the Agency should determine that an emergency exists, it has the authority to impound or order the impounding of any source of ionizing radiation in the possession of any person who is not equipped to observe or who fails to observe the provisions of the the Act or any rules or regulations issued thereunder.

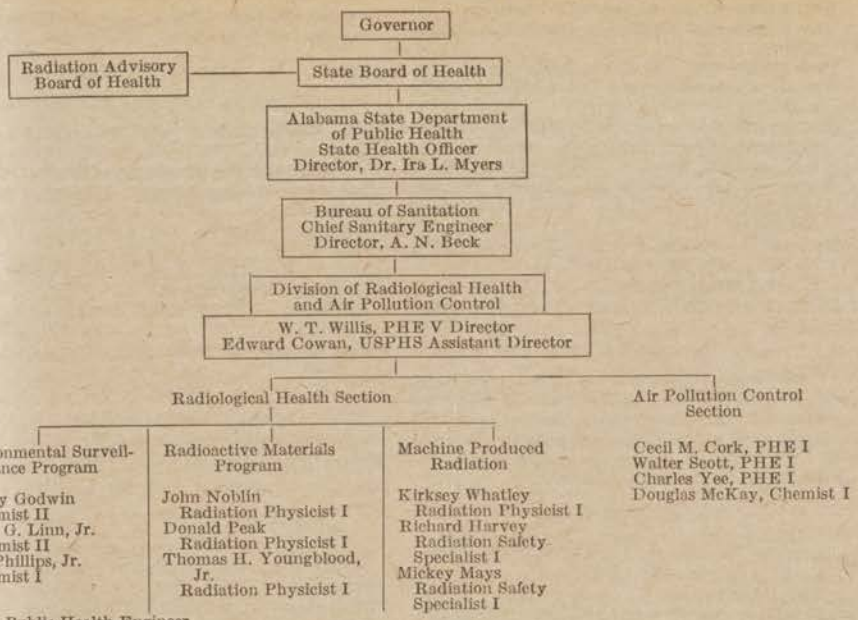
It is proposed that full legal measures will be employed only in those instances where there is continued noncompliance after notice, willful negligence on the part of the licensee, or where a serious potential hazard exists. Provisions of the Act provide for appropriate punishment of any violations of the Act or rules and regulations promulgated under the provisions of the Act.

Act Number 582 duly authorizes representatives of the Agency to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violations of the provisions of this Act or rules and regulations issued thereunder.

Hearings. Act Number 582 provides for a hearing on the record upon the request by any person whose interest may be affected by the issuance or modification of rules and regulations relating to the control of sources of ionizing radiation or for granting or suspending, revoking or amending a license or for determining compliance with rules and regulations of the Agency. Whenever the Agency finds that an emergency exists requiring immediate action to protect the public health and safety, the Agency may without notice or hearing issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Such regulation or order shall become effective immediately. However, anyone aggrieved by such order shall on application to the Agency be afforded a hearing within thirty days. On the basis of such hearing, the emergency regulation or order shall be continued, modified, or revoked within thirty days after such hearing.

Any final order entered in any proceeding shall be subject to judicial review by the Circuit Court of Montgomery County in the manner prescribed for taking appeals from orders of the Alabama Public Service Commission as provided in Code 1960, Title 48, section 79 and following.

ORGANIZATIONAL CHART



PHE—Public Health Engineer.

ALABAMA RADIATION CONTROL PERSONNEL

The Division of Radiological Health is an existing organizational unit of the Bureau of Sanitation, Alabama State Department of Public Health. Technical personnel engaged in the existing programs of the Division are listed below; also, listed below are personnel of the air pollution program who will be used in radiological health in emergency and unusual situations where additional personnel are needed.

Bureau of Sanitation—Chief, Arthur N. Beck, B.S., M.S.

Division of Radiological Health—Director, W. T. Willis, B.S., M.S.; Assistant Director, J. Edward Cowan, B.S., M.P.H.; Radiation Physicist I: John Noblin, B.S., Donald W. Peak, A.B., Kirksey E. Whatley, B.S., Thomas H. Youngblood, Jr., B.S.; Chemist II: Aubrey V. Godwin, B.S., Lloyd G. Linn, Jr., B.S.; Chemist I, Alva Phillips, B.S.; Radiation Safety Specialist: Richard E. Harvey, R. X-Ray Technician, Mickey T. Mays, R. X-Ray Technician.

Air Pollution Program—Director, W. T. Willis, B.S., M.S.; Public Health Engineer I: Charles Yee, B.S., Cecil M. Cork, B.S., Walter E. Scott, B.S.; Chemist I, Douglas McKay, BS.

Education and Experience of staff members:

WILLIAM THOMAS WILLIS

EDUCATION AND TRAINING

B.S. Civil Engineering, Alabama Polytechnic Institute, 1948.
S.M. Sanitary Engineering, Harvard University, 1952.

U.S. Public Health Service Courses:
One week—Detection and Control of Radioactive Pollutants in Water.
Two weeks—Sanitary Engineering Aspects of Nuclear Energy Course.
Two weeks—Basic Radiological Health Course.
One week—Medical X-Ray Protection Course.
Two weeks—Occupational Radiation Protection.
One week—Engineering Management of Radiation Accidents.
One week—Civil Defense Training Course for Food and Drug Officials.
Two weeks—Reactor Safety and Hazards Evaluation.
One week—Community Air Pollution.
One week—Measurement of Airborne Radioactivity.
One week—Elements of Air Quality Management.
One week—Control of Particulate Emissions.
One week—Control of Gaseous Emissions.
One week—Meteorological Aspects of Air Pollution.

Atomic Energy Commission Courses:
Three weeks—Orientation Course in AEC Regulatory Practices and Procedures, Bethesda.

EXPERIENCE

Seventeen years total experience in Sanitary Engineering, Alabama State Department of Public Health. Fifteen years in stream pollution control. Two years as Director of Division of Radiological Health, responsibilities for directing and administrating a comprehensive program in radiation control involving the medical and industrial x-ray field, radioactive materials regulatory program, environmental surveillance and the environmental health laboratory.

JAMES EDWARD COWAN

EDUCATION AND TECHNICAL TRAINING

B.A., Science, Western Carolina College, 1949,
M.S. P.H., Sanitary Science, University of North Carolina, 1950.
M.P.H., Radiation Health, University of Pittsburgh, 1961.

U.S. Public Health Service Courses:
Two weeks—Basic Radiological Health.
Two weeks—Reactor Safety and Hazards Evaluation.
Two weeks—Radionuclide Protection.
One week—Medical X-Ray Protection.
One week—Management of Nuclear Emergencies.
Two weeks—Medical Aspects of Radiological Health.
One week—Radium Hazards and Control.

Atomic Energy Commission Courses:
Two weeks—Orientation Course in AEC Regulatory Practices and Procedures, Bethesda.
One week—Dose and Dosimetric Determinations, ANL, Chicago.

Other Training:
Three weeks—Presbyterian Hospital, X-Ray Department, Pittsburgh.
Five weeks—Westinghouse Testing Reactor, Health Physics Department, Pittsburgh.
One week—Radiological Monitors Instructor Course—FCDA, Austin, Texas.

EXPERIENCE

Regular Corps, U.S. Public Health Service; 12 years generalized public health experience in local, State, and Federal agencies; 2 years, Radiation Control Program, Division of Occupational Health and Radiation Control, Texas State Department of Health; 2 years, Division of Radiological Health, Alabama State Department of Health, experienced in licensing, inspection, and other aspects of radiological health.

CECIL MERRITT CORK

EDUCATION AND TECHNICAL TRAINING

B.S., Civil Engineering, Auburn University, 1964.

U.S. Public Health Service Courses:
One week—Community Air Pollution.
One week—Elements of Air Quality Management.
One week—Control of Particulate Emissions.
One week—Source Sampling for Atmospheric Survey.
One week—Combustion Evaluation—Sources and Control Devices.
One week—Design of Air Pollutant Sampling Trains.
Two weeks—Atmospheric Survey.
One week—Control of Gaseous Emissions.

EXPERIENCE

One year, Public Health Engineer I, Division of Radiological Health, Alabama State Department of Public Health. Has accompanied Radiation Physicists on radium surveys.

AUBREY V. GODWIN

EDUCATION AND TECHNICAL TRAINING

A.A., Chemistry, Southwest Mississippi Junior College, 1958.
B.A., Chemistry, University of Mississippi, 1961.
Educational Leave, Mr. Godwin is presently on educational leave attending the University of Michigan where he will receive an MPH degree in 1966.

U.S. Public Health Service Courses:
Two weeks—Basic Radiological Health.
Two weeks—Occupational Radiation Protection.
Two weeks—Radionuclide Analysis by Gamma Spectroscopy.
Two weeks—Radiochemical Analysis and Instrumentation, On-the-job training, Southeastern Radiological Health Laboratory, Montgomery.

Other Training:
Two weeks—C.B.R. Refresher Course, Fort McClellan.
One week—Civil Defense for Food and Drug Officials, Montgomery.

EXPERIENCE

Two and one-half years experience as Chemist, Water Quality Surveillance, Alabama State Department of Public Health; Two years experience in all aspects of radiochemistry, Division of Radiological Health, Alabama State Department of Public Health. Duties have included broad experience in chemical preparation of samples, and operation of counting equipment, including a 400-channel gamma spectrometer. For seven months, served as Chief Chemist with responsibilities for the operation of the Division's Environmental Radiation Laboratory. Concurrently, 3 years in C.R.B., Army National Guard.

RICHARD E. HARVEY

EDUCATION AND TECHNICAL TRAINING

Registered X-ray Technician. Two years X-ray technician course. Norwood Clinic, Birmingham, Alabama.
U.S. Public Health Service Courses:
Two weeks—Basic Radiological Health.
One week—Radium Hazards and Control.
Two weeks—Medical X-Ray Protection.
One week—Radiological Health for X-Ray Technologist.

EXPERIENCE

Six months experience with medical X-ray program, Division of Radiological Health.

LLOYD G. LINN, Jr.

EDUCATION AND TECHNICAL TRAINING

B.S., Chemistry, Birmingham Southern College, 1963.
U.S. Public Health Service Courses:
Two weeks—Radionuclide Analysis by Gamma Spectroscopy.
Two weeks—Basic Radiological Health.
One week—Measurement of Airborne Radioactivity.
Two weeks—Analysis of Radionuclides in Water.
Two weeks—Radiochemical Analysis and Instrumentation, On-the-job training, Southeastern Radiological Health Laboratory, Montgomery.
Two weeks—Chemical Analyses for Water Quality.
One week—Pesticide Residue Analysis of Foods.
Other Training:
Infrared Spectroscopy, ACS Short Course School, 150th Annual ACS National Convention, Atlantic City.
RCA Course in Nuclear Instrumentation.
One week—Gas Chromatography.

EXPERIENCE

One year, 4 months experience as chemist, water quality surveillance, Alabama State Department of Public Health. Two years experience in all aspects of radiochemistry, Division of Radiological Health, Alabama State Department of Public Health. Duties have included all phases of sample preparation and radioanalysis. Serving as Acting Chief Chemist with responsibilities for the operation of the Division's Environmental Radiation Laboratory while Mr. Godwin is on educational leave.

MICKEY T. MAYS

EDUCATION AND TECHNICAL TRAINING

Registered X-Ray Technician. Air Force Medical Service School, Gunter Air Force Base, Montgomery, Alabama.
U.S. Public Health Service Courses:
Two weeks—Basic Radiological Health.
Two weeks—Medical X-ray Protection.

EXPERIENCE

Four years as X-ray technician, Maxwell Air Force Base, Montgomery, Alabama.

DOUGLAS L. MCKAY

EDUCATION AND TECHNICAL TRAINING

B.S., Chemistry, Florence State College, 1966.
U.S. Public Health Service Courses:
Two weeks—Basic Radiological Health.
Two weeks—Analysis of Atmospheric Organics.

EXPERIENCE

Three months, chemist, Jefferson County Health Department, Birmingham, Alabama. Three months, chemist, Alabama State Department of Public Health, Montgomery, Alabama.

JOHN W. NOBLIN

EDUCATION AND TECHNICAL TRAINING

B.S., Mathematics, Troy State College, 1962.
U.S. Public Health Service Courses:
One week—Radium Hazards and Control.
Two weeks—Basic Radiological Health.
Two weeks—Occupational Radiation Protection.
Two weeks—Medical X-ray Protection.
One week—Measurement of Airborne Radioactivity.
One week—Radionuclide Analysis by Gamma Spectroscopy.
U.S. Atomic Energy Commission Courses:
Three weeks—Orientation Course in AEC Regulatory Practices and Procedures, Bethesda.
Ten weeks—Health Physics, Institute of Nuclear Studies, Oak Ridge.
Other Training:
One week—Radiological Defense Officer Course.

EXPERIENCE

Two years experience as Radiation Physicist, Division of Radiological Health. Experienced in survey and inspection techniques of radioactive materials. Planned and conducted statewide onsite survey of all radium facilities in Alabama.

DONALD W. PEAK

EDUCATION AND TECHNICAL TRAINING

A.B. in Physics and Mathematics, Huntingdon College.
One and one-half years graduate study, Nuclear Science, Auburn University.
Educational Leave, Mr. Peak is presently on educational leave attending North Carolina State College where he will receive an M.S. degree in Radiation Protection and Safety in 1966.
U.S. Public Health Service Courses:
Two weeks—Basic Radiological Health.
One week—Radium Hazards and Control.
Two weeks—Occupational Radiation Protection.
Two weeks—Medical X-ray Protection.

EXPERIENCE

Ten months experience with Division of Radiological Health, Alabama State Department of Public Health. Experience includes work in the Alabama state-wide radium survey.

ALVA PHILLIPS, JR.

EDUCATION AND TECHNICAL TRAINING

B.S., Engineering Technology, Troy State College, 1965.
U.S. Public Health Service Courses:
Two weeks—Basic Radiological Health.
Two weeks—Radionuclide Analysis by Gamma Spectroscopy.

EXPERIENCE

Three months, Chemist, Division of Radiological Health.

WALTER E. SCOTT

EDUCATION AND TECHNICAL TRAINING

B.S., Civil Engineering, University of Alabama, 1966.
U.S. Public Health Service Courses:
Two weeks—Basic Radiological Health.
One week—Elements of Air Quality Management.
One week—Source Sampling for Atmospheric Pollutants.
One week—Design of Pollutant Sampling Trains.

EXPERIENCE

Three months, Engineer, Air Pollution Control Program.

KIRKSEY E. WHATLEY

EDUCATION AND TECHNICAL TRAINING

B.S., Mathematics, Troy State College, 1965.
U.S. Public Health Service Course:
Two weeks—Basic Radiological Health.

EXPERIENCE

Two months, Division of Radiological Health.

CHARLES K. YEE

EDUCATION AND TECHNICAL TRAINING

B.S., Chemical Engineering, Auburn University, 1963.
U.S. Public Health Service Courses:
One week—Meteorological Aspects of Air Pollution.
One week—Elements of Air Quality Management.
One week—Combustion Evaluation—Sources and Control Devices.
One week—Analysis of Atmospheric Inorganic.
Two weeks—Analysis of Atmospheric Organic.

EXPERIENCE

Nine months Public Health Engineer I, Environmental Health Laboratory, Alabama State Department of Public Health.

THOMAS H. YOUNGBLOOD, Jr.

EDUCATION AND TECHNICAL TRAINING

B.S. in Science, Troy State College, 1965.
U.S. Public Health Service Courses:
Two weeks—Basic Radiological Health.
Two weeks—Occupational Radiation Protection.
Two weeks—Medical X-Ray Protection.
One week—Radium Hazards and Control.
U.S. Atomic Energy Commission:
Ten weeks—Health Physics, Institute of Nuclear Studies, Oak Ridge.

EXPERIENCE

Nine months, Division of Radiological Health, Alabama State Department of Public Health. Worked with state-wide radium survey program.

[F.R. Doc. 66-6021; Filed, June 1, 1966; 8:46 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 16979; Order E-23744]

SOUTHEAST AIRLINES, INC.

Order Instituting Investigation and Denying Exemption

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 26th day of May 1966.

Application of Southeast Airlines, Inc., Docket 16979; for an exemption under section 416(b) of the Federal Aviation Act of 1958, as amended.

On February 14, 1966, Southeast Airlines, Inc. (Southeast), an air taxi operator, filed an application for exemption from section 401 of the Act and Part 298 of the Board's Economic Regulations in order to use one F-27 aircraft in the air transportation of persons, property and mail between Miami and Key West via Marathon, Fla.[1] In the alternative, Southeast requests an exemption to engage in certain activities with limited interstate aspects (such as advertising, through ticketing, interline bookings, etc.), as well as the transportation of mail incident to operations that applicant alleges it would institute as an in-

[1] Air taxi operators are precluded by Part 298 from utilizing in direct air transportation aircraft having a maximum gross certificated takeoff weight in excess of 12,500 pounds.

trastate commercial operator utilizing large aircraft.

In support of its application Southeast alleges, inter alia, that it now provides scheduled air taxi operations between Miami and Key West, via Marathon; that National Airlines, Inc. (National), the air carrier certificated between Miami and Key West, provides only one mid-day round-trip flight which fails to meet the traffic demands; and that no air carrier is certificated to serve Marathon. Southeast estimates that the monthly total of passengers over the Miami-Key West route is 6,500; that of this total Southeast carries approximately 1,500 per month, about 20 percent of whom enplane and deplane at Marathon; and that Argonaut Airways (a commercial operator) carries in excess of 3,000 passengers per month over the Miami-Key West route. Southeast alleges that Argonaut's operations are illegal and are having a serious adverse effect on the applicant's services; that it has filed a complaint with the Board's Bureau of Enforcement with respect to Argonaut's services; and that if Argonaut's operations are brought to an end by the Board, there will continue to be a need for air service to accommodate the requirements now being filled by Argonaut.

No objections to grant of this application have been filed.

The Board has carefully considered this application and related matters and concludes that the request for exemption should be denied. Heretofore, authorizations by exemption permitting air taxi operators to perform conventional services with large aircraft have been in the nature of experiments to test the feasibility of such services. However, the Board has clearly indicated that the question of extended need for such services should be resolved only on the basis of a full evidentiary record.[3] The instant proposal cannot be classified as experimental or specialized, or as a temporary auxiliary to the service of a certificated carrier. It involves scheduled service with large, modern aircraft between two well-established and substantially populated communities. The route has been served regularly by a certificated carrier since 1944, and more recently by other classes of carrier using both large and small equipment. Thus it is clear that there is no need for further experimentation. On the contrary, rather than innovating a service, Southeast proposes to enter, on a competitive basis, an established market served by a certificated air carrier. Where, as here, a proposed operation would constitute a service equivalent to that provided by a certificated carrier, and would involve a change in authorization for service over a route of a certificated carrier, we believe the appropriate procedure for authorization is section 401, not section 416(b), of the Act.[3] Accordingly, we conclude that it would not be in the public interest to grant Southeast the relief it seeks.

National provides only one round-trip daily between Miami and Key West. This service consists of a mid-day flight originating and terminating in New York City and does not appear to be geared to the needs of either local traffic or the Post Office Department.[4] The total traffic on National between Key West and all other domestic points for the year ended December 31, 1964, was 17,740 passengers, or an average of 48 passengers a day. Of this total, local traffic between Miami and Key West accounted for 6,090 passengers.[5] There are no reporting requirements for air taxi operators or intrastate carriers from which to ascertain the number of passengers carried by these classes of carriers during any given period or over any particular route. However, it appears that several air taxi operators are currently providing multiple schedules daily with small aircraft, and, until recently, an alleged commercial operator was providing scheduled service with large aircraft. It appears, therefore, on the basis of the volume of noncertificated services provided in the Miami-Key West market that National's service between these points may not be fully responsive to the needs of the public and the postal service. We shall, therefore, institute a Miami-Key West Service Investigation to determine whether the public convenience and necessity require the certification, on a subsidy ineligible basis, of one or more air carriers to transport persons, property and mail between Miami and Key West, nonstop and/or via Marathon, and whether the certificate authority of National at Key West should be suspended or deleted.

Accordingly, it is ordered:

1. That the application of Southeast in Docket 16979 be and it hereby is denied;

2. That an investigation to be called the Miami-Key West Service Investigation, Docket 17358, be and it hereby is instituted to determine whether the public convenience and necessity require the certification, on a subsidy-ineligible basis, of one or more carriers to provide air transportation of persons, property, and mail between Miami and Key West, nonstop and/or via Marathon; and whether the public convenience requires the suspension or deletion of National's authority at Key West; and

3. That the Investigation instituted in Docket 17358, be assigned to an Examiner of the Board for hearing at a time and place hereafter to be designated.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 66-6047; Filed, June 1, 1966; 8:49 a.m.]

[Docket No. 17360; Order E-23746]

BEKINS AIRVAN CO.

Order of Investigation and Suspension Regarding Proposed Increased Charge for Excess Valuation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 27th day of May 1966.

By tariff revision filed April 27, 1966, and marked to become effective May 31, 1966, Bekins Airvan Co. (Bekins) proposes to increase its charge for excess valuation to $1.50 per $100, or fraction thereof, of the full amount of the shipper's declared value. This charge will apply if the shipper declares a value in excess of $0.30 per pound per article. If the shipper fails to declare a value on the entire shipment, Bekins' liability for loss or damage does not exceed $0.30 per pound per article. Bekins, an air freight forwarder, is authorized to engage in transportation of household goods. It supports its filing as correcting an error originally made on the charge for excess valuation, which was $0.50 per $100.

Upon consideration of all relevant matters, the Board finds that the proposed tariff revisions may be unjust, unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, or otherwise unlawful, and should be investigated. Bekins' original tariff charge for excess valuation of $0.50 per $100 was made effective August 15, 1965. It was revised effective March 15, 1966, to indicate that the charge would be assessed on the full amount of the shipper's declared value. The current proposal of $1.50 involves a tripling of the current rate.

The current charges of Bekins of $0.50 per $100 are the same as the charges for excess valuation of most other air

---

[3] See Orders E-23221, Feb. 10, 1966, and E-23418, Mar. 25, 1966. An exception was made in the case of Schaefer Air Service, Inc. (Order E-22294, June 11, 1965). However, there the applicant was providing a unique operation requiring specialized equipment and services not otherwise readily available, and projected toward an extremely limited clientele.

[3] This situation is not comparable to the case of South Central Airlines, Inc., Order E-21037, July 7, 1964, where an air taxi operator was authorized to provide service with an aircraft in excess of the 12,500-pound limitation in the Miami-Key West market. There the Board clearly indicated that that case was not to be used as a precedent for granting exemption to air taxi operators to use large aircraft, and noted that the aircraft authorized to be used was one having a gross weight of 13,500 pounds which, technically, could be operated within the air taxi weight limitation. Cf. Melbourne Airways and Air College, Inc., Order E-22497, Aug. 2, 1965, and Midwest Airways, Inc., Order E-20626, Mar. 27, 1964, wherein the Board declined to authorize air taxi operators to use large aircraft in areas served by certificated carriers.

[4] On the basis of evidence submitted in the South Central Case, supra, the Board concluded that National's daily round-trip service between Miami and Key West did not appear to fully meet the needs of the public. See Order E-21037, July 7, 1964. In addition, the Postmaster General has heretofore stated that a minimum of one morning and one evening daily round-trip flight is required between Miami and Key West to satisfy postal needs.

[5] Origination and Destination Survey for year ended Dec. 31, 1964.

freight forwarders of household goods. These charges are considerably higher, however, than imposed by the direct air carriers. Since Bekins has presented no cost justification for a substantial increase in excess valuation charges which appear excessive, the Board will suspend the proposal pending an investigation.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof:

It is ordered, That:

1. An investigation is instituted to determine whether the provisions of Rule No. 75(c) on 2d Revised Page 14 of Bekins Airvan Co.'s CAB No. 5, and rules, regulations or practices affecting such provisions are, or will be, unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful provisions, and rules, regulations, or practices affecting such provisions;

2. Pending hearing and decision by the Board, the provisions of Rule No. 75 (c) on 2d Revised Page 14 of Bekins Airvan Co.'s CAB No. 5 are suspended and their use deferred to and including August 28, 1966, unless otherwise ordered by the Board and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The proceeding herein be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated; and

4. Copies of this order shall be filed with the tariff and served upon Bekins Airvan Co., which is hereby made a party to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 66-6048; Filed, June 1, 1966; 8:49 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 16368, 16369; FCC 66M-742]

CENTRAL BROADCASTING CORP., AND SECOND THURSDAY CORP.

Order Continuing Hearing

In re applications of Central Broadcasting Corp., Madison, Tenn., Docket No. 16368, File No. BPH-3773; second Thursday Corp., Nashville, Tenn., Docket No. 16369, File No. BPH-3778; for construction permits.

The Hearing Examiner having under consideration the motion for indefinite continuance of procedural dates filed May 19, 1966, by Central Broadcasting Corp. and the opposition thereto filed May 23, 1966, by the Broadcast Bureau; [1]

It appearing, that as basis for the requested continuance it is alleged that applicants "are in the process of negotiations looking toward a resolution of the conflict between their applications without further litigation;"

It further appearing, that the Broadcast Bureau opposes the petition for the reasons that extensions of procedural dates have twice been requested and granted with the instant request not being made until the date on which the exhibits to be offered in the direct presentations were to be exchanged and it accordingly is urged that the instant motion be denied "unless and until a joint dismissal agreement has been filed;"

It further appearing, that the instant motion fails to indicate the stage of the said negotiations, the date contemplated for completion thereof, or to in any manner indicate that the neogtiations will in fact result in the filing of a joint dismissal agreement and accordingly the request for an indefinite continuance must be denied;

It is ordered, This 25th day of May 1966 that the said motion for continuance of procedural dates is denied;

It is further ordered, On the Hearing Examiner's own motion that the date for exchange of exhibits to be offered in the direct presentations is continued from May 19, 1966, to May 31, 1966, and the date for commencement of hearing is continued from May 31, 1966, to June 6, 1966, commencing at 10 a.m. in the offices of the Commission at Washington, D.C., said dates to be strictly adhered to in the event a joint dismissal agreement has not been filed on or before May 31, 1966.

Released: May 27, 1966.

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

[F.R. Doc. 66-6050; Filed, June 1, 1966; 8:49 a.m.]

[1] Counsel for Second Thursday Corp. has orally advised that he consents to early consideration and grant of the requested continuance.

[Docket Nos. 16572, 16573; FCC 66M-738]

COSMOPOLITAN ENTERPRISES, INC., AND H. H. HUNTLEY

Memorandum Opinion and Order Regarding Procedural Dates

In re applications of Cosmopolitan Enterprises, Inc., Edna, Tex., Docket No. 16572, File No. BP-16347; H. H. Huntley, Yoakum, Tex., Docket No. 16573, File No. BP-16570; for construction permits.

1. On May 16, 1966, Cosmopolitan Enterprises, Inc., filed a petition for change in procedural dates. The petition has been opposed in its entirety by H. H. Huntley and International Broadcasting Corp. The Broadcast Bureau filed a response which is a conditional consent to an extension of the date for exchange of exhibits but the Bureau insists that there would be insufficient time to examine the engineering exhibits prior to the hearing date suggested by Cosmopolitan, which is June 29.

2. At the present time there is a schedule of procedural dates which was evolved during a prehearing conference held on May 4. These dates and the schedule now proposed by Cosmopolitan are as follows:

	Present schedule	Proposed schedule
Direct exchange	June 9	June 23
Supplemental exchange	June 20	June 27
Hearing commencement	June 28	June 29

3. The responses of Huntley, International, and the Bureau are correct in pointing out that there would be insufficient time between the date of direct exchange and the hearing date for an examination of engineering exhibits which all parties concede will be of a complex nature. The situation is also complicated by the fact that the applicants and respondent have retained consulting engineers who reside outside the Washington area. Obviously time will be lost in dispatching exhibits to and from these consultants. Furthermore, the procedural dates suggested in the petition would probably make it impossible to have an informal engineering conference prior to the hearing. The Hearing Examiner recognizes that such conferences can often be of inestimable value and will take no action which might preclude convening such a conference.

4. Actually the petition does not state facts which would constitute good cause but inferentially it may be concluded that this is a hardship case. It is doubtless true that petitioner's consulting engineer will need additional time for preparation of exhibits because he was retained at a rather late stage of the proceeding. While the Hearing Examiner would normally be inclined to deny a request which is designed merely to satisfy the convenience of an applicant, it must be recognized that the engineering problems here appear to be of a more complex nature than is ordinarily the case. By denying any relief to Cosmopolitan there is the possibility that such action would administer "sudden death" to that applicant. In an endeavor to avoid any action which might smack of being arbitrary, the Examiner proposes to modify the schedule of dates, although not precisely as requested. The modified schedule will also take accord of the realities of the situation which have been pointed out by Cosmopolitan's opponents and by the Broadcast Bureau. Thus, the date for commencement of hearing will be set sufficiently late to allow a fair opportunity for all parties to study the exhibits, request witnesses and ask for supplementary material. This schedule will consist of the following dates:

Direct exchange	June 20.
Supplemental exchange (with request for witnesses)	July 1.
Commencement of hearing	July 11.

Admittedly the foregoing changes are designed to effect a compromise which will reasonably satisfy the needs and rights of all the parties. The Examiner is constrained to add that no further changes of these dates will be granted except upon the most cogent showing of good cause.

It is ordered, This 25th day of May 1966, that the petition for change in procedural dates filed on May 16, 1966, by Cosmopolitan Enterprises, Inc., is granted to the extent shown above and that, in accordance with the schedule shown in paragraph 4 above, the date for commencement of hearing is changed from June 28 to July 11, 1966.

Released: May 26, 2966.

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

[F.R. Doc. 66-6051; Filed, June 1, 1966; 8:49 a.m.]

[Docket No. 16663; FCC 66-481]

LAMAR LIFE BROADCASTING CO.

Order Designating Application for Hearing on Stated Issues

In re applications of Lamar Life Broadcasting Co., Docket No. 16663, File No. BRCT-326; for renewal of license of Television Station WLBT and auxiliary services, Jackson, Miss.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 25th day of May 1966:

1. This proceeding involves an application for renewal of the license of Television Station WLBT. At issue are questions of standing, procedure and alleged unfairness in programing by applicant. The proceeding comes before the Commission now on remand from the U.S. Court of Appeals for the District of Columbia Circuit directing the holding of a hearing on the application. United Church of Christ et al. v. Federal Communications Commission, —— App. D.C. ——, —— F. 2d ——— (March 25, 1966).

2. The case is now before us on the following pleadings:

(a) Application for renewal of the license of Television Station WLBT for the period June 1, 1964, to May 31, 1967, filed by Lamar Life Broadcasting Co. (herein called applicant) on March 3, 1964.

(b) Petition to intervene and to deny application for renewal filed by the Office of Communications of the United Church of Christ, Aaron Henry and Robert L. T. Smith on April 15, 1964, seeking leave to intervene in the proceeding and denial of the application on grounds specified by numerous allegations therein.

(c) An opposition to petition filed by the applicant on May 15, 1964, denying most of the allegations and opposing the relief sought by the aforesaid petition.

(d) Petition for Joinder filed by the United Church of Christ at Tougaloo, Miss., on June 10, 1964, seeking leave to intervene in the proceeding and to join in the aforesaid Petition filed by the Office of Communications of the United Church of Christ, Aaron Henry and Robert L. T. Smith.

(e) Reply to Opposition to Petition to Intervene and to Deny Application for Renewal filed by applicant on July 13, 1964, opposing the relief sought by the Petition for Joinder.

(f) Response to Reply filed by applicant on September 13, 1964 and containing further allegations by applicant responsive to the pleading of the United Church of Christ et al. filed on July 13, 1964.

3. On May 19, 1965, the Commission issued its Memorandum Opinion and Order in this proceeding discussing the substantive allegations of the foregoing pleadings and the results of the Commission's investigation of the case. In reliance thereon the Commission stated various conclusions concerning the matters referred to in these pleadings. The Commission held, in substance, that the several petitioners did not have standing as parties in the proceeding but that irrespective of standing the Commission would consider the matters raised by the several petitions and the responses thereto. The Commission concluded that serious questions were raised as to whether applicant had properly operated the station in the past but that the public interest would best be served by granting a renewal of the license for 1 year on condition that the applicant operate in accordance with specified conditions during that period and report upon its operations in a renewal application to be filed at the end of that year.

4. An appeal was taken to the U.S. Court of Appeals for the District of Columbia Circuit by the Office of Communications of the United Church of Christ, Aaron Henry, Robert L. T. Smith and the United Church of Christ at Tougaloo. The Court of Appeals stated that the issues presented to and decided by it were (a) whether appellants, or any of them, had standing as parties in interest before the Commission in this proceeding, and (b) whether the Commission was required to conduct an evidentiary hearing on this application. The court held that responsible and representative groups, including such community organizations as civic associations, professional societies, unions, churches, and educational institutions or associations should be allowed to intervene as parties in a proceeding such as this one, subject to the broad discretion of the Commission in determining which and how many community representatives are reasonably required to give the Commission the assistance it needs in vindicating the public interest. The court stated that it did not hold that all appellants have standing but that it did hold that the Commission must allow standing to one or more of them. The court further held that in the circumstances of this proceeding an evidentiary hearing was required in order to resolve the public interest issue. The court stated that: "The Commission is directed to conduct hearings on WLBT's renewal application, allowing public intervention pursuant to this holding. Since the Commission has already decided that appellants are responsible representatives of the listening public of the Jackson area, we see no obstacle to a prompt determination granting standing to appellants or some of them."

5. That holding is the law of this case. Since a hearing is to be held, the future action of the Commission should be based upon the record made in that hearing. It is, therefore, inappropriate for the Memorandum Opinion and Order previously issued to stand and, accordingly, the Memorandum Opinion adopted May 19, 1965, is hereby withdrawn and the Order of that date is hereby vacated.

6. This proceeding is hereby referred to a Hearing Examiner, to be hereafter designated, who shall have all of the power and authority specified in 47 CFR §§ 1.243 and 1.251 and who shall conduct these proceedings and hold a hearing herein pursuant to 47 U.S. Code section 309(c) and the directions and conditions specified herein. The Hearing Examiner shall permit proposed findings and conclusions pursuant to 47 CFR 1.263 and 1.264, and thereafter shall prepare and issue an initial decision pursuant to 47 CFR 1.267 which shall be subject to the filing of exceptions, appeal and review pursuant to 47 CFR 1.276 and 1.277. In accordance with established procedure (see 47 CFR 0.365) the review function in this proceeding shall be performed by the Commission.

7. In a Memorandum Opinion and Order adopted December 2, 1965 (1 FCC 2d 1484), the Commission approved an application for transfer of control of Station WLBT from the Lamar Life Broadcasting Co. to the Lamar Life Insurance Co. For the reasons stated in that opinion, our action did not affect or prejudice the outcome of this proceeding, then on appeal. It, therefore, appears that the Lamar Life Insurance Co. should be substituted as the applicant herein for the Lamar Life Broadcasting Co., with no prejudice or effect upon the issues to be resolved herein. The heading of this proceeding shall hereinafter be so modified and provided.

8. The pertinent pleadings now before us contain petitions to intervene by the four parties who had jointly petitioned the Commission to deny WLBT's renewal action and who had appealed to the court from the Commission's denial thereof. In the circumstances of this case, and in light of the indicated relationship between petitioners and other organizations directly affected by the WLBT practices complained of, we deem it appropriate to confer standing as parties in interest herein upon all the petitioners. In general we believe that organizations rather than individuals are likely to be representative of the community and helpful to the Commission in a proceeding such as this; but in reliance upon the fact that these petitioners have been joined in pleadings before the Commission and the court and are jointly represented herein by the same counsel, so that there will be no undue and burdensome proliferation of parties, we will permit intervention by the Office of Communications of the United Church of Christ, the United Church of Christ at Tougaloo, Miss., Aaron Henry and Robert L. T. Smith upon filing written appearances herein pursuant to paragraph 11 of this Order.

9. It appears from the pertinent pleadings filed herein that the substantial is-

sues raised relate to charges that the programing presented by applicant has been unfair to various groups, particularly Negro groups, within the service area, and has discriminatorily denied such groups the opportunity for local expression over the facilities of applicant's station.[1] Accordingly, the hearing to be held herein and the other proceedings herein shall be directed to the following issues:

(a) Whether Station WLBT has afforded reasonable opportunity for the discussion of conflicting views on issues of public importance;

(b) Whether Station WLBT has afforded reasonable opportunity for the use of its broadcasting facilities by the significant groups comprising the community of its service area;

(c) Whether Station WLBT has acted in good faith with respect to the presentation of programs dealing with the issue of racial discrimination, and, particularly, whether it has misrepresented to the public or the Commission with respect to the presentation of such programing.

(d) Whether in light of all the evidence a grant of the application for renewal of license of Station WLBT would serve the public interest, convenience, or necessity.

The ultimate issue here is the probable future performance of the applicant with respect to serving the public interest, convenience or necessity through operation of the station involved. Melody Music, Inc., — FCC 2d — (Mar. 9, 1966), (FCC 66–226). Accordingly, the the Hearing Examiner should admit evidence which appears to be material and relevant to this basic issue and which is not unduly remote in time. With this same objective, evidence otherwise material and relevant relating to the operation of the station up to the date of the hearing may be admitted.[2]

10. Pursuant to the rule announced in D & E Broadcasting Company, 1 FCC 2d 78 (1965), and in accordance with the statutory mandate of section 309(e), the burden of proof as to issues (a) and (b) shall be upon the intervenors, the burden of proof as to issue (c) shall be upon the Broadcast Bureau, and the burden of proof as to issue (d) shall be upon the applicant.

11. Applicant and intervenors may participate as parties at the hearing herein and avail themselves of the opportunity to be heard provided that they each file a timely notice of intention to appear and participate pursuant to 47 CFR § 1.221.

12. The hearing herein shall be held at a time and place to be specified in a subsequent order. The applicant shall give local notice of the hearing, pursuant to 47 U.S. Code section 311(a)(2) and 47 CFR § 1.594(g).

It is ordered, That further proceedings herein be held pursuant to and in accordance with the provisions of paragraphs 6, 7, 8, 9, 10, 11 and 12 of the foregoing Order.

Released: May 26, 1966.

FEDERAL COMMUNICATIONS COMMISSION,[3]
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 66–6052; Filed, June 1, 1966; 8:49 a.m.]

[Docket No. 16663; FCC 66M–747]

LAMAR LIFE BROADCASTING CO.

Order Scheduling Prehearing Conference

In re applications of Lamar Life Broadcasting Co., Docket No. 16663, File No. BRCT–326; for renewal of license of Television Station WLBT and auxiliary services, Jackson, Miss.

It is ordered, This 27th day of May 1966, that Jay A. Kyle shall serve as Presiding Officer in the above-entitled proceeding, and that a prehearing conference therein shall be held in the offices of the Commission, Washington, D.C., on June 21, 1966: *And, it is further ordered,* That the formal hearing in the proceeding shall be convened at a time and place to be specified by subsequent order.

Released: May 27, 1966.

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

[F.R. Doc. 66–6053; Filed June 1, 1966; 8:49 a.m.]

[Docket No. 16509 etc.; FCC 66M–743]

MICROWAVE COMMUNICATIONS, INC.

Order Regarding Procedural Dates

In re applications of Microwave Communications, Inc. et al., Docket No. 16509, File No. 4615–C1–P–64; for construction permits to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service at Chicago, Ill., St. Louis, Mo., and intermediate points; Docket Nos. 16510, 16511, 16512, 16513, 16514, 16515, 16516, 16517, 16518, 16519.

The following schedule shall be in effect:

Applicant to furnish its direct written case to other parties and Hearing Examiner by	June 20, 1966
Petitioners to furnish their direct written cases to applicant and Hearing Examiner by	July 11, 1966
Receipt of notification of witnesses for cross-examination by	July 21, 1966
Hearing (rescheduled from July 11, see FCC 66M–723)	July 26, 1966

So ordered, This 26th day of May 1966.[1]

Released: May 27, 1966.

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

[F.R. Doc. 66–6054; Filed, June 1, 1966; 8:49 a.m.]

[Docket No. 15658; FCC 66M–744]

NAUGATUCK VALLEY SERVICE, INC. (WOWW)

Order Following Prehearing Conference

In re application of Naugatuck Valley Service, Inc. (WOWW), Naugatuck, Conn., Docket No. 15658, File No. BP–14829; for construction permit.

Pursuant to agreements reached at a prehearing conference held today or arrived at subsequently by all parties: *It is ordered,* This 26th day of May 1966, that the following procedural steps will be taken on the dates specified in the above-captioned proceeding:

June 15, 1966	Applicant will notify other parties of the persons from whom depositions are to be taken,
July 13, 1966	Hearing.

Released: May 27, 1966.

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

[F.R. Doc. 66–6055; Filed, June 1, 1966; 8:50 a.m.]

[1] The allegations concerning discrimination against the Roman Catholic Church is simply a bare one, with no supporting facts or circumstances indicating a significant public interest question in the context of this case. As to the over-commercialization charge, the amount of time alleged to be devoted to commercials was roughly 15 percent—a percentage not unreasonable or shown to be inconsistent with the public interest. The licensee further represented that it adhered to the NAB code and it has kept within that representation. In the circumstances, we do not feel that hearing issues would be appropriate as to these matters.

[2] Prior to our action of May 19, 1965, the applicant had promised improvement in this area (see paragraph 26, 38 FCC 1143); there were further statements of compliance with the conditions attached to our May 19, 1965, order made in connection with the transfer application of December 2, 1965. In the circumstances, we believe that evidence of this nature should be received, without here deciding its weight or significance in the overall hearing record to be made before us.

[3] Statement of Commissioner Cox filed as part of original document.

[1] This schedule, which conforms to the discussion at the prehearing conference of February 25, allows only 4 days of hearing before the probable August recess. The Hearing Examiner does not know how much of the case can be covered in that time, and it may be necessary, as previously indicated (FCC 66M–723) to continue the remainder of the hearing to September, at the earliest. (This Order was written after public notice (84556) of the Commission's denial of the applicant's petition for reconsideration and grant and application for review, but before the text of the rulings was available. Because of the tight schedule the Hearing Examiner is issuing this order without waiting for the text.)

FEDERAL MARITIME COMMISSION

AMERICAN MAIL LINE, LTD., ET AL.

Notice of Agreement Filed for Approval

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

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 609; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. Warner W. Gardner, Shea & Gardner, 734 15th Street NW., Washington, D.C., 20005.

Agreement No. 9551 between American Mail Line, Ltd., American President Lines, Ltd., and Pacific Far East Line, Inc., is an agreement in principle to an eventual merger of the three lines, precise details of which remain to be agreed upon. In the interim Agreement No. 9551 would permit the parties to coordinate sailings and solicit traffic jointly.

Dated: May 27, 1966.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Special Assistant to the Secretary.

[F.R. Doc. 66-6036; Filed, June 1, 1966; 8:48 a.m.]

AMERICAN PRESIDENT LINES, INC., AND ISTHMIAN LINES, INC.

Notice of Agreement Filed for Approval

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

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 609; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. W. H. Williams, Assistant to the Vice President, American President Lines, Inc., 1101 17th Street NW., Washington, D.C., 20036.

Agreement 9550 between American President Lines and Isthmian Lines, is a tariff concurrence agreement whereby American President Lines concurs in the publication and filing of rates by Isthmian Lines in the trade from Vietnam and Cambodia to U.S. Atlantic and Gulf ports. The parties may discuss rates and other tariff matters which may affect both of them, but, final decision as to tariff matters to be filed shall be reserved to Isthmian Lines.

Dated: May 27, 1966.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Special Assistant to the Secretary.

[F.R. Doc. 66-6037; Filed, June 1, 1966; 8:48 a.m.]

SECURITIES AND EXCHANGE COMMISSION

ATLANTIC RICHFIELD CO.

Order Amending Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

MAY 26, 1966.

In the matter of application of the Philadelphia Baltimore Washington Stock Exchange for unlisted trading privileges in a certain security.

The notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing dated May 20, 1966, in the above matter (Administrative Proceeding File No. 3-648) is hereby amended to read as follows:

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the $3 cumulative convertible preference stock of Atlantic Richfield Co., which security is listed and registered on one or more other national securities exchanges.

Upon receipt of a request, on or before June 5, 1966, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C., 20001, not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 66-6011; Filed, June 1, 1966; 8:46 a.m.]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority 30; Anchorage, Alaska Region]

ANCHORAGE REGIONAL OFFICE

Delegation of Authority To Conduct Program Activities

I. Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30, Pacific Coastal Area, 30 F.R. 3340, as revised, 30 F.R. 8080, as amended, 30 F.R. 8978, as amended, 30 F.R. 13557, as amended, the following authority is hereby redelegated to the specific positions as indicated herein:

A. Size determinations (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 (and Assistant Chief, if assigned).

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 as follows:

(Name), Adminstrator,
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 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 think 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 therefor, 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.C.3.

2. To decline business and disaster loans of any amount.

3. Items I.C.6. through 10.

4. Item I.A. (Size Determinations for Financial Assistance only.)

5. Item I.B. (Eligibility Determinations for Financial Assistance only.)

E. Working Supervisor, Loan Administration and Liquidation.

1. To approve the amendments and modifications of loan conditions for loans that have been fully disbursed.

2. Item I.C.12.—only the authority for servicing, administration and collection, including subitems a. and b.

3. Item I.A. (Size Determinations for Financial Assistance only.)

4. Item I.B. (Eligibility Determinations for Financial Assistance only.)

5. Item I.C.12.—only the authority for liquidation, including collateral purchased, and 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 direct or 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. 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.)

H. Regional Counsel. To disburse approved loans.

I. Administrative Assistant.

1. To purchase reproductions of loan documents, chargeable to the revolving fund, 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 and (d) issue Government bills of lading.

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 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. May 17, 1966.

ROBERT E. BUTLER,
Regional Director,
Anchorage Regional Office.

[F.R. Doc. 66–6012; Filed, June 1, 1966; 8:46 a.m.]

[Delegation of Authority 30; Middle Atlantic Area (Amdt. 5)]

MIDDLE ATLANTIC AREA

Delegation of Authority To Conduct Program Activities in Regional Offices

Pursuant to the authority vested in the Area Administrator by Delegation of Authority No. 30 (Revision 10), 30 F.R. 972, as amended, 30 F.R. 2742, 11984, and 12343; Delegation of Authority 30 F.R. 3254, as amended, 30 F.R. 5778, 8080, 13890, and 14128, is further amended by revising Items I. C. 1. a and b, I. F. 1 and 2., to read as follows:

I. * * *

C. *Procurement and management assistance.* 1. a. (Only to the Regional Directors, Philadelphia, Cleveland, Richmond and Baltimore Regions.) To approve applications for Certificates of Competency received from small business concerns which are located within the geographical jurisdiction of the area office when the total value of the contract to be awarded as a result of the issuance of a COC does not exceed $350,000.

b. (Only to the Regional Directors, Newark and Washington, D.C., Regions.) To approve applications for Certificates of Competency received from small business concerns which are located within the geographical jurisdiction of the area office when the total value of the contract to be awarded as a result of the issuance of a COC does not exceed $100,000.

* * * * *

F. *Size determinations.* 1. (Only to the Regional Directors, Philadelphia; Cleveland; Richmond; Baltimore; Washington, D.C.; Pittsburgh; Newark; and Columbus.) 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 classifications for financial purposes only. Product classifications for procurement purposes are made by contracting officers.

2. (Only to the Regional Director, Clarksburg.) To make initial size determinations for financial assistance purposes only, in all cases within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions for financial purposes only. Product classification decisions for procurement purposes are made by contracting officers.

* * * * *

Effective date. May 18, 1966.

EDWARD N. ROSA,
Area Administrator,
Middle Atlantic Area.

[F.R. Doc. 66–6013; Filed, June 1, 1966; 8:46 am.]

[Delegation of Authority 30; Miami Regional Disaster 1, 1966]

MANAGER, DISASTER BRANCH OFFICE, TAMPA, FLA.

Delegation of Authority Rescinded

Notice is hereby given that Delegation of Authority No. 30, Disaster 1–1966, 31 F.R. 6144, is hereby rescinded in its entirety.

Effective date. May 16, 1966.

THOMAS A. BUTLER,
Regional Director, Miami, Fla.

[F.R. Doc. 66–6014; Filed, June 1, 1966; 8:46 am.]

MANAGER, DISASTER FIELD OFFICE, TAMPA, FLA.

Revocation of Appointment

Pursuant to authority contained in Delegation of Authority No. 30, Southeastern Area, 30 F.R. 2884, as amended, I hereby revoke in its entirety the designation effective April 11, 1966 (31 F.R. 6144) of William H. Merrill, Jr., as Manager of the Disaster Branch Office at Tampa, Fla.

Effective date. May 16, 1966.

THOMAS A. BUTLER,
Regional Director, Miami, Fla.

[F.R. Doc. 66–6015; Filed, June 1, 1966; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 1356]

MOTOR CARRIER TRANSFER PROCEEDINGS

MAY 27, 1966.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC–68659. By order of May 25, 1966, the Transfer Board approved the transfer to Price S. Hilton and Wendell G. Hilton, a partnership, doing business as Hiltons Trucking, Rural Route No. 1, Box 215, Galesville, Wis., 54630, of certificate in No. MC–96439, issued December 2, 1952, to Price Stevens Hilton, doing business as Price S. Hilton Trucking, Rural Route No. 1, Box 215, Galesville, Wis., 54630, authorizing the transportation of: General commodities, with the usual exceptions including household goods and commodities in bulk, from Winona, Minn., and points in Minnesota within 5 miles of Winona to named points in Trempealeau and LaCrosse Counties, Wis., and, livestock and agricultural commodities on the return.

No. MC–FC–68663. By order of May 25, 1966, the Transfer Board approved the transfer to George O. Slater, Inc., Stoughton, Mass., of the certificate in No. MC–45362, issued July 30, 1965, to Hyman Stone, doing business as Stone Bros., and acquired by George O. Slater, Stoughton, Mass., authorizing the transportation of: Household goods, between Boston, Mass., and points in Massachusetts within 25 miles of Boston, on the one hand, and, on the other, points in Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, New Hampshire, Maine, and Maryland. Robert J. Gallagher, 111 State Street, Boston, Mass., 02109, attorney for applicants.

No. MC–FC–68668. By order of May 25, 1966, the Transfer Board approved the transfer to E. L. Hollingsworth & Co., a corporation, Flint, Mich., of the certificate in No. MC–28636, issued June 12, 1941, to E. L. Hollingsworth, doing business as E. L. Hollingsworth & Co., Flint, Mich., authorizing the transportation of: General commodities, excluding household goods, commodities in bulk, and other specified commodities, between Detroit, Mich., and Bay City, Mich., serving the intermediate points of Pontiac, Flint, and Saginaw, Mich. Quentin A. Ewert, Union Savings & Loan Building, 117 West Allegan Street, Lansing, Mich., 48933, counsel for applicants.

No. MC–FC–68709. By order of May 25, 1966, the Transfer Board approved the transfer to Joseph L. Werner, doing business as Werner Express, St. Louis, Mo., of the operating rights of Meier Drayage Co., Inc., St. Louis, Mo., in Certificate No. MC–80345 (Sub-No. 1), issued November 10, 1949, authorizing the transportation, over irregular routes, of uncrated, new, household furniture, household furnishings, and household appliances, from St. Louis, Mo., to points in Illinois within 85 miles of St. Louis, and of used or damaged household furniture, household furnishings, and household appliances, uncrated, from points in Illinois within 85 miles of St. Louis to St. Louis, Mo. Austin C. Knetzger, 722 Chestnut Street, St. Louis, Mo., 63101, attorney for applicants.

No. MC–FC–68719. By order of May 23, 1966, the Transfer Board approved the transfer to Robert E. Mack, Harry Robson, Carl Brown, Sophie R. Mack, and Estelle M. Funk, a partnership, doing business as Mack Transportation Co., Philadelphia, Pa., of Certificate No. MC–10223, issued May 24, 1949, authorizing the transportation of general commodities, with the usual exceptions, over irregular routes between points and places in Philadelphia, Pa.; and in Permit No. MC–105809 and MC–105809 (Sub-No. 4), MC–105809 (Sub-No. 5), and MC–105809 (Sub-No. 6), issued by the Commission, May 25, 1949, June 14, 1951, November 14, 1952, and March 11, 1954, respectively, of such commodities as are sold in chain and retail stores, coal tar products, in bulk, and plumbing and heating supplies, from Philadelphia, Pa., and Tullytown, Pa., to points and places in Connecticut, Delaware, Maryland, New Jersey, New York, and Pennsylvania, varying with the commodities indicated. Dual operations were authorized. Alan L. Reed, 2107 Fidelity-Philadelphia Trust Building, Philadelphia, Pa., 19109, attorney for applicants.

No. MC–FC–68746. By order of May 25, 1966, the Transfer Board approved the transfer to Blaschke Trucking Co., a corporation, Houston, Tex., of the certificate of registration in No. MC–120851 (Sub-No. 1), issued April 20, 1964, to Hugo E. Blaschke, doing business as Blaschke Trucking Co., Houston, Tex., evidencing a right to engage in transportation in interstate or foreign commerce solely within the State of Texas, corresponding to Certificate of Public Convenience and Necessity No. 5255, Docket No. S–5936, dated February 13, 1961, issued by the Railroad Commission of Texas. H. H. Prewett, Suite 2159, Tennessee Building, Houston, Tex., 77002, attorney for applicants.

No. MC–FC–68752. By order of May 25, 1966, the Transfer Board approved the transfer to Frederick Schroen and William Schroen, a partnership, doing business as R. Rieken Moving & Storage, Cresskill, N.J., of certificate in No. MC–60611, issued May 11, 1949, to Richard Rieken, New Milford, N.J., authorizing the transportation of: Household goods, as defined by the Commission, between points and places within 100 miles of Dumont, N.J. Edward F. Bowes, 1060 Broad Street, Newark, N.J., attorney for applicants.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 66–6027; Filed, June 1, 1966; 8:47 a.m.]

[Notice 190]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MAY 27, 1966.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules in Ex Parte No. MC 67 (49 CFR Part 240), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protest must be served on the applicant, or its authorized representative, if any, and the protest must certify that such service has been made. The protest must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined, at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 22046 (Sub-No. 13 TA), filed May 25, 1966. Applicant: W. M. (BILLY) WALKER, INC., 129 South Grimes Street, Hobbs, N. Mex., 88240. Applicant's representative: W. D. Girand, Hobbs, N. Mex., 88240. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, the transportation of which, because of size or weight, requires the use of special equipment, and *related machinery parts, and related contractors' materials and supplies* when their transportation is incidental to the transportation by the carrier of commodities which, because of size or weight require the use of special equipment, from and to all points within a radius of 200 miles of Hobbs, N. Mex., for 180 days. Supporting shippers: New Mexico Electric Service Co., Post Office Box 920, Hobbs, N. Mex., 88240; H. B. Zachry Co., Post Office Box 760, Hobbs, N. Mex., 88240; Missouri Valley Constructors, Inc., Post Office Box 1988, Amarillo, Tex., 79105; Potash Co. of America, Post Office Box 31, Carlsbad, N. Mex., 88220; Rust Caterpillar Tractor Co., Post Office Box 856, Hobbs, N. Mex., 88240; New Mexico Bank & Trust Co., Hobbs, N. Mex., 88240; International Minerals & Chemical Corp., Post Office Box 71, Carlsbad, N. Mex., 88220. Send protests to: Jerry R. Murphy, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 109 U.S. Courthouse Building, Albuquerque, N. Mex., 87101.

No. MC 105159 (Sub-No. 18 TA), filed May 25, 1966. Applicant: LAWRENCE TRUCKING, INC., 1320 West Main Street, Red Wing, Minn. Applicant's representative: Donald B. Taylor, 4261 Minnehaha Avenue South, Minneapolis, Minn., 55406. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clay products and mortar mix*, from Red Wing, Minn., and Des Moines, Iowa, to points in Iowa, Minnesota, and Nebraska, for 180 days. Supporting shipper: Red Wing Sewer Pipe Corp., Featherstone Road, Red Wing, Minn. Send protests to: C. H. Bergquist, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 448 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minn., 55401.

No. MC 110686 (Sub-No. 33 TA), filed May 25, 1966. Applicant: McCORMICK DRAY LINE, INC., Avis, Pa. Applicant's representative: J. S. Griffith (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bulk handling semitrailers*, equipped with vacuum and pressure conveying systems, as demonstrators, between points in the United States (excluding Alaska and Hawaii), for 180 days. Supporting shipper: The Young Machinery Company, Inc., Muncy, Pa. Send protests to: Kenneth R. Davis, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 309 U.S. Post Office Building, Scranton, Pa., 18503.

No. MC 116073 (Sub-No. 69 TA), filed May 25, 1966. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., 1825 Main Avenue, Moorhead, Minn., 56560. Applicant's representative: John C. Barrett (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles, in initial movement, from points in Sauk County, Wis., to points in Michigan, Ohio, Indiana, Illinois, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, and Montana, for 180 days. Supporting shipper: House of Harmony, Inc., 301 South Main Street, Adams, Wis., 53910. Send protests to: Joseph H. Ambs, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 1621 South University Drive, Room 213, Fargo, N. Dak., 58102.

No. MC 125216 (Sub-No. 2 TA), filed May 25, 1966. Applicant: OWENS TRUCKMEN, INC., 183 Concord Street, Brooklyn, N.Y. Applicant's representative: Bert Collins, 140 Cedar Street, New York, N.Y., 10006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Elevators and escalators, and parts, cabs, materials, supplies, equipment, tools and accessories* used or useful in installation and repair of elevators and escalators, from Long Island City, N.Y., to points in New Jersey, Connecticut, and New York, *returned shipments*, on return; Restriction: Under contract with Stanley Elevator Co., Inc., Long Island City, N.Y., for 180 days. Supporting shipper: Stanley Elevator Co., Inc., 47–24 27th Street, Long Island City, N.Y. Send protests to: Robert E. Johnston, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 346 Broadway, New York, N.Y., 10013.

No. MC 125458 (Sub-No. 3 TA), filed May 25, 1966. Applicant: DWIGHT LEWIS, doing business as LEWIS GRAIN & PRODUCE, Post Office Box 262, Morton, Miss. Applicant's representative: Donald B. Morrison, Post Office Box 961, Jackson, Miss. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wooden pallets*, from Morton, Miss., to Mobile, Ala., New Orleans, Weeks, Reserve, and Harvey, La., and Memphis, Tenn., service performed under a continuing contract with Morton Manufacturing Co., Inc., Morton, Miss., for 180 days. Supporting shipper: Morton Manufacturing Co., Inc., Morton, Miss. (A. B. Farriss, President). Send protests to: Floyd A. Johnson, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 320 U.S. Post Office Building, Jackson, Miss., 39201.

No. MC 128247 TA, filed May 24, 1966. Applicant: BURSAL TRANSPORT, INC., Rural Route 1, Bunker Hill, Ind. Applicant's representative: Warren C. Moberly, 1212 Fletcher Trust Building, Indianapolis, Ind. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles, and dross*, from the plants or warehouses of Continental Steel Corp. at Kokomo, Ind., to points in Illinois, Michigan, Wisconsin, Missouri, Iowa, Ohio, Pennsylvania, Virginia, West Virginia, Kentucky, and Tennessee, (2) *machinery, machinery parts, millrolls, iron and steel; ingots, iron and steel, carrier shipping reels, cleaning compounds and lubricants*, from all points in Illinois, Michigan, Wisconsin, Missouri, Iowa, Ohio, Pennsylvania, Virginia, West Virginia, Kentucky, and Tennessee, to the plants or warehouses of Continental Steel Corp. at Kokomo, Ind., (3) *lime and quick lime*, from Chicago, Ill., St. Louis, Mo., and Woodville, Ohio, to the plants or warehouses of Continental Steel Corp. at Kokomo, Ind., (4) *dolomite*, from Chicago, Ill., to the plants or warehouses of Continental Steel Corp. at Kokomo, Ind., (5) *refractory products*, from Chicago, Ill., Woodville, Ohio, and Pittsburgh, Pa., to the plants or warehouses of Continental Steel Corp. at Kokomo, Ind., (6) *ingot molds and stools, and fence posts*, from Chicago Heights, Ill., to the plants or warehouses of Continental Steel Corp. at Kokomo, Ind., for 180 days. Supporting shipper: Continental Steel Corp., Kokomo, Ind. Send protests to: District Supervisor Dixon, Bureau of Operations and Compliance, Interstate Commerce Commission, 308 Federal Building, Fort Wayne, Ind., 46802.

No. MC 128248 TA, filed May 25, 1966. Applicant: ROUNTREE TRANSPORT, INC., 3580 Southwest 46th Avenue, Fort Lauderdale, Fla., 33302. Applicant's representative: John T. Bond, 1955 Northwest 17th Avenue, Miami, Fla. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Telephone equipment, material and supplies used in the installation, maintenance, and repair of such equipment*, for the account of Western Electric Co., Inc., between Fort Lauderdale, Fla., on the one hand, and, on the other, points in Broward, Dade, and Palm Beach Counties, Fla., for 180 days. Supporting shipper: Western Electric Co., Inc., 3300 Lexington Road, Winston-Salem, N.C. Send protests to: Joseph B. Teichert, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, Room 1621, 51 Southwest First Avenue, Miami, Fla., 33130.

No. MC 128249 TA, filed May 25, 1966. Applicant: CRONER DISTRIBUTING CORP., 530 Olmstead Avenue, Bronx, N.Y. Applicant's representative: Charles J. Williams, 1060 Broad Street, Newark, N.J., 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Noodles, spaghetti, macaroni, baked goods (such as matzos, macaroons, soup nuts, and kichel)*, from Long Is-

land City, N.Y., to East Paterson and Hackensack, N.J., (2) *dried soups*, from Paterson, N.J., to Farmingdale, Long Island City, Bronx, and Brooklyn, N.Y., (3) *return shipments of noodles, baked goods, and dehydrated soups*, from East Paterson to Long Island City, N.Y., restricted to a service to be performed under a continuing contract or contracts with A. Goodman & Sons, Inc., for 180 days. Supporting shipper: A. Goodman & Sons, Inc., 2107 41st Avenue, Long Island City, N.Y. Send protests to: Robert E. Johnston, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 346 Broadway, New York, N.Y., 10013.

No. MC 128250 TA, filed May 25, 1966. Applicant: EUGENE NANNEY, 827 Harvard Road, Sikeston, Mo. Applicant's representative: Daniel S. Norton, Post Office Box 447, Sikeston, Mo. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) Used farm *equipment*, from Sikeston, Mo., to on-farm sites throughout the continental United States; no return movement, (2) *ceramic lamps*, from Mayfield, Ky., to Chicago, Ill., and on return, *shredded paper* (packaging material) from points in Cook County, Ill., to Mayfield, Ky., for 180 days. Supporting shipper: Brewer Auction Co., Sikeston, Mo.; Sikeston Ceramics, Mayfield, Ky. Send protests to: J. P. Werthmann, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, Room 3248–B, 1520 Market Street, St. Louis, Mo., 63103.

No. MC 128252 TA, filed May 25, 1966. Applicant: DAVID MARCUS, doing business as MARCUS TRUCKING, 1625 Emmons Avenue, Brooklyn, N.Y. Applicant's representative: Arthur Piken, 160–16 Jamaica Avenue, Jamaica, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric lamps and fixtures and parts* used in the manufacture of lamps and fixtures, (1) from piers and wharves in the New York, N.Y., commercial zone to premises of Mobilite, Inc., at Great Neck, N.Y., (2) from premises of Mobilite, Inc., at Great Neck, N.Y., to freight forwarders and consolidators in the New York, N.Y., commercial zone and to points in New Jersey and points in Fairfield County, Conn., for 150 days. Supporting shipper: Mobilite, Inc., 98 Cuttermill Road, Great Neck, N.Y. Send protests to: Robert E. Johnston, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 346 Broadway, New York, N.Y., 10013.

MOTOR CARRIERS OF PASSENGERS

No. MC 127138 (Sub-No. 1 TA), filed May 25, 1966. Applicant: VINCENT DALESSIO, 926 Fifth Street, New Martinsville, W. Va., 26155. Applicant's representative: D. L. Bennett, 213 First National Bank Building, 2207 National Road, Wheeling, W. Va., 26003. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage*, between Jacksonburg, W. Va., and Hannibal, Ohio, as follows: From Jacksonburg, over West Virginia Highway 20 to New Martinsville, W. Va., thence across the Ohio River to Ohio Highway 7, thence over Ohio Highway 7 to plantsite of Ormet Corp. in Hannibal, Ohio, and return over the same routes, serving all intermediate points, for 180 days. Supported by: Robert Anderson, Box 3, Jacksonburg, W. Va.; John Bassett, Reader, W. Va.; Robert King, Box 154, Pine Grove, W. Va.; Lee White, Jacksonburg, W. Va.; Sherman Larrimore, Reader, W. Va.; Leslie Williams, Route 7 ,Turkey Run, W. Va.; R. W. Elliot, Pine Grove, W. Va.; John Brown, Route 20, Turkey Run, W. Va. Send protests to: J. A. Niggemyer, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 531 Hawley Building, Wheeling, W. Va., 26003 .

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 66-6028; Filed, June 1, 1966; 8:47 a.m.]

[Notice 927]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

MAY 27, 1966.

The following publications are governed by special rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER issue of April 20, 1966, which became effective May 20, 1966.

The publications hereinafter set forth reflect the scope of the applications *as filed* by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

No. MC 112822 (Sub-No. 65), filed May 19, 1966. Applicant: EARL BRAY, INC., Post Office Box 1191, Linwood and North Streets, Cushing, Okla. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs*, from Springdale, Ark., to points in Kansas, Missouri, Kentucky and to Alton, Cairo, Carbondale, Centralia, East St. Louis, Eldorado, Granite City, Marion, Mount Vernon, Murphysboro, Staunton, Litchfield, Quincy, and Scott Air Force Base, Ill., and (2) *foodstuffs and baby supplies*, from Fort Smith, Ark., to points in Kentucky, and to Alton, Cairo, Carbondale, Centralia, East St. Louis, Eldorado, Granite City, Marion, Mount Vernon, Murphysboro, Staunton, Litchfield, Quincy, and Scott Air Force Base, Ill. NOTE: If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark.

HEARING: June 9, 1966, at the Arkansas Commerce Commission, Justice Building, State Capitol, Little Rock, Ark., before Examiner Frederick G. Smithson.

No. MC 112435 (Sub-No. 5) (Republication), filed March 19, 1965, published FEDERAL REGISTER issues of April 14, 1965, and June 9, 1965, and republished, this issue. Applicant: D. M. SMOCK, L. D. SMOCK, and E. G. SMOCK, a partnership doing business as D. & L. E. TRANSIT CO., 1502 Augusta Street, Zanesville, Ohio. Applicant's representative: James M. Burtch, 44 East Broad Street, Columbus 15, Ohio. By application filed March 19, 1965, as amended May 27, 1965, and published in the FEDERAL REGISTER June 9, 1965, applicant seeks a permit under section 209 of the Interstate Commerce Act, authorizing it to extend its operations as a contract carrier by motor vehicle in interstate or foreign commerce, over irregular routes, to the transportation of (a) ferro alloys from Philo, Ohio, to points in Kentucky, (b) ferro alloys in containers from Philo, Ohio, to New Jersey and Baltimore and Sparrows Point, Md., and (c) equipment, materials and supplies used in the manufacture, processing, packaging and sale of ferro alloys from points in Kentucky, Pennsylvania, West Virginia, Illinois, Indiana, Michigan, New York, Baltimore, Md., and St. Louis, Mo., to Philo, Ohio. The application was referred to Examiner Edwin J. Martenet for hearing on December 2, 1965, and the recommendation of an appropriate order thereon.

A corrected report and recommended order of the Commission, served April 14, 1966, which became effective May 16, 1966, finds that the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of the Interstate Commerce Act and with the lawful requirements, rules and regulations of the Commission thereunder and that operation in interstate or foreign commerce by applicant as a contract carrier by motor vehicle over irregular routes under continuing contract with the Ohio Ferro Alloys Corp. of Canton, Ohio, in the transportation of (a) *ferro alloys*, from Philo, Ohio, to points in Kentucky, New Jersey, and Sparrows Point, Md., (b) *ferro alloys* in containers, from Philo, Ohio, to Baltimore, Md., and (c) *equipment, materials and supplies used in the manufacture, processing, packaging and sale of ferro alloys* (except liquid commodities, in bulk, in tank vehicles), from points in Kentucky, Pennsylvania, West Virginia, Illinois, Indiana, Michigan, New Jersey, New York, Baltimore, Md., and St. Louis, Mo., to Philo, Ohio, will be consistent with the public interest and the national transportation policy.

The amendments proposed by the applicant at the hearing will be granted with the proviso or condition that there be republication in the FEDERAL REGISTER of notice of the amended application

and the authority granted herein and the elapse of 30 days after such republication before the issuance to the applicant of the permit sought in this proceeding.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 1.240 TO THE EXTENT APPLICABLE

No. MC 15821 (Sub-No. 11), filed May 19, 1966. Applicant: GRAF BROS., INC., 180 Main Street, Salisbury, Mass. Applicant's representative: Kenneth B. Williams, 111 State Street, Boston, Mass. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between points in Massachusetts. NOTE: This application is directly related to MC–F–9429 published this issue. If a hearing is deemed necessary, applicant requests it be held at Boston, Mass.

No. MC 52889 (Sub-No. 5), filed May 12, 1966. Applicant: EL DORADO TRANSPORTATION COMPANY, INCORPORATED, 1718 Boston Post Road, Milford, Conn. Applicant's representative: A. David Millner, 1060 Broad Street, Newark, N.J., 07102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between points in Connecticut. NOTE: Application is directly related to MC–F–9420, to be published May 25, 1966. Applicant states that operations under this authority, if granted, will be tacked to applicant's existing authority, in which it is authorized to operate in the States of Connecticut, Massachusetts, New Jersey, New York, and Pennsylvania. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or New Haven, Conn.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC–F–9428. Authority sought for control and merger by IDA-CAL FREIGHT LINES, INC., 1798 Floral Avenue (Post Office Box 422), Twin Falls, Idaho, of the operating rights and property of (1) IDA-MONT FREIGHT LINES, INC., 1798 Floral Avenue (Post Office Box 422), Twin Falls, Idaho, and (2) BUHL-TWIN FALLS TRUCK LINES, INC., 1798 Floral Avenue (Post Office Box 422), Twin Falls, Idaho, and for acquisition by HELMUT MOSS, also of Twin Falls, Idaho, of control of such rights and property through the transaction. Applicants' attorney: Marvin Handler, 405 Montgomery Street, Suite 1401, San Francisco, Calif., 94104. Operating rights sought to be controlled and merged: (1) IDA-MONT FREIGHT LINES, INC.: *General commodities*, excepting, among others, household goods and commodities in bulk, as a *common carrier*, over regular routes, between Butte, Mont., and Idaho Falls, Idaho, serving all intermediate points; *frozen fruits* and *frozen vegetables*, over irregular routes, from Caldwell, Idaho, Salt Lake City and Ogden, Utah, and points in California, Washington, and Oregon, to points in Montana; and (2) BUHL-TWIN FALLS TRUCK LINES, INC.: Under a certificate of registration in Docket No. MC–120177 (Sub-No. 1), covering the transportation of property, as a common carrier, in intrastate state commerce, in the State of Idaho. IDA-CAL FREIGHT LINES, INC., is authorized to operate as a *common carrier* in Idaho, California, and Nevada. Application has not been filed for temporary authority under section 210a(b). NOTE: MC–118318 (Sub-No. 13), is a matter directly related.

No. MC–F–9429. Authority sought for purchase by GRAF BROS., INC., 180 Main Street., Salisbury, Mass., of the operating rights and property of KEVILLE MOTOR LINES, INC., 27 Willow Street, Westwood, Mass., and for acquisition by FRED WM. GRAF, 14 Allen Street, Newburyport, Mass., of control of such rights and property through the purchase. Applicants' attorneys: Kenneth B. Williams, 111 State Street, Boston, Mass., 02109, and Jeanne M. Hession, 5 Potosi Street, Boston, Mass., 02122. Operating rights sought to be transferred: Under a certificate of registration, in Docket No. MC–97640 (Sub-No. 1), covering the transportation of general commodities, as a common carrier in intrastate commerce, within the State of Massachusetts. Vendee is authorized to operate as a *common carrier* in points in the United States east of the Mississippi River. Application has been filed for temporary authority under section 210a(b). NOTE: Docket No. MC–15821 (Sub-No. 11) is a matter directly related.

No. MC–F–9431. Authority sought for control and merger by MOTOR FREIGHT CORPORATION, 2345 South 13th Street, Terre Haute, Ind., of the operating rights and property of DURRETT TRANSFER, INC., U.S. Highway 41, Springfield, Tenn., and for acquisition by HARRY J. ADAMS, also of Terre Haute, Ind., of control of such rights and property through the transaction. Applicants' attorneys: John P. McMahon, 100 East Broad Street, Columbus, Ohio, 43215, and A. O. Buck, 500 Court Square Building, Nashville, Tenn., 37201. Operating rights sought to be controlled and merged: *General commodities*, excepting, among others, household goods, and commodities in bulk, as a *common carrier*, over regular routes, between Nashville, Tenn., and Adairville, Ky., between Russellville, Ky., and Owensboro, Ky., between South Carollton, Ky., and Owensboro, Ky., serving all intermediate points, with restriction; between Nashville, Tenn., and Owensboro, Ky., between Adairville, Ky., and Russellville, Ky., serving no intermediate points; between junction of U.S. Highways 41 and 60 (near Henderson, Ky.), and Beech Grove, Ky., serving all intermediate and off-route points (with exceptions), certain intermediate points for purposes of joinder only, between Henderson, Ky., and Sorgho, Ky., serving all intermediate and off-route points (with exception), and serving Henderson for purposes of joinder only, between junction of Kentucky Highways 136 and 56 (West of Beech Grove, Ky.), and junction of Kentucky Highway 136 and U.S. Highway 41 (at Anthoston, Ky.), serving all intermediate and off-route points (with exception), and serving Anthoston for purposes of joinder only, between St. Joseph, Davis County, Ky., and junction of Kentucky Highways 258 and 136 (near Anthoston, Ky.), serving no intermediate points, with restriction; and serving certain off-route points in connection with carriers authorized regular route operations, with restriction; numerous alternate routes for operating convenience only, with restrictions; and *general commodities*, excepting, among others, commodities in bulk, but not excepting household goods, between Sacramento, Ky., and Evansville, Ind., serving certain intermediate points, and the off-route points of Curdsville, and Cleopatra, Ky., between Stanley, and Evansville, Ind., serving no intermediate points. Motor Freight Corp. is authorized to operate as a *common carrier* in Indiana, Illinois, Missouri, Ohio, Kentucky, Nebraska, and Iowa. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–9432. Authority sought for control by WATT TRANSPORT, INC., 115 Army Road, Providence, R.I., 02905, of ESSEX WAREHOUSE COMPANY, 609 West 29th Street, New York, N.Y., and for acquisition by JOHN J. ORR, II, HELEN O. DALEY, and N. EVERETT PICCHIONE, all also of Providence, R.I., of control of ESSEX WAREHOUSE COMPANY, through the acquisition by WATT TRANSPORT, INC. Applicants' attorney and representative: John C. Bradley, 618 Perpetual Building, Washington, D.C., 20424, and Russell B. Curnett, 36 Circuit Drive, Edgewood Station, Providence, R.I., 02905. Operating rights sought to be controlled: *Heaters*, as a *common carrier*, over irregular routes, from New York, N.Y., to Phillipsburg, N.J.; and *general commodities*, excepting, among others, household goods, and commodities in bulk, between Newark, N.J., on the one hand, and, on the other, certain specified points in New York, between New York, N.Y., and points in Nassau and Suffolk Counties, N.Y., on the one hand, and, on the other, certain specified points in New Jersey. Watt Transport, Inc., is authorized to op-

erate as a *common carrier* in Massachusetts, New Jersey, Rhode Island, Connecticut, and New York. Application has been filed for temporary authority under section 210a(b).

No. MC–F–9433. Authority sought for purchase by ADRIAN VAN DAALEN and JAY M. VAN DAALEN, both of 1239 Randolph, SW., Grand Rapids, Mich., 49507, of the operating rights and property of CAPITAL EXPRESS, INC., 1621 Century, SW., Grand Rapids, Mich., 49502. Applicants' attorney: J. M. Neath, Jr., One Vandenberg Center, Grand Rapids, Mich. Operating rights sought to be transferred: *Household laundry equipment*, as a *contract carrier*, over irregular routes, from Peoria, Ill., to Grand Rapids, Mich., from Grand Rapids, Mich., to points in Illinois, Indiana, and Ohio; *electric ranges*, from Grand Rapids, Mich., to points in Illinois, Indiana, and Ohio; *waste paper*, from Chicago, Ill., to Grand Rapids, Mich.; *refrigerators* and *materials, equipment, and supplies*, used in the manufacture of refrigerators, from Grand Rapids, Mich., to Detroit, Mich.; *refrigerators*, from Grand Rapids, Mich., to points in Illinois, Indiana and Ohio; *materials, equipment, and supplies* used in the manufacture of refrigerators, from points in Illinois, Indiana and Ohio to Grand Rapids, Mich.; *electric ranges*, and *parts thereof*, from Delaware, Ohio, to Grand Rapids, Mich., with restriction; *machinery* and *parts, materials and supplies*, used in the manufacture of electric ranges (except such as require the use of special equipment to load, unload or transport), between Grand Rapids, Mich., and Delaware, Ohio, with restriction; *dishwashers* and *parts thereof* when transported at the same time and in the same vehicle with dishwashers, from Connersville, Ind., to Grand Rapids, Mich., with restriction; *dishwashers* and *parts thereof* when transported at the same time and in the same vehicle with dishwashers, when moving in mixed loads with refrigerators, electric ranges or household laundry equipment, the said dishwashers and parts thereof not to exceed 25 percent of the weight of the total load, from Grand Rapids, Mich., to points in Illinois, Indiana, and Ohio, with restriction; *cooking ranges, parts thereof*, and *machinery and parts, materials and supplies used in the manufacture thereof* (except such as require the use of special equipment to load, unload or transport), between Grand Rapids, Mich., and Delaware, Ohio, with restriction; *cooking ranges*, from Grand Rapids, Mich., to points in Illinois, Indiana and Ohio, with restriction; *dehumidifiers*, from Columbus, Ohio, to Grand Rapids, Mich.; *water heaters*, from Chicago, Ill., to Grand Rapids, Mich.; *water heaters* and *dehumidifiers*, when moving in mixed loads with other appliances, from Grand Rapids, Mich., to points in Illinois, Indiana, and Ohio, with restriction; and *materials, equipment, and supplies* used in the manufacture of laundry equipment (except steel, and except materials, equipment, and supplies used in the manufacture of laundry equipments, which, because of size or weight or inherent nature, requires the use of special equipment or special handling), from points in Illinois, Indiana, and Ohio, to Grand Rapids, Mich., with restriction. ADRIAN VAN DAALEN and JAY M. VAN DAALEN hold no authority with this Commission. However, they control KELLER TRANSFER LINE, INC., 1239 Randolph Street, SW., Grand Rapids, Mich., which is authorized to operate as a *common carrier* in Michigan and Illinois. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 66–6029; Filed, June 1, 1966; 8:47 a.m.]

[Notice 929]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

MAY 27, 1966.

The following publications are governed by special rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER issue of April 20, 1966, which became effective May 20, 1966.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

The applications immediately following are assigned for hearing at the time and place designated in the notice of filing as here published in each proceeding. All of the proceedings are subject to the special rules of procedure for hearing outlined below:

SPECIAL RULES OF PROCEDURE FOR HEARING

(1) All of the testimony to be adduced by applicant's company witnesses shall be in the form of written statements which shall be submitted at the hearing at the time and place indicated.

(2) All of the written statements by applicant's company witnesses shall be offered in evidence at the hearing in the same manner as any other type of evidence. The witnesses submitting the written statements shall be made available at the hearing for cross-examination, if such becomes necessary.

(3) The written statements by applicant's company witnesses, if received in evidence, will be accepted as exhibits. To the extent the written statements refer to attached documents such as copies of operating authority, etc., they should be referred to in written statements as numbered appendices thereto.

(4) The admissibility of the evidence contained in the written statements and the appendices thereto, will be at the time of offer, subject to the same rules as if the evidence were produced in the usual manner.

(5) Supplemental testimony by a witness to correct errors or to supply inadvertent omissions in his written statement is permissible.

No. MC 112617 (Sub-No. 230), filed May 18, 1966. Applicant: LIQUID TRANSPORTERS, INC., Post Office Box 5135, Cherokee Station, Louisville, Ky. Applicant's representative: Leonard A. Jaskiewicz, Madison Building, 1155 15th Street NW., Washington, D.C., 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, from Helena, Ark., and points within 10 miles thereof, to points in Alabama, Arkansas, Indiana, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas.

HEARING: July 25, 1966, at the Arkansas Commerce Commission, Justice Building, State Capitol, Little Rock, Ark., before Examiner William J. O'Brien, Jr.

No. MC 124078 (Sub-No. 222), filed May 9, 1966. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, Wis., 53246. Applicant's representative: Richard H. Prevette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Anhydrous ammonia, ammonium nitrate, urea, acids, fertilizers, fertilizer solutions and fertilizer materials*, liquid and dry, in bulk, and (2) *ammonium nitrate, urea, fertilizer, fertilizer material and fertilizer ingredients*, dry, in bags, from Helena, Ark., and points within 10 miles thereof, to points in Arkansas, Louisiana, Texas, Oklahoma, Kansas, Missouri, Illinois, Kentucky, Tennessee, Mississippi, and Alabama. NOTE: If a hearing is deemed necessary, applicant does not specify a location.

HEARING: July 25, 1966, at the Arkansas Commerce Commission, Justice Building, State Capitol, Little Rock, Ark., before Examiner William J. O'Brien, Jr.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 66–6031; Filed, June 1, 1966; 8:47 a.m.]

[Notice 397]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

MAY 27, 1966.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission, under the Commission's Deviation Rules Revised, 1957 (49 CFR 211.1

(c)(8)), and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 211.1(d)(4)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 211.1(e)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Deviation Rules Revised, 1957, will be numbered consecutively for convenience in identification and protests if any should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 42487 (Deviation No. 62), CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, Calif., filed May 19, 1966. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: Between Pittsburgh, Pa., and Erie, Pa., over Interstate Highway 79, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: (1) from Mercer, Pa., over U.S. Highway 19 to Erie, Pa., (2) from Jamestown, N.Y., over New York Highway 60 to junction unnumbered highway, thence over unnumbered highway via Busti, N.Y., to the New York-Pennsylvania State line, thence over unnumbered highway to Sugargrove, Pa., thence over Pennsylvania Highway 69 to junction Pennsylvania Highway 27, thence over Pennsylvania Highway 27 via Youngsville, Pa., to Pleasantville, Pa., thence over Pennsylvania Highway 36 to Titusville, Pa., thence over Pennsylvania Highway 8 to Franklin, Pa., thence over U.S. Highway 62 to Mercer, Pa., thence over U.S. Highway 19 to Harlansburg, Pa., thence over Pennsylvania Highway 108 to New Castle, Pa., thence over Pennsylvania Highway 65 (formerly Pennsylvania Highway 88) to Pittsburgh, Pa., and (3) from Harlansburg, Pa., over U.S. Highway 19 to Pittsburgh, Pa., and return over the same routes.

No. MC 59488 (Deviation No. 8), SOUTHWESTERN TRANSPORTATION COMPANY, 1517 West Front Street, Tyler, Tex., 75702, filed May 18, 1966. Carrier's representative: Lloyd M. Roach (same address as applicant). Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: Between Texarkana, Ark., and Dallas, Tex., over Interstate Highway 30, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Texarkana, Ark., over U.S. Highway 67 via Sulphur Springs, Tex., to Dallas, Tex., and return over the same routes.

No. MC 59488 (Deviation No. 9), SOUTHWESTERN TRANSPORTATION COMPANY, 1517 West Front Street, Tyler, Tex., 75702, filed May 18, 1966. Carrier's representative: Lloyd M. Roach (same address as applicant). Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: Between Memphis, Tenn., and St. Louis, Mo., over Interstate Highway 55, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: Between Memphis, Tenn., and St. Louis, Mo., over U.S. Highway 61.

No. MC 59488 (Deviation No. 10), SOUTHWESTERN TRANSPORTATION COMPANY, 1517 West Front Street, Tyler, Tex., 75702, filed May 18, 1966. Carrier's representative: Lloyd M. Roach (same address as applicant). Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Memphis, Tenn., over Interstate Highway 40 to Little Rock, Ark., thence over Interstate Highway 30 to Texarkana, Tex., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Memphis, Tenn., over U.S. Highway 70 to Little Rock, Ark., thence over U.S. Highway 67 to Texarkana, Tex., and return over the same route.

No. MC 59488 (Deviation No. 11), SOUTHWESTERN TRANSPORTATION COMPANY, 1517 West Front Street, Tyler, Tex., 75702, filed May 20, 1966. Carrier's representative: Lloyd M. Roach (same address as applicant). Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Bossier City, La. (junction Louisiana Highway 3 and U.S. Highways 79 and 80 and Interstate Highway 20), east over U.S. Highways 79 and 80 and Interstate Highway 20 to Minden, La., thence over U.S. Highway 79 to Homer, La., thence north over Louisiana Highway 9 to junction U.S. Highway 167, thence north over U.S. Highway 167 to Thornton, Ark., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes, as follows: (1) From Memphis, Tenn., over U.S. Highway 70 to junction Arkansas Highway 17, thence over Arkansas Highway 17 to junction U.S. Highway 79, thence over U.S. Highway 79 to Magnolia, Ark., thence over U.S. Highway 82 to Texarkana, Tex., and (2) from Lewisville, Ark., over Arkansas Highway 29 to the Arkansas-Louisiana State line, thence over Louisiana Highway 3 (formerly Louisiana Highway 10) to junction U.S. Highway 80, thence over U.S. Highway 80 to Shreveport, La., and return over the same routes.

MOTOR CARRIERS OF PASSENGERS

No. MC 1515 (Deviation No. 313), GREYHOUND LINES, INC. (Western Division), Market and Fremont Streets, San Francisco, Calif., 94106, filed May 17, 1966. Carrier's representative: W. T. Meinhold, 371 Market Street, San Francisco, Calif., 94105. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers, over a deviation route as follows: From junction U.S. Highway 101 and California Highway 85 (West Los Gatos Junction) over California Highway 85 to junction Interstate Highway 280, thence over Interstate Highway 280 to junction California Highway 17, thence over California Highway 17 to Los Gatos, Calif., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1) From San Francisco, Calif., over U.S. Highway 101 to junction unnumbered highway (North Gonzales Junction), thence over unnumbered highway via Gonzales to junction U.S. Highway 101 (South Gonzales Junction), thence over U.S. Highway 101 to San Luis Obispo, Calif., (2) from San Francisco, Calif., over California Highway 82 to junction U.S. Highway 101 south of San Jose (Edenvale Junction), Calif., (3) from Palo Alto, Calif., over unnumbered highway via Mountain View and Sunnyvale to junction California Highway 82 south of Sunnyvale (Sunnyvale Junction), Calif., and (4) from junction California Highway 85 and California Highway 82 (Sunnyvale Junction), over California Highway 85 to Saratoga, Calif., thence over California Highway 9 to Los Gatos, Calif., thence over California Highway 17 to Santa Cruz, Calif., and return over the same routes.

No. MC 1515 (Deviation No. 314), GREYHOUND LINES, INC. (Eastern Division), 1400 West Third Street, Cleveland, Ohio, 44113, filed May 19, 1966. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers*, in the same vehicle with passengers, over deviation routes as follows: (1) From junction Interstate Highway 70 and U.S. Highways 40 and 522 at Hancock, Md., over Interstate Highway 70 to junction (within the city limits of Frederick, Md.) with U.S. Highway 240, Interstate Highway 70S and the Frederick bypass route, (2) from Hancock, Md., over U.S. Highway 522 to junction Interstate Highway 70 north of Hancock, Md., (3) from Hancock, Md., over Maryland Highway 144 to junction Interstate Highway 70 east of Hancock, Md., (4) from Clear Spring, Md., over Maryland Highway 68 to junction Interstate Highway 70, (5) from Huyett, Md., over Maryland Highway 63 to junction Interstate Highway 70, (6) from junction Interstate Highway 81 and U.S. Highway 40 west of Hagerstown, Md., over Inter-

state Highway 81 to junction Interstate Highway 70, (7) from Wagners Crossing, Md., over Maryland Highway 66 to junction Interstate Highway 70, (8) from junction U.S. Highway 40 and Maryland Highway 153 near Myersville, Md., over Maryland Highway 153 to junction Interstate Highway 70, (9) from Frederick, Md., over U.S. Highway 340 to junction Interstate Highway 70, (10) also access and egress to Interstate Highway 70 where it junctions with regular routes as follows:

(a) Junction U.S. Highway 40 and Interstate Highway 70 southeast of Hagerstown, Md., and (b) junction Alternate U.S. Highway 40 and Interstate Highway 70 west of Frederick, Md., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1) From Pittsburgh, Pa., over U.S. Highway 19 to Washington, Pa., thence over U.S. Highway 40 to junction Alternate U.S. Highway 40, thence over Alternate U.S. Highway 40 to junction U.S. Highway 40, northwest of Frederick, Md., thence over U.S. Highway 40 to junction Maryland Highway 144, thence over Maryland Highway 144 to Baltimore, Md., (2) from junction Frederick, Md., Bypass and U.S. Highway 40 over Frederick, Md., Bypass to junction new U.S. Highway 40 (near the eastern city limits of Frederick, Md.), thence over new U.S. Highway 40 to junction Maryland Highway 144 near Ridgeville, Md., (3) from Harrisburg, Pa., over U.S. Highway 11 via Carlisle and Shippensburg, Pa., to Winchester, Va., (4) from junction Alternate U.S. Highway 40 and U.S. Highway 40 over U.S. Highway 40 to Hagerstown, Md. (also from junction U.S. Highway 40 and Maryland Highway 17 to Myersville, Md., and thence over Maryland Highway 54 and unnumbered highway to junction U.S. Highway 40), (5) from junction U.S. Highways 40 and 522, located at Hancock, Md., over U.S. Highway 522 to junction Interstate Highway 70, located north of Warfordsburg, Pa., thence over Interstate Highway 70 to junction Pennsylvania Highway 126, thence over Pennsylvania Highway 126 to junction U.S. Highway 30, and return over the same routes.

By the Commission.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 66-6032; Filed, June 1, 1966; 8:47 a.m.]

CUMULATIVE LIST OF PARTS AFFECTED—JUNE

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during June

5 CFR

Page

213 ... 7733, 7734

7 CFR

28 ... 7734
701 ... 7735, 7814
728 ... 7814
845 ... 7815
893 ... 7816
918 ... 7735
1483 ... 7817
1486 ... 7735

PROPOSED RULES:

51 ... 7757
1013 ... 7829
1031 ... 7831
1032 ... 7831
1038 ... 7831
1039 ... 7831
1044 ... 7831
1045 ... 7831
1051 ... 7831
1061 ... 7831
1062 ... 7831
1063 ... 7831
1064 ... 7831
1065 ... 7757
1066 ... 7757
1067 ... 7831
1068 ... 7757
1069 ... 7757
1070 ... 7831
1071 ... 7831
1073 ... 7831
1074 ... 7831
1075 ... 7757
1076 ... 7757
1078 ... 7831
1079 ... 7831
1094 ... 7831
1096 ... 7831
1097 ... 7831
1099 ... 7758, 7831
1102 ... 7831
1103 ... 7831
1104 ... 7831
1106 ... 7831
1108 ... 7831
1120 ... 7831
1125 ... 7757
1126 ... 7831
1127 ... 7831
1128 ... 7831
1129 ... 7831
1130 ... 7831
1131 ... 7757
1132 ... 7831
1133 ... 7757, 7831
1134 ... 7757
1136 ... 7757
1137 ... 7757
1138 ... 7757

14 CFR

Page

39 ... 7735
71 ... 7736, 7827
73 ... 7736, 7827
75 ... 7736, 7827

PROPOSED RULES:

71 ... 7760–7762, 7836
75 ... 7762

15 CFR

230 ... 7737, 7819

PROPOSED RULES:

9 ... 7833

16 CFR

15 ... 7737, 7806

PROPOSED RULES:

45 ... 7757

17 CFR

211 ... 7821
230 ... 7738
239 ... 7738
240 ... 7740
276 ... 7821

20 CFR

PROPOSED RULES:

405 ... 7864

21 CFR

120 ... 7741

22 CFR

41 ... 7741
42 ... 7741

24 CFR

200 ... 7743
221 ... 7743

25 CFR

41 ... 7744
42 ... 7745

26 CFR

1 ... 7789

31 CFR

500 ... 7745

32 CFR

1 ... 7807
3 ... 7807
4 ... 7810
7 ... 7811
8 ... 7812
16 ... 7814
30 ... 7814

32A CFR

Page

OIA (Ch. X):
OI REG. 1 ... 7751

33 CFR

203 ... 7827
208 ... 7751

39 CFR

13 ... 7752
22 ... 7752
25 ... 7752
43 ... 7752

41 CFR

4–1 ... 7819
4–6 ... 7819
8–1 ... 7820
8–2 ... 7820
101–15 ... 7752

42 CFR

57 ... 7755

43 CFR

3120 ... 7806

45 CFR

801 ... 7755

47 CFR

18 ... 7821
21 ... 7822
74 ... 7822
91 ... 7822

PROPOSED RULES:

1 ... 7837
21 ... 7837
23 ... 7837
73 ... 7837, 7838
74 ... 7837
81 ... 7837
87 ... 7837
89 ... 7837
91 ... 7837
93 ... 7837
95 ... 7837
97 ... 7837

49 CFR

95 ... 7806

PROPOSED RULES:

170 ... 7841

50 CFR

33 ... 7766

FEDERAL REGISTER

VOLUME 31 • NUMBER 106

Thursday, June 2, 1966 • Washington, D.C.

PART II

Department of Health, Education, and Welfare

•

Social Security Administration

•

Health Insurance Program for Aged

Notice of Proposed Rule Making

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 405]

[Reg. 5]

HEALTH INSURANCE PROGRAM FOR AGED

Principles for Reimbursable Costs

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. The proposed regulations (§ 405.401 et seq.) relate to the principles for reimbursement for provider costs for covered services furnished to beneficiaries under title XVIII of the Social Security Act.

In the framing of these proposed regulations for the determination of reasonable cost, it was the intent to give consideration to the principles generally applied by national organizations and established prepayment programs. Accordingly, in development of the proposed principles of reimbursement there has been extensive consultation with representatives of the American Hospital Association and with many others including representatives of the American Nursing Home Association, the American Association of Hospital Accountants, the National Blue Cross Association, individual Blue Cross plans, the Health Insurance Association of America, and the private insurance field as well as State and Federal agencies which purchase hospital and institutional services. There have been meetings also with hospital administrators and comptrollers, nationally recognized authorities in the field of health care costs, and many other interested individuals and organizations. The Health Insurance Benefits Advisory Council, a 16-member non-Federal body established for the purpose of providing advice in the formulation of regulations, has given prolonged attention to the subject of cost reimbursement, and these principles are based on their advice and have their support.

Prior to the final adoption of the proposed regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in duplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue SW., Washington, D.C., 20201, within a period of 30 days from the date of publication of this notice in the FEDERAL REGISTER.

The proposed Federal Health Insurance for the Aged regulations are to be issued under the authority contained in sections 1102, 1814(b), 1861(v), and 1871, 49 Stat. 647, as amended, 79 Stat. 294, 79 Stat. 322, 79 Stat. 326; 42 U.S.C. 1302, 1395, et seq.

Chapter III, Title 20, is amended by adding thereto Subpart D of Part 405 to read as follows:

Subpart D—Principles of Reimbursement for Provider Costs

§ 405.401 Introduction.

(a) Under the health insurance program for the aged, the amount paid to any provider of services—i.e., hospital, extended care facility, or home health agency—for the covered services furnished to beneficiaries is required by section 1814(d) of the Social Security Act to be the "reasonable cost" of such services.

(b) These principles of reimbursement and the related policies described in this subpart establish the guidelines and procedures to be used by institutional providers, fiscal intermediaries, and the Social Security Administration in determining reasonable cost.

(c) The principles of reimbursement will be applied on behalf of the program by public and private organizations and agencies acting as fiscal intermediaries in the payment of claims. These organizations and agencies were selected after nomination by groups or associations of hospitals. Extended care facilities and home health agencies may similarly nominate such intermediaries. The fiscal intermediaries will be responsible for paying the bills of beneficiaries for covered services received in participating hospitals and other institutions under the medicare program. A provider may deal directly with the Social Security Administration, in which case the same principles will be used in making payment for services.

(d) In consideration of the wide variations in size and scope of services of providers and regional differences that exist, the principles are flexible on many points. They offer certain alternatives and options designed to fit individual circumstances and to allow time for those providers who do not already collect the statistical and financial data necessary for the reporting of costs to develop the necessary records.

(e) An important role of the fiscal intermediary, in addition to claims processing and payment, and other assigned responsibilities, is to furnish consultative services to providers in the development of accounting and cost-finding procedures which will assure them equitable payment under the program.

§ 405.402 Cost reimbursement; general.

(a) In formulating methods for making fair and equitable reimbursement for services rendered beneficiaries of the program, payment is to be made on the basis of current costs of the individual provider, rather than costs of a past period or a fixed negotiated rate. All necessary and proper expenses of an institution in the production of services, including normal standby costs, are recognized. Furthermore, the share of the total institutional cost that is borne by the program is related to the care furnished beneficiaries so that no part of their cost would need to be borne by other patients. Conversely, costs attributable to other patients of the institution are not to be borne by the program. Thus, the application of this approach, with appropriate accounting support, will result in meeting actual costs of services to beneficiaries as they vary from institution to institution.

(b) Putting these several points together, certain tests were evolved for the principles of reimbursement and certain goals were established that they should be designed to accomplish. In general terms, these are the tests or objectives:

(1) That the methods of reimbursement should result in current payment so that institutions will not be disadvantaged, as they sometimes are under other arrangements, by having to put up money for the purchase of goods and services well before they receive reimbursement.

(2) That, in addition to current payment, there should be retroactive adjustment so that increases in costs are taken fully into account as they actually occurred, not just prospectively.

(3) That there be a division of the allowable costs between the beneficiaries of this program and the other patients of the hospital that takes account of the actual use of services by the beneficiaries of this program and that is fair to each provider individually.

(4) That there be sufficient flexibility in the methods of reimbursement to be used, particularly at the beginning of the program, to take account of the great differences in the present state of development of recordkeeping.

(5) That the principles should result in the equitable treatment of both nonprofit organizations and profitmaking organizations.

(6) That there should be a recognition of the need of hospitals and other providers to keep pace with growing needs and to make improvements.

(c) As formulated herein, the principles give recognition to such factors as depreciation, interest, bad debts, educational costs, compensation of owners, and allowance for capital funds to secure, preserve, and improve service-rendering capabilities and in lieu of a direct return on equity capital. With respect to allowable costs some items of inclusion and exclusion are:

(1) An appropriate part of the net cost of approved educational activities will be included.

(2) Costs incurred for research purposes, over and above usual patient care, will not be included.

(3) Grants, gifts, and income from endowments will not be deducted from operating costs unless they are designated by the donor for the payment of specific operating costs.

(4) The value of voluntary services provided by sisters or other members of religious orders is includable in the amount that would be paid others for similar work.

(5) Discounts and allowances received on the purchase of goods or services are reductions of the cost to which they relate.

(6) Bad debts growing out of the failure of a beneficiary to pay the deductible, or the coinsurance, will be reimbursed (after bona fide efforts at collection).

(7) Charity and courtesy allowances are not includable, although "fringe benefit" allowances for employees under a formal plan will be includable as part of their compensation.

(8) A reasonable allowance of compensation for the services of owners in profitmaking organizations will be allowed providing their services are actually performed in a necessary function.

(d) In developing these principles of reimbursement for the health insurance program, all of the considerations inherent in allowances for depreciation were studied. The principles, as presented, provide options to meet varied situations. Depreciation will essentially be on an historical cost basis but since many institutions do not have adequate records of old assets, the principles provide an optional allowance in lieu of such depreciation for assets acquired before 1966. For assets acquired after 1965, the historical cost basis must be used. All assets actually in use for production of services for title XVIII beneficiaries will be recognized even though they may have been fully or partially depreciated for other purposes. Assets financed with public funds may be depreciated. In general, the options for accelerated depreciation allowed by the income tax laws will be permitted. Although funding of depreciation is not required, there is an incentive for it since income from funded depreciation is not considered as an offset which must be taken to reduce the interest expense that is allowable as a program cost.

(e) An allowance is provided in recognition of the continuing need for capital funds to secure, preserve, and improve service-rendering capability. In part this allowance is in lieu of a direct return on net capital investment and in part is a recognition of various uncertainties that are inherent in the application of any cost formula at this stage of cost-finding capabilities. The allowance will apply to both nonprofit and profitmaking organizations alike. This avoids the anomalous result that would arise from reimbursing a profitmaking organization more than a nonprofit organization for rendering exactly the same service solely by reason of allowing a return on investment in one case but not the other. The allowance will be computed by taking 2 percent of total allowable cost (for purposes of determining this base, interest expense will be subtracted). The amount computed will be subject to the limitation that the total allowance not exceed a reasonable long-term interest rate on net capital investment.

§ 405.403 Apportionment of allowable costs.

(a) Consistent with prevailing practice where third-party organizations pay for health care on a cost basis, reimbursement under the title XVIII health insurance program will involve determination of (1) each provider's allowable costs for producing services, and (2) the share of these costs which is to be borne by title XVIII. The provider's costs are to be determined in accordance with the principles reviewed in the preceding discussion relating to allowable costs; the share to be borne by title XVIII is to be determined in accordance with principles relating to apportionment of cost.

(b) In the study and consideration devoted to the method of apportioning costs, the objective has been to adopt methods for use under title XVIII of the Act that would, to the extent reasonably possible, result in the program's share of a provider's total allowable costs being the same as the program's share of the provider's total services. This result is essential for carrying out the statutory directive that the program's payments to providers should be such that the costs of covered services for beneficiaries would not be passed on to nonbeneficiaries, nor would the cost of services for nonbeneficiaries be borne by the program.

(c) A basic factor bearing upon apportionment of costs is that title XVIII beneficiaries are not a cross section of the total population. Nor will they constitute a cross section of all patients receiving services from most of the providers that participate in the program. Available evidence shows that the use of services by persons age 65 and over differs significantly from other groups. Consequently, the objective sought in the determination of the title XVIII share of a provider's total costs means that the methods used for apportionment must take into account the differences in the amount of services received by patients who are beneficiaries and other patients served by the provider.

(d) The method most widely used at the present time by third-party purchasers of inpatient hospital care apportions a provider's total costs among groups served on the basis of the relative number of days of care used. This method, commonly referred to as average per diem cost, does not take into account variations in the amount of service which a day of care may represent and thereby assumes that the patients for whom payment is made on this basis are average in their use of service.

(e) In considering the average per diem method of apportioning cost for use under the program, the difficulty encountered is that the preponderance of presently available evidence strongly indicates that the over-65 patient is not typical from the standpoint of average per diem cost. On the average he stays in the hospital twice as long and therefore the ancillary services that he uses are averaged over the longer period of time, resulting in an average per diem cost for the aged alone, significantly below the average per diem for all patients.

(f) Moreover, the relative use of services by aged patients as compared to other patients differs significantly among institutions. Consequently, considerations of equity among institutions are involved as well as that of effectiveness of the apportionment method under the program in accomplishing the objective of paying each provider fully, but only, for services to beneficiaries.

(g) A further consideration of long-range importance is that the relative use of services by aged and other patients can be expected to change, possibly to a significant extent in future years. The ability of apportionment methods used under the program to reflect such change is an element of flexibility which has been regarded as important in the formulation of the cost reimbursement principles.

(h) An alternative to the relative number of days of care as a basis for apportioning costs is the relative amount of charges billed by the provider for services to patients. The amount of charges is the basis upon which the cost of hospital care is distributed among patients who pay directly for the services they receive. Payment for services on the basis of charges applies generally under insurance programs where individuals are indemnified for incurred expense, a form of health insurance widely held throughout the Nation. Also, charges to patients are commonly a factor in determining the amount of payment to hospitals under insurance programs providing service benefits, many of which pay "costs or charges, whichever is less" and some of which pay exclusively on the basis of charges. In all of these instances, the provider's own charge structure and method of itemizing services for the purpose of assessing charges is utilized as a measure of the amount of services received and as the basis for allocating responsibility for payment among those receiving the provider's services.

(i) An increasing number of third-party purchasers who pay for services on the basis of cost are developing methods which utilize charges to measure the amount of services for which they have responsibility for payment. In this approach, the amount of charges for such services as a proportion of the provider's total charges to all patients is used to determine the proportion of the provider's total costs for which the third-party purchaser assumes responsibility. The approach is subject to numerous variations. It can be applied to the total of charges for all services combined or it can be applied to components of the provider's activities for which the amount of costs and charges are ascertained through a breakdown of data from provider's accounting records.

(j) For the application of the approach to components, which represent types of services, the breakdown of total costs is accomplished by "cost-finding" techniques under which indirect costs and nonrevenue activities are allocated to revenue producing components for which charges are made as services are rendered.

§ 405.404 Methods of apportionment under title XVIII.

(a) The principles for reimbursement under title XVIII of the act establish two basic methods, either of which may be used at the option of a provider, for the determination of the share of allowable

costs for which payment is to be made to the provider.

(b) The first alternative is to apply the beneficiaries' share of total charges, on a departmental basis, to total costs for the respective departments. Use of this department-by-department method will involve determination, by cost-finding methods, of the total costs for each of the institution's departments that are revenue-producing; i.e., departments providing services to patients for which charges are made.

(c) The second alternative is a combination method. Under this method, as applied to inpatient care, that part of a provider's total allowable cost which is attributable to routine services (room, board, nursing service) is to be apportioned on the basis of the relative number of patient days for beneficiaries and for other patients; i.e., an average cost per diem basis. The residual part of the provider's allowable cost, attributable to nonroutine or ancillary services, is to be apportioned on the basis of the beneficiaries' share of the total charges to patients by the provider for nonroutine or ancillary services. The amounts computed to be the program's share of the two parts of the provider's allowable costs are then combined in determining the amount of reimbursement under the program. Use of the combined method will necessitate cost finding to determine the division of the provider's total allowable costs into the two parts, although it would be less involved than for the first alternative, the department-by-department method.

(d) It is recognized that many hospitals and other providers do not currently employ methods for ascertaining the cost of the services they produce, either by departmental or other groupings of services. Although the use of cost finding has become more extensive among institutions in recent years, for a large number of providers use of the apportionment methods under the program will involve compiling information needed as a basis for breaking down total costs into departmental costs or between routine services and other services, as would need to be done at the end of each accounting year. To avoid an undue burden on providers and to allow ample time for all providers to adopt the cost-finding methods needed for the apportionment methods under the program, a temporary method may be used, at the option of the provider, for accounting periods ending before January 1, 1968. Under this option, a provider may employ the combination method of apportionment by using an estimated percentage obtained from the intermediary as the basis for arriving at a division of total allowable costs between routine and other services. This estimated percentage basis for division of costs will be accepted in lieu of actual cost finding as the basis for the division in the initial reporting period(s) of any provider of service. Furthermore, where there are special factors which make the apportionment methods difficult to apply, the intermediary may approve appropriate adaptations to accomplish the objective of determining the share of the provider's allowable costs which is attributable to services rendered to beneficiaries.

§ 405.405 Payments to providers.

(a) The fiscal intermediaries will establish a basis for interim payments to each provider. This may be done by one of several methods. Where an intermediary is already paying the provider on a cost basis, the intermediary can adjust its rate of payment to an estimate of the result under the title XVIII principles of reimbursement. Where no organization is paying the provider on a cost basis, the intermediary can obtain the previous year's financial statement from the provider and, by applying the principles of reimbursement, compute or approximate an appropriate rate of payment. The interim payment may be related to last year's average per diem, or to charges, or to any other ready basis of approximating costs.

(b) At the end of the period, the actual apportionment, based on the cost finding and apportionment methods selected by the provider, will determine the title XVIII reimbursement for the actual services provided to beneficiaries during the period.

(c) Basically, therefore, interim payments to providers will be made for services throughout the year, with final settlement on a retroactive basis at the end of the accounting period. Interim payments will be made as often as possible and in no event less frequently than once a month. The retroactive payments will take fully into account the costs that were actually incurred and settle on an actual, rather than on an estimated basis.

(d) In addition to the basic procedure for payment to a provider following the submission of bills to the intermediary, payment will be made upon request by the provider on a basis designed to reimburse concurrently as services are furnished to beneficiaries. The amount of such payment will be computed by the intermediary initially on an estimated basis and periodically adjusted to represent the average level of services unreimbursed by the basic payment procedure.

§ 405.406 Financial data and reports.

(a) The principles of cost reimbursement will require that providers maintain sufficient financial records and statistical data for proper determination of costs payable under the program. Standardized definitions, accounting, statistics, and reporting practices which are widely accepted in the hospital and related fields are followed. Changes in these practices and systems will not be required in order to determine costs payable under the principles of reimbursement. Essentially the methods of determining costs payable under title XVIII involve making use of data available from the institution's basic accounts, as usually maintained, to arrive at equitable and proper payment for services to beneficiaries.

(b) Costs reports will be required from providers on an annual basis with reporting periods based on the provider's accounting year. In the interpretation and application of the principles of reimbursement, the fiscal intermediaries will be an important source of consultative assistance to providers and will be available to deal with questions and problems on a day-to-day basis.

§ 405.415 Depreciation: allowance for depreciation based on asset costs.

(a) *Principle.* An appropriate allowance for depreciation on buildings and equipment is an allowable cost. The depreciation must be:

(1) Identifiable and recorded in the provider's accounting records;

(2) Based on the historical cost of the asset or fair market value at the time of donation in the case of donated assets; and

(3) Prorated over the estimated useful life of the asset using the straight-line method or accelerated depreciation under the declining balance or sum-of-the-years' digits methods.

(b) *Definitions*—(1) *Historical costs.* Historical cost is the cost incurred by the present owner in acquiring the asset.

(2) *Fair market value.* Fair market value is the price that the asset would bring by bona fide bargaining between well-informed buyers and sellers at the date of acquisition. Usually the fair market price will be the price at which bona fide sales have been consummated for assets of like type, quality, and quantity in a particular market at the time of acquisition.

(3) *The straight-line method.* Under the straight-line method of depreciation, the cost or other basis (e.g., donated) of the asset, less its estimated salvage value, if any, is determined first. Then this amount is distributed in equal amounts over the period of the estimated useful life of the asset.

(4) *Declining balance method.* Under the declining balance method, the annual depreciation allowance is computed by multiplying the undepreciated balance of the asset each year by a uniform rate up to double the straight-line rate.

(5) *Sum-of-the-years' digits method.* Under the sum-of-the-years' digits method, the annual depreciation allowance is computed by multiplying the depreciable cost basis (cost less salvage value) by a constantly decreasing fraction. The numerator of the fraction is represented by the remaining years of useful life of the asset at the beginning of each year, and the denominator is always represented by the sum of the years' digits of useful life at the time of acquisition.

(c) *Recording of depreciation.* Appropriate recording of depreciation encompasses the identification of the depreciable assets in use, the assets' historical costs, the method of depreciation, estimated useful life, and the assets' accumlated depreciation. The Chart of Accounts published by the American Hospital Association and publications of the Internal Revenue Service are to be used as guides for the estimation of the useful life of assets.

(d) *Depreciation methods.* (1) Proration of the cost of an asset over its useful life will be allowed on the straight-line, the declining balance, or the sum-of-the-years' digits methods. The provider may choose to use one of the methods on a single asset or group of assets and another method on others. In applying the declining balance or sum-of-the-years' digits method to an asset that is not new, the undepreciated balance of the asset is to be treated as the cost of a new asset in computing the depreciation.

(2) A provider may change from the straight-line method to an accelerated method or vice versa upon advance approval from the intermediary on a prospective basis with the request being made before the end of the first month of the prospective reporting period. Only one such change with respect to a particular asset may be made by a provider.

(e) *Funding of depreciation.* Although funding of depreciation is not required, it is strongly recommended that providers use this mechanism as a means of conserving funds for replacement of depreciable assets, and cordinate their planning of capital expenditures with areawide planning activities of community and State agencies. As an incentive for funding, investment income on funded depreciation will not be treated as a reduction of allowable interest expense.

(f) *Gains and losses on disposal of assets.* Gains and losses realized from the disposal of depreciable assets are to be included in the determination of allowable cost. The extent to which such gains and losses are includable is to be calculated on a proration basis recognizing the amount of depreciation charged under the program in relation to the amount of depreciation, if any, charged or assumed in a prior period.

§ 405.416 Depreciation: optional allowance for depreciation based on a percentage of operating costs.

(a) *Principle.* With respect to all assets acquired before 1966, the provider, at its option, may choose an allowance for depreciation based on a percentage of operating costs. The operating costs to be used are the lower of the provider's 1965 operating costs or the provider's current year's allowable costs. The percent to be applied is 5 percent starting with the year 1966–67, with such percentage being uniformly reduced by one-half percent each succeeding year. The allowance based on operating costs is in addition to regular depreciation on assets acquired after 1965; however, when the optional allowance is selected, the combined amount of such allowance on pre-1966 assets and the allowance for actual depreciation on assets acquired after 1965 may not exceed 6 percent of the provider's allowable cost for the current year.

(b) *Definitions*—(1) *Operating costs.* Operating costs are the total costs incurred by the provider in operating the institution or facility.

(2) *Allowable costs.* Allowable costs are the costs of a provider which are includable under the principles for cost reimbursement; by the application of apportionment methods to the total amount of such allowable costs, the share of a provider's total cost which is attributable to covered services for beneficiaries is determined.

(c) *Application.* Where a provider has inadequate historical cost records for pre-1966 depreciable assets, the provider may elect to receive an allowance for depreciation on such assets based on a percentage of operating costs. The optional allowance for depreciation for such assets may be used, however, whether or not a provider has records of the cost of pre-1966 depreciable assets currently in use.

(d) *Allowance based on a percentage of operating costs.* (1) The allowance for depreciation based on a percentage of operating costs is to be computed by applying a specified percentage to a base amount equal to the provider's 1965 total operating costs, without adjustments to these principles or the current year's allowable operating costs, whichever is lower. The percentage to be applied would be five for 1966–67, four and one-half for 1967–68, and would so continue to decline annually by equal amounts to become zero in 1976–77.

(2) When used as a base for determining the optional allowance for depreciation, neither the 1965 operating costs nor the current year's allowable costs are to include any actual depreciation or estimated depreciation on rented depreciable-type assets. Such exclusions are to be made only for the purpose of computing the allowance for depreciation based on operating costs. For other purposes, the excluded amounts are recognized in determining allowable costs and for computing the costs of services rendered to the program beneficiaries during the reporting period.

(e) *Change to actual depreciation.* (1) A provider that elects this allowance may at any time before 1976 change to actual depreciation on all pre-1966 depreciable assets. In such case, this option is eliminated and the provider can no longer elect to receive an allowance for depreciation based on a percentage of operating costs.

(2) Where the provider desires to change to actual depreciation but either has no historical cost records or has incomplete records, the determination of historical cost could be made through appropriate means involving expert consultation with the determination being subject to review and approval by the intermediary.

(f) *Determination of optional allowance based on percentage of operating costs illustrated.* The following illustrates how the provider would determine the optional allowance for depreciation based on operating costs.

Example No. 1.—The provider keeps its records on a calendar year basis. The current year's actual allowable cost and the actual operating cost for 1965 do not include any actual depreciation or rentals on depreciable-type assets.

YEAR 1966

Current year's allowable cost	$1,100,000
Operating cost for 1965 [1]	$1,000,000
Percent for determining the allowance	5
Allowance	$50,000

[1] 1965 operating cost was used in computing the allowance for depreciation based on a percentage of operating costs because it was lower than 1966 allowable cost.

YEAR 1967

Current year's allowable cost	$1,200,000
Operating cost for 1965 [1]	$1,000,000
Percent for determining the allowance	4½
Allowance	$45,000

[1] 1965 operating cost was used in computing the allowance for depreciation based on a percentage of operating costs because it was lower than 1967 allowable cost.

YEAR 1968

Operating cost for 1965	$1,000,000
Current year's allowable cost [1]	$900,000
Percent for determining the allowance	4
Allowance	$36,000

[1] The current year's allowable cost was used in computing the allowance for depreciation based on percentage of operating costs because it was lower than 1965 operating cost.

Example No. 2.—When the provider pays rent for depreciable-type assets rented prior to 1966, the estimated depreciation on such assets must be deducted from the allowance. The following illustration demonstrates how the allowance is determined.

YEAR 1966

The provider keeps its records on a calendar year basis. The current year's actual allowable cost and the actual operating cost for 1965 did not include any actual depreciation. However, such costs have been adjusted to exclude estimated depreciation on rented depreciable-type assets.

Adjusted current year's allowable cost	$1,100,000
Adjusted operating cost for 1965 [1]	$1,000,000
Percent for determining the allowance	5
Allowance	$50,000
Less estimated depreciation for depreciable-type assets rented prior to 1966 on which rental is paid in 1966	$3,000
Adjusted allowance	$47,000

[1] 1965 operating cost was used in computing the allowance for depreciation based on a percentage of operating costs because it was lower than 1966 allowable cost.

YEAR 1967

Adjusted current year's allowable cost	$1,200,000
Adjusted operating cost for 1965 [1]	$1,000,000
Percent for determining the allowance	4½
Allowance	$45,000

Less estimated depreciation for depreciable-type assets rented prior to 1966 on which rental is paid in 1967	$3,000
Adjusted allowance	$42,000

[1] 1965 operating cost was used in computing the allowance for depreciation based on a percentage of operating costs because it was lower than 1967 allowable cost.

(g) *Limitation on depreciation where optional allowance is used.* This optional allowance only is subject to a limitation based on the provider's total allowable operating cost for the current year. To determine this limitation, compute the sum of the actual depreciation claimed, and the allowance based on a percentage of operating costs after adjustment for estimated depreciation on depreciable-type assets rented after 1965. If this sum exceeds 6 percent of the provider's current year's allowable cost (exclusive of any actual depreciation claimed and estimated depreciation on rented depreciable-type assets), the allowance for depreciation based on a percentage of operating costs will be reduced by the amount of the excess. In applying this limitation, if the actual depreciation claimed is on an accelerated basis it must be converted to a straight-line basis only for use in calculating this limitation. It is presumed that pre-1966 assets will not be retired at a greater than normal rate, and the limitation of 6 percent, as it affects the availability of the allowance, is designed as a safeguard where the presumption is not borne out. Where the provider does not elect to use the optional allowance, the combined allowance for depreciation based on costs of pre-1966 assets and those subsequently acquired is not subject to the 6-percent limitation.

Example No. 1.—The following illustration demonstrates how this limitation would be determined.

YEAR 1966

The provider keeps its records on a calendar year basis. The current year's actual allowable cost and the actual operating cost for 1965 have been adjusted to exclude actual depreciation and the estimated depreciation on rented depreciable-type assets.

Adjusted operating cost for 1965	$1,000,000
Percent for determining the allowance	5
In 1966 assets were acquired which produce a straight-line depreciation of	$18,000
Estimated depreciation on assets rented in 1966	$2,000
Adjusted allowable operating cost for 1966	$1,100,000

Calculation of Allowance for Depreciation Based on a Percentage of Operation Costs

Gross allowance:	
5% times adjusted 1965 operating costs ($1,000,000)	$50,000
Estimated depreciation on assets rented in 1966	2,000
Straight-line depreciation on post-1965 assets	18,000
Total	70,000
6% of adjusted 1966 allowable operating cost	66,000
Deduction in allowance	4,000
Allowance	50,000
Reduction	4,000
Adjusted allowance	46,000
Total depreciation allowance for 1966 ($18,000 actual depreciation plus $46,000 allowance based on operating cost)	64,000

Assume in this illustration that the provider had elected to use the declining balance method in computing its allowable depreciation and the rental expense for depreciable-type assets was $3,500. In that case, it would include in its 1966 allowable cost not only the $46,000 allowance based on operating costs but also $36,000 (in this instance 2 × straight-line rate is used) in actual depreciation and the rental expense of $3,500—or a total of $85,000 covering all its depreciable assets.

§ 405.417 Depreciation: allowance for depreciation on fully depreciated or partially depreciated assets.

(a) *Principle.* Depreciation on assets being used by a provider at the time it enters into the title XVIII program will be allowed; this applies even though such assets may be fully or partially depreciated on the provider's books.

(b) *Application.* Depreciation is allowable on assets being used at the time the provider enters into the program. This applies even though such assets may be fully depreciated on the provider's books or fully depreciated with respect to other third-party payers. So long as an asset is being used, its useful life is considered not to have ended, and consequently the asset is subject to depreciation based upon a revised estimate of the asset's useful life as determined by the provider and approved by the intermediary. Correction of prior years' depreciation to reflect revision of estimated useful life should be made in the first year of participation in the program unless the provider has used the optional method (§ 405.416), in which case the correction should be made at the time of discontinuing the use of that method. When an asset has become fully depreciated under title XVIII, further depreciation would not be appropriate or allowable, even though the asset may continue in use. For example, if a 50-year-old building is in use at the time the provider enters into the program, depreciation is allowable on the building even though it has been fully depreciated on the provider's books. Assuming that a reasonable estimate of the asset's continued life is 20 years (70 years from the date of acquisition), the provider may claim depreciation over the next 20 years—if the asset is in use that long—or a total depreciation of as much as twenty-seventieths of the asset's historical cost. If the asset is disposed of before the expiration of its estimated useful life, the depreciation would be adjusted to the actual useful life. Likewise, a provider may not have fully depreciated other assets it is using and finds that it has incorrectly estimated the useful lives of those assets. In such cases, the provider may use the corrected useful lives in determining the amount of depreciation, provided such corrections have been approved by the intermediary.

§ 405.418 Depreciation: allowance for depreciation on assets financed with Federal or public funds.

(a) *Principle.* Depreciation will be allowed on assets financed with Hill-Burton or other Federal or public funds.

(b) *Application.* (1) Like other assets (including other donated depreciable assets), assets financed with Hill-Burton or other Federal or public funds become a part of the provider institution's plant and equipment to be used in rendering services. It is the function of payment of depreciation to provide funds which make it possible to maintain the assets and preserve the capital employed in the production of services. Therefore, irrespective of the source of financing of an asset, if it is used in the providing of services for beneficiaries of the program, payment for depreciation of the asset is, in fact, a cost of the production of those services. Moreover, recognition of this cost is necessary to maintain productive capacity for the future. An incentive for funding of depreciation is provided in these principles by the provision that investment income on funded depreciation will not be treated as a reduction of allowable interest expense under § 405.419 (a) which follows.

(2) For certain purposes, however, assets financed with Hill-Burton or other Federal funds should be treated differently from other depreciable assets, i.e., such assets are to be excluded from the provider's net investment when applying the limitation on the allowance in lieu of specific recognition of other cost under § 405.428(a).

§ 405.419 Interest expense.

(a) *Principle.* Necessary and proper interest on both current and capital indebtedness is an allowable cost.

(b) *Definitions*—(1) *Interest.* Interest is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short term. This is usually for such purposes as working capital for normal operating expenses. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes, such as acquisition of facilities and equipment, and capital improvements. Generally, loans for capital purposes are long-term loans.

(2) *Necessary.* Necessary requires that the interest:

(i) Be incurred on a loan made to satisfy a financial need of the provider. Loans which result in excess funds or investments would not be considered necessary.

(ii) Be incurred on a loan made for a purpose reasonably related to patient care.

(iii) Be reduced by investment income except where such income is from gifts and grants, whether restricted or unrestricted, and which are held separate and not commingled with other funds. Income from funded depreciation will not be used to reduce interest expense.

(3) *Proper.* Proper requires that interest:

(i) Be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market existing at the time the loan was made.

(ii) Be paid to a lender not related through control or ownership, or personal relationship to the borrowing organization. However, interest is allowable if paid on loans from the provider's donor-restricted funds or the funded depreciation account.

(c) *Borrower-lender relationship.* (1) To be allowable, interest expense must be incurred on indebtedness established with lenders or lending organizations not related through control, ownership, or personal relationship to the borrower. Presence of any of these factors could affect the "bargaining" process that usually accompanies the making of a loan, and could thus be suggestive of an agreement on higher rates of interest or of unnecessary loans. Loans should be made under terms and conditions that a prudent borrower would make in arms-length transactions with lending institutions. The intent of this provision is to assure that loans are legitimate and needed, and that the interest rate is reasonable. Thus, interest paid by the provider to partners or to stockholders of the provider would not be allowable. Where the owner uses his own funds in a business, it is reasonable to treat the funds as invested funds or capital, rather than borrowed funds.

(2) Exceptions to the general rule regarding interest on loans from controlled sources of funds are made in the following circumstances. Where the general fund of a provider "borrows" from a donor-restricted fund and pays interest to the restricted fund, this interest expense is an allowable cost. The same treatment will be accorded interest paid by the general fund on money "borrowed" from the funded depreciation account of the provider. In addition, if a provider operated by members of a religious order borrows from the order, interest paid to the order is an allowable cost.

(3) Where funded depreciation is used for purposes other than improvement, replacement, or expansion of facilities or equipment related to patient care, allowable interest expense will be reduced to adjust for offsets not made in prior years for earnings on funded depreciation.

(4) Allowable interest expense on current indebtedness of a provider will be adjusted to reflect the extent to which working capital needs which are attributable to covered services for beneficiaries have been met by payments to the provider designed to reimburse concurrently as services are furnished to beneficiaries.

§ 405.420 Bad debts, charity, and courtesy allowances.

(a) *Principle.* Bad debts, charity, and courtesy allowances are deductions from revenue and are not to be included in allowable cost; however, bad debts attributable to the deductibles and coinsurance amounts are allowable costs.

(b) *Definitions*—(1) *Bad debts.* Bad debts are amounts considered to be uncollectible from accounts and notes receivable which were created or acquired in providing services. "Accounts receivable" and "notes receivable" are designations for claims arising from the rendering of services, and are collectible in money in the relatively near future.

(2) *Charity allowances.* Charity allowances are reductions in charges made by the provider of services because of the indigence or medical indigence of the patient.

(3) *Courtesy allowances.* Courtesy allowances indicate a reduction in charges in the form of an allowance to physicians, clergy, members of religious orders, and others as approved by the governing body of the provider, for services received from the provider. Employee fringe benefits, such as hospitalization and personnel health programs, are not considered to be courtesy allowances.

(c) *Normal accounting treatment: reduction in revenue.* Bad debts, charity, and courtesy allowances represent reductions in revenue. The failure to collect charges for services rendered does not add to the cost of providing the services. Such costs have already been incurred in the production of the services.

(d) *Requirements of title XVIII.* Title XVIII of the Act costs of covered services furnished beneficiaries are not to be borne by individuals not covered by the health insurance program, and conversely, costs of services provided for other than beneficiaries are not to be borne by the health insurance program. Uncollected revenue related to services rendered to beneficiaries of the program generally means the provider has not recovered the cost of services covered by that revenue. The failure of beneficiaries to pay the deductible and coinsurance amounts can result in the related costs of covered services being borne by other than beneficiaries of title XVIII. To assure that such covered service costs are not borne by others, the costs attributable to the deductible and coinsurance amounts which remain unpaid will be included in the title XVIII share of allowable costs. Bad debts arising from other sources are not allowable costs.

(e) *Criteria for allowable bad debt.* A bad debt must meet the following criteria to be allowable:

(1) The debt must be related to covered services and derived from deductible and coinsurance amounts.

(2) The provider must be able to establish that reasonable collection efforts were made.

(3) The debt was actually uncollectible when claimed as worthless.

(4) Sound business judgment established that there was no likelihood of recovery at any time in the future.

(f) *Charging of bad debts and bad debt recoveries.* The amounts uncollectible from specific beneficiaries are to be charged off as bad debts in the accounting period in which the accounts are deemed to be worthless. In some cases an amount previously written off as a bad debt and allocated to the program may be recovered in a subsequent accounting period; in such cases the income therefrom must be used to reduce the cost of beneficiary services for the period in which the collection is made.

(g) *Charity allowances.* Charity allowances have no relationship to beneficiaries of the health insurance program and are not allowable costs. The cost to the provider of employee fringe-benefit programs is an allowable element of reimbursement.

§ 405.421 Cost of educational activities.

(a) *Principle.* An appropriate part of the net cost of approved educational activities is an allowable cost.

(b) *Definitions*—(1) *Approved educational activities.* Approved educational activities means formally organized or planned programs of study usually engaged in by providers in order to enhance the quality of patient care in an institution. These activities must be licensed where required by State law. Where licensing is not required, the institution must receive approval from the recognized national professional organization for the particular activity.

(2) *Net cost.* The net cost means the cost of approved educational activities (including stipends of trainees, compensation of teachers, and other costs), less any reimbursements from grants, tuition, and specific donations.

(3) *Appropriate part.* The appropriate part means the net cost of the activity apportioned in accordance with the methods set forth in these principles.

(c) *Educational activities.* Many providers engage in educational activities including training programs for nurses, medical students, interns and residents, and various paramedical specialties. These programs contribute to the quality of patient care within an institution and are necessary to meet the community's needs for medical and paramedical personnel. It is recognized that the costs of such educational activities should be borne by the community. However, many communities have not assumed responsibility for financing these programs and it is necessary that support be provided by those purchasing health care. Until communities undertake to bear these costs, the program will participate appropriately in the support of these activities. Although the intent of the program is to share in the support of educational activities customarily or traditionally carried on by providers in conjunction with their operations, it is not intended that this program should participate in increased costs resulting from redistribution of costs from educational institutions or units to patient care institutions or units.

(d) *"Orientation" and "on-the-job training".* The costs of "orientation" and "on-the-job training" are not within the scope of this principle but are recognized as normal operating costs in accordance with principles relating thereto.

(e) *Approved programs.* In addition to approved medical, osteopathic, and dental internships and residency programs, recognized professional and para-

medical educational and training programs now being conducted by provider institutions, and their approving bodies, include the following:

Program	Approving bodies
(1) Cytotechnology	Council on Medical Education of the American Medical Association in collaboration with the Board of Schools of Medical Technology of the American Society of Clinical Pathologists.
(2) Dietetic internships	The American Dietetic Association.
(3) Hospital administration residencies.	Members of the Association of University Programs in Hospital Administration.
(4) Inhalation therapy	Council on Medical Education of the American Medical Association in collaboration with the Board of Schools of Inhalation Therapy.
(5) Medical records	Council on Medical Education of the American Medical Association in collaboration with the Committee on Education and Registration of the American Association of Medical Record Librarians.
(6) Medical technology	Council on Medical Education of the American Medical Association in collaboration with the Board of Schools of Medical Technology, American Society of Clinical Pathologists.
(7) Nurse anesthetists	The American Association of Nurse Anesthetists.
(8) Professional nursing	Approved by the respective State approving authorities. Reported for the United States by the National League for Nursing.
(9) Practical nursing	Approved by the respective State approving authorities. Reported for the United States by the National League for Nursing.
(10) Occupational therapy	Council on Medical Education of the American Medical Association in collaboration with the Council on Education of the American Occupational Therapy Association.
(11) Pharmacy internships and residencies.	Accredited by the American Council on Pharmaceutical Education.
(12) Physical therapy	Council on Medical Education of the American Medical Association in collaboration with the American Physical Therapy Association.
(13) X-ray technology	Council on Medical Education of the American Medical Association in collaboration with the American College of Radiology.

(f) *Other educational programs.* There may also be other educational programs not included in the foregoing in which a provider institution is engaged. Appropriate consideration will be given by the intermediary and the Social Security Administration to the costs incurred for those activities that come within the purview of the principle when determining the allowable costs for apportionment under the health insurance program.

§ 405.422 Research costs.

(a) *Principle.* Costs incurred for research purposes, over and above usual patient care, are not includible as allowable costs.

(b) *Application.* (1) There are numerous sources of financing for health-related research activities. Funds for this purpose are provided under many Federal programs and by other tax-supported agencies. Also, many foundations, voluntary health agencies, and other private organizations, as well as individuals, sponsor or contribute to the support of medical and related research. Funds available from such sources are generally ample to meet basic medical and hospital research needs. A further consideration is that quality review should be assured as a condition of governmental support for research. Provisions for such review would introduce special difficulties in the health insurance program.

(2) Where research is conducted in conjunction with and as a part of the care of patients, the costs of usual patient care are allowable to the extent that such costs are not met by funds provided for the research. Under this principle, however, studies, analyses, surveys, and related activities to serve the provider's administrative and program needs, are not excluded as allowable costs in the determination of reimbursement under title XVIII of the act.

§ 405.423 Grants, gifts, and income from endowments.

(a) *Principle.* Unrestricted grants, gifts, and income from endowments should not be deducted from operating costs in computing reimbursable cost. Grants, gifts, or endowment income designated by a donor for paying specific operating costs should be deducted from the particular operating cost or group of costs.

(b) *Definitions* — (1) *Unrestricted grants, gifts, income from endowment.* Unrestricted grants, gifts, and income from endowments are funds, cash or otherwise, given to a provider without restriction by the donor as to their use.

(2) *Designated or restricted grants, gifts, and income from endowments.* Designated or restricted grants, gifts, and income from endowments are funds, cash or otherwise, which must be used only for the specific purpose designated by the donor. This does not refer to unrestricted grants, gifts, or income from endowments which have been restricted for a specific purpose by the provider.

(c) *Application.* (1) Unrestricted funds, cash or otherwise, are generally the property of the provider to be used in any manner its management deems appropriate and should not be deducted from operating costs. It would be inequitable to require providers to use the unrestricted funds to reduce the payments for care. The use of these funds is generally a means of recovering costs which are not otherwise recoverable.

(2) Donor-restricted funds which are designated for paying certain hospital operating expenses should apply and serve to reduce these costs or group of costs and benefit all patients who use services covered by the donation. If such costs are not reduced, the provider would secure reimbursement for the same expense twice; it would be reimbursed through the donor-restricted contributions as well as from patients and third-party payers including the title XVIII health insurance program.

§ 405.424 Value of voluntary services.

(a) *Principle.* The value of voluntary services provided by sisters or other members of religious orders is allowable as an operating expense for the determination of allowable cost. The amounts included are not to exceed those paid others for similar work. Such amounts must be identifiable in the records of the institution as a legal obligation for operating expenses.

(b) *Definitions; voluntary services.* Voluntary services must be performed by sisters or other members of religious orders in positions necessary to enable the provider institution to carry out the functions of normal patient care. The value of donated services of individual volunteers or members of volunteer organizations engaged in various activities at a provider institution is not allowable as a reimbursable cost under the title XVIII health insurance program.

(c) *Application.* The following illustrates how a provider would determine an amount to be allowed under this principle: The prevailing salary for a lay nurse working in Hospital A is $5,000 for the year. The lay nurse receives no maintenance or special perquisites. A sister working as a nurse engaged in the same activities in the same hospital receives maintenance and special perquisites which cost the hospital $2,000 and are included in the hospital's allowable operating costs. The hospital would then include in its records an additional $3,000 to bring the value of the services rendered to $5,000. The amount of $3,000 would be allowable where the provider assumes obligation for the expense under a written agreement with the sisterhood or other religious order covering payment by the provider for the services.

§ 405.425 Purchase discounts and allowances, and refunds of expenses.

(a) *Principle.* Discounts and allowances received on purchases of goods or services are reductions of the costs to which they relate. Similarly, refunds of previous expense payments are reductions of the related expense.

(b) *Definitions*—(1) *Discounts.* Discounts, in general, are reductions granted for the settlement of debts.

(2) *Allowances.* Allowances are deductions granted for damage, delay, shortage, imperfection, or other causes, excluding discounts and returns.

(3) *Refunds.* Refunds are amounts paid back or a credit allowed on account of an overcollection.

(c) *Normal accounting treatment: Reduction of costs.* All discounts, allowances, and refunds of expenses are reductions in the cost of goods or services purchased and are not income. When they are received in the same accounting period in which the purchases were made or expenses were incurred, they will reduce the purchases or expenses of that period. However, when they are received in a later accounting period, they will reduce the comparable purchases or expenses in the period in which they are received.

(d) *Application.* (1) Purchase discounts have been classified as cash, trade, or quantity discounts. Cash discounts are reductions granted for the settlement of debts before they are due. Trade discounts are reductions from list prices granted to a class of customers before consideration of credit terms. Quantity discounts are reductions from list prices granted because of the size of individual or aggregate purchase transactions. Whatever the classification of purchase discounts, like treatment in reducing allowable costs is required. In the past, purchase discounts were considered as financial management income. However, modern accounting theory holds that income is not derived from a purchase but rather from a sale or an exchange and that purchase discounts are reductions in the cost of whatever was purchased. The true cost of the goods or services is the net amount actually paid for them. Treating purchase discounts as income would result in an overstatement of costs to the extent of the discount.

(2) As with discounts, allowances, and rebates received from purchases of goods or services and refunds of previous expense payments are clearly reductions in costs and must be reflected in the determination of allowable costs. This treatment is equitable and is in accord with that generally followed by other governmental programs and third-party payment organizations paying on the basis of cost.

§ 405.426 Compensation of owners.

(a) *Principle.* A reasonable allowance of compensation for services of owners is an allowable cost, provided the services are actually performed in a necessary function.

(b) *Definitions*—(1) *Compensation.* Compensation means the total benefit received by the owner for the services he renders to the institution. It includes:

(i) Salary amounts paid for managerial, administrative, professional, and other services.

(ii) Amounts paid by the institution for the personal benefit of the proprietor.

(iii) The cost of assets and services which the proprietor receives from the institution.

(iv) Deferred compensation.

(2) *Reasonableness.* Reasonableness requires that the compensation allowance:

(i) Be such an amount as would ordinarily be paid for comparable services by comparable institutions.

(ii) Depend upon the facts and circumstances of each case.

(3) *Necessary.* Necessary requires that the function:

(i) Be such that had the owner not rendered the services, the institution would have had to employ another person to perform the services.

(ii) Be pertinent to the operation and sound conduct of the institution.

(c) *Application.* (1) Owners of provider organizations often render services as managers, administrators, or in other capacities. In such cases, it is equitable that reasonable compensation for the services rendered be an allowable cost. To do otherwise would disadvantage such owners in comparison with corporate providers or providers employing persons to perform similar services.

(2) Ordinarily, compensation paid to proprietors is a distribution of profits. However, where a proprietor renders necessary services for the institution, the institution is in effect employing his services, and a reasonable compensation for these services is an allowable cost. In corporate providers, the salaries of owners who are also employees are subject to the same requirements of reasonableness. Where the services are rendered on less than a full-time basis, the allowable compensation should reflect an amount proportionate to a full-time basis. Reasonableness of compensation may be determined by reference to, or in comparison with, compensation paid for comparable services and responsibilities in comparable institutions; or it may be determined by other appropriate means.

§ 405.427 Cost to related organizations.

(a) *Principle.* Costs applicable to services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control are includable in the allowable cost of the provider at the cost to the related organization. However, such cost must not exceed the price of comparable services, facilities, or supplies that could be purchased elsewhere.

(b) *Definitions*—(1) *Related to provider.* Related to the provider means that the provider to a significant extent is associated or affiliated with or has control of or is controlled by the organization furnishing the services, facilities, or supplies.

(2) *Common ownership.* Common ownership exists when an individual or individuals possess significant ownership or equity in the provider and the institution or organization serving the provider.

(3) *Control.* Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution.

(c) *Application.* (1) Individuals and organizations associate with others for various reasons and by various means. Some deem it appropriate to do so to assure a steady flow of supplies or services, to reduce competition, to gain a tax advantage, to extend influence, and for other reasons. These goals may be accomplished by means of ownership or control, by financial assistance, by management assistance, and other ways.

(2) Where the provider obtains items of services, facilities, or supplies from an organization, even though it is a separate legal entity, and the organization is owned or controlled by the owner(s) of the provider, in effect the items are obtained from itself. An example would be a corporation building a hospital or a nursing home and then leasing it to another corporation controlled by the owner. Therefore, reimbursable cost should include the costs for these items at the cost to the supplying organization. However, if the comparable services, facilities, or supplies could be obtained at a lower cost elsewhere, the "going rates" should be the amount includable by the provider as a reasonable allowable cost.

§ 405.428 Allowance in lieu of specific recognition of other costs.

(a) *Principle.* In lieu of specific recognition of other costs in providing and improving services, an allowance amounting to 2 percent of costs allowed under the other principles (with the exception of interest expense) is includable as an element of reasonable cost of services, subject to the limitation that the allowance not exceed a reasonable long-term interest rate on the provider's net investment related to patient care.

(b) *Application.* Difficulty in measurement, lack of adequate data and other considerations have precluded specific recognition of various elements which are germane to costs of services for beneficiaries. Moreover, although the methods to be utilized by providers for determining the actual cost of services provided to beneficiaries are the best available, there is some lack of precision in methods at the present stage of development of cost finding which represents a contingency for which recognition is appropriate. It is the established practice of a significant number of large third-party purchasers to include in payment for costs of services a factor in the form of an allowance to cover various elements not specifically recognized or not precisely measured. This allowance is, in part, in lieu of a specific interest return on equity capital as well as other factors not given specific recognition. The allowance under this principle is limited to an amount which, as a percentage of the provider's investment in plant, property, and equipment related to patient care (net of depreciation and long-term debt related to such investment), does not exceed the average interest rate on special issues of public-debt obligations issued to the Federal Hospital Insurance Trust Fund during the reporting period (i.e., the appropriate average of the several monthly rates, as

determined under section 1817(c) of the Social Security Act). In the determination of the amount of the provider's net investment, for purposes of applying this limitation, the cost of assets financed by Hill-Burton or other Federal funds will be excluded. Such exclusion will be on the basis of the share of the cost financed by Federal funds after adjustment for depreciation.

§ 405.451 Cost related to patient care.

(a) *Principle.* All payments to providers of services must be based on the "reasonable cost" of services covered under title XVIII of the Act and related to the care of beneficiaries. Reasonable cost includes all necessary and proper costs incurred in rendering the services, subject to principles relating to specific items of revenue and cost.

(b) *Definitions*—(1) *Reasonable Cost.* Reasonable cost of any services must be determined in accordance with regulations establishing the method or methods to be used, and the items to be included. The regulations in this subpart take into account both direct and indirect costs of providers of services. The objective is that under the methods of determining costs, the costs with respect to individuals covered by the program will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by the program. These regulations also provide for the making of suitable retroactive adjustments after the provider has submitted fiscal and statistical reports. The retroactive adjustment will represent the difference between the amount received by the provider during the year for covered services from both title XVIII and the beneficiaries and the amount determined in accordance with an accepted method of cost apportionment to be the actual cost of services rendered to beneficiaries during the year.

(2) *Necessary and proper costs.* Necessary and proper costs are costs which are appropriate and helpful in developing and maintaining the operation of patient care facilities and activities. They are usually costs which are common and accepted occurrences in the field of the provider's activity.

(c) *Application.* (1) It is the intent of title XVIII of the Act that payments to providers of services should be fair to the providers, to the contributors to the health-insurance trust funds, and to other patients.

(2) The costs of providers' services vary from one provider to another and the variations generally reflect differences in scope of services and intensity of care. The provision in title XVIII of the Act for payment of reasonable cost of services is intended to meet the actual costs, however widely they may vary from one institution to another. This is subject to a limitation where a particular institution's costs are found to be substantially out of line with other institutions in the same area which are similar in size, scope of services, utilization, and other relevant factors.

(3) The determination of reasonable cost of services must be based on cost related to the care of beneficiaries of title XVIII of the Act. Reasonable cost includes all necessary and proper expenses incurred in rendering services, such as administrative costs, maintenance costs, and premium payments for employee health and pension plans. It includes both direct and indirect costs and normal standby costs. However, where the provider's operating costs include amounts not related to patient care, or specifically not reimbursable under the program, such amounts will not be allowable. The reasonable cost basis of reimbursement contemplates that the providers of services would be reimbursed the actual costs of providing quality care however widely the actual costs may vary from provider to provider and from time to time for the same provider.

§ 405.452 Determination of cost of services to beneficiaries.

(a) *Principle.* Total allowable costs of a provider shall be apportioned between program beneficiaries and other patients so that the share borne by the program is based upon actual services received by program beneficiaries. To accomplish this apportionment, the provider shall have the option of either of the two following methods:

(1) *Departmental method.* The ratio of beneficiary charges to total patient charges for the services of each department is applied to the cost of the department.

(2) *Combination method.* The cost of "routine services" for program beneficiaries is determined on the basis of average cost per diem of these services for all patients; to this is added the cost of ancillary services used by beneficiaries, determined by apportioning the total cost of ancillary services on the basis of the ratio of beneficiary charges for ancillary services to total patient charges for such services.

(b) *Definitions*—(1) *Apportionment.* Apportionment means an allocation or distribution of allowable cost between the beneficiaries of the health insurance program and other patients.

(2) *Routine services.* Routine services means the regular room, dietary, and nursing services, minor medical and surgical supplies, and the use of equipment and facilities for which a separate charge is not customarily made.

(3) *Ancillary services.* Ancillary services or special services are the services for which charges are customarily made in addition to routine services.

(4) *Charges.* Charges refers to the regular rates for various services which are charged to both beneficiaries and other paying patients who receive the services. Implicit in the use of charges as the basis for apportionment is the objective that charges for services be related to the cost of the services.

(5) *Cost.* Cost refers to reasonable cost as described in § 405.451(a).

(6) *Ratio of beneficiary charges to total charges on a departmental basis.* Ratio of beneficiary charges to total charges on a departmental basis, as applied to inpatients, means the ratio of inpatient charges to beneficiaries of the health insurance program for services of a revenue-producing department or center to the inpatient charges to all patients for that center during an accounting period. After each revenue-producing center's ratio is determined, the cost of services rendered to beneficiaries of the health insurance program is computed by applying the individual ratio for the center to the cost of the related center for the period.

(7) *Average cost per diem for routine services.* Average cost per diem for routine services means the amount computed by dividing the total allowable inpatient cost for routine services by the total number of inpatient days of care (excluding newborn days where nursery costs are excluded from routine service costs) rendered by the provider in the accounting period.

(8) *Ratio of beneficiary charges for ancillary services to total charges for ancillary services.* Ratio of beneficiary charges for ancillary services to total charges for ancillary services, as applied to inpatients, means the ratio of the total inpatient charges for covered ancillary services rendered to beneficiaries of the health insurance program to the total inpatient charges for ancillary services to all patients during an accounting period. This ratio is applied to the allowable inpatient ancillary costs for the period to determine the amount of reimbursement to a provider for the covered ancillary services rendered to beneficiaries.

(c) *Application*—(1) *Objective.* (i) The law provides that the costs with respect to individuals covered by the health insurance program will not be borne by individuals not so covered, and, conversely, that costs with respect to individuals who are not under the program will not be borne by the program.

(ii) The cost of services to beneficiaries of the health insurance program may be determined by either of the alternative methods, that is selected by a provider; however, the objective of whatever method of apportionment is used will be to approximate as closely as practicable the actual cost of services rendered.

(iii) The two methods of apportionment available for use in determining the cost of services rendered to beneficiaries of the program have as their goal the allocation of the total allowable costs between the beneficiaries and other patients in as equitable a manner as possible. Under these methods, if it is found that beneficiaries receive more than the average amount of services, the providers would receive reimbursement greater than average cost for all patients. Conversely, if the beneficiaries receive less than the average amount of services, the providers would be reimbursed accordingly for the services rendered.

(2) *Departmental method.* The following illustrates how apportionment based on the ratio of beneficiary charges to total charges applied to cost on a departmental basis would be determined, using only inpatient data.

HOSPITAL A

Department	Charges to program beneficiaries	Total charges	Ratio of beneficiary charges to total charges	Total cost	Cost of beneficiary services
			Percent		
Routine services	$140,000	$600,000	23⅓	$630,000	$147,000
X-ray	24,000	100,000	24	75,000	18,000
Operating room	20,000	70,000	28⅔	77,000	22,000
Laboratory	40,000	140,000	28⅔	98,000	28,000
Pharmacy	20,000	60,000	33⅓	45,000	15,000
Others	6,000	30,000	20	25,000	5,000
Total	250,000	1,000,000	----------	950,000	235,000

The total reimbursement for services rendered by the provider to the beneficiaries would be $235,000.

(3) *Combination method*—(i) *Using cost finding.* A provider may, at its option, elect to be reimbursed on the average cost per diem for the cost of routine services, with apportionment of the cost of ancillary services on the basis of the ratio of beneficiary charges to total patient charges applied to the cost of all such ancillary services. The cost of the ancilliary services rendered to beneficiaries of the program is determined by computing the ratio of total inpatient charges for ancillary services to beneficiaries to the total inpatient ancillary charges to all patients. This ratio is then applied to the total allowable cost of inpatient ancillary services.

COST-FINDING EMPLOYED BY HOSPITAL B

Statistical and financial data:	
Total inpatient days for all patients	30,000
Inpatient days applicable to beneficiaries	7,500
Inpatient routine services—total allowable cost	$600,000
Inpatient ancillary services—total allowable cost	$320,000
Inpatient ancillary services—total charges	$400,000
Inpatient ancillary services—charges for services to beneficiaries	$80,000
Computation of cost applicable to program:	
Average cost per diem for routine services: $600,000÷30,000 days=$20 per diem.	
Cost of routine services rendered to beneficiaries: $20 per diem × 7,500 days	$150,000
Ratio of beneficiary charges to total charges for all ancillary services: $80,000÷$400.00=20%.	
Cost of ancillary services rendered to beneficiaries: 20% × $320,000	$64,000
Total cost of beneficiary services	$214,000

(ii) *Using estimated percentage.* The provider has an option at the beginning of the program of obtaining from the intermediary and utilizing an estimated rather than a computed basis for apportioning cost between routine and ancillary services. Where a provider either elects this option or is unable to make the necessary computations by cost-finding methods as indicated in § 405.453, the intermediary will estimate the appropriate percentage of the provider's allowable cost that represents routine service costs and the appropriate percentage that represents the ancillary service costs. These percentages are to be based upon study, analysis, and judgment by the intermediary and designed to approximate the result that a cost-finding method would have produced for the particular provider. The use of estimated percentages would apply only to cost reports for periods ending before January 1, 1968. For subsequent periods, the use of cost-finding methods as described in § 405.453 will be required for the apportionment of allowable costs.

ESTIMATED PERCENTAGES EMPLOYED BY HOSPITAL C

Statistical and financial data:	
Total inpatient days for all patients	35,000
Inpatient days applicable to beneficiaries	5,000
Total allowable inpatient cost	$1,000,000
Estimated percent for routine inpatient services	70
Estimated percent for ancillary inpatient services	30
Inpatient ancillary services: Total charges	$400,000
Charges for services to beneficiaries	$80,000
Computation of cost applicable to program:	
Average cost per diem for routine services: 70%×$1,000,000=$700,000 (routine service cost). $700,000÷35,000 days=$20 per diem.	
Cost of routine services rendered to beneficiaries: $20 per diem×5,000 days	$100,000
Ratio of beneficiary charges to total charges for all ancillary services: $80,000÷$400,000=20%.	
Cost of ancillary services rendered to beneficiaries: 30%×$1,000,000=$300,000 (ancillary service costs).	
20%×$300,000	$60,000
Total cost of beneficiary services	$160,000

(4) *Option to use departmental method or combination method for the first reporting period.* The provider has the option of using either the departmental method or the combination method for the first reporting period. Thereafter, a provider may change from one to the other method provided a request is made to the intermediary before the end of the first month of the period for which the change is to be applied and such request is approved.

(5) *Temporary methods of apportionment.* (i) The intermediary may find that a provider is unable to apply either the departmental method or the combination method employing cost finding or estimated percentages. In such case, the intermediary can authorize the provider to use, on a temporary basis, an apportionment based on the ratio of beneficiary inpatient charges to total inpatient charges applied to the total cost of all services. This would permit the provider time to establish the records necessary for applying either of the basic alternative methods of apportionment in the next accounting period. In some cases the intermediary may determine that a provider is unable to employ this temporary method of apportionment based on the ratio of beneficiary inpatient charges to total inpatient charges applied to total inpatient cost. In such a case any other method determined by the intermediary to be reasonable may be used on a temporary basis. Any temporary method of apportionment may not be used to cover more than one cost reporting period.

Example. The following illustration demonstrates the apportionment of cost based on the ratio of beneficiary inpatient charges to all inpatient charges computed on a total basis for all inpatient services.

HOSPITAL D

Financial data:	
Inpatient services: Total allowable cost	$950,000
Total charges	1,000,000
Charges for beneficiary services	200,000
Computation of cost of beneficiary inpatient services:	
Ratio of beneficiary charges to total charges: $200,000÷$1,000,000=20%.	
Cost of services rendered to beneficiaries: 20%×$950,000	190,000

(ii) Whenever authorization is given to apportion costs by a method other than one of the two basic alternative methods, such authorization would be considered to be a temporary expediency to cover only one accounting period. It would be available to a provider only after diligent efforts have been made by the provider to apportion its costs based upon either of the approved methods of apportionment.

§ 405.453 Adequate cost data and cost finding.

(a) *Principle.* Providers receiving payment on the basis of reimbursable cost must provide adequate cost data. This must be based on their financial and statistical records which must be capable of verification by qualified auditors. The cost data must be based on an approved method of cost finding and on the accrual basis of accounting. However, where governmental institutions operate on a cash basis of accounting, cost data based on such basis of accounting will be acceptable, subject to appropriate treatment of capital expenditures.

(b) *Definitions*—(1) *Cost finding.* Cost finding is the process of recasting the data derived from the accounts ordinarily kept by a provider to ascertain costs of the various types of services rendered. It is the determination of these costs by the allocation of direct costs and proration of indirect costs.

(2) *Accrual basis of accounting.* Under the accrual basis of accounting, revenue is reported in the period when it is earned, regardless of when it is collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(c) *Application.* Adequate cost information must be obtained from the provider's records to support payments made for services rendered to beneficiaries. The requirement of adequacy of data implies that the data be accurate and in sufficient detail to accomplish the purposes for which it is intended. Adequate data capable of being audited is consistent with good business concepts and effective and efficient management of any organization, whether it is operated for profit or on a nonprofit basis. It is a reasonable expectation on the part of any agency paying for services on a cost-reimbursement basis. In order to provide the required cost data and not impair comparability, financial and statistical records should be maintained in a manner consistent from one period to another. However, a proper regard for consistency need not preclude a desirable change in accounting procedures when there is reason to effect such change.

(d) *Cost finding methods.* After the close of the accounting period, one of the following methods of cost finding is to be used to determine the actual costs of services rendered during that period.

(1) *Step-down method.* This method recognizes that services rendered by certain nonrevenue-producing departments or centers are utilized by certain other nonrevenue-producing centers as well as by the revenue-producing centers. All costs of nonrevenue-producing centers are allocated to all centers which they serve, regardless of whether or not these centers produce revenue. The cost of the nonrevenue-producing center serving the greatest number of other centers, while receiving benefits from the least number of centers, is apportioned first. Following the apportionment of the cost of the nonrevenue-producing center, that center will be considered "closed" and no further costs are apportioned to that center. This applies even though it may have received some service from a center whose cost is apportioned later. Generally when two centers render service to an equal number of centers while receiving benefits from an equal number, that center which has the greatest amount to expense should be allocated first.

(2) *Other methods*—(i) *The double-apportionment method.* The double-apportionment method may be used by a provider upon approval of the intermediary. This method also recognizes that the nonrevenue-producing departments or centers render services to other nonrevenue-producing centers as well as to revenue-producing centers. A preliminary allocation of the costs of nonrevenue-producing centers is made. These centers or departments are not "closed" after this preliminary allocation. Instead, they remain "open," accumulating a portion of the costs of all other centers from which services are received. Thus, after the first or preliminary allocation, some costs will remain in each center representing services received from other centers. The first or preliminary allocation is followed by a second or final apportionment of expenses involving the allocation of all costs remaining in the nonrevenue-producing functions directly to revenue-producing centers.

(ii) *More sophisticated methods.* A more sophisticated method designed to allocate costs more accurately may be used by the provider upon approval of the intermediary. However, having elected to use the double-apportionment method, the provider may not thereafter use the step-down method without approval of the intermediary. Request for the approval must be made on a prospective basis and must be submitted before the end of the first month of the prospective reporting period. Likewise, once having elected to use a more sophisticated method, the provider may not thereafter use either the double-apportionment or step-down methods without similar request and approval.

(3) *Temporary method for initial period.* If the provider is unable to use either cost-finding method when it first participates in the program, it may apply to the intermediary for permission to use some other acceptable method which would accurately identify costs by department or center, and appropriately segregate inpatient and outpatient costs. Such other method may be used for cost reports covering periods ending before January 1, 1968.

(e) *Accounting basis.* The cost data submitted must be based on the accrual basis of accounting which is recognized as the most accurate basis for determining costs. However, governmental institutions that operate on a cash basis of accounting may submit cost data on the cash basis subject to appropriate treatment of capital expenditures.

§ 405.454 Payments to providers.

(a) *Principle.* Providers of services will be paid the reasonable cost of services furnished to beneficiaries. Interim payments approximating the actual costs of the provider will be made on the most expeditious basis administratively feasible but not less often than monthly. A retroactive adjustment based on actual costs will be made at the end of the reporting period. At the request of the provider, payment will be made on a basis designed to reimburse concurrently as services are rendered to beneficiaries.

(b) *Amount and frequency of payment.* Title XVIII of the act states that providers of services will be paid the reasonable cost of services furnished to beneficiaries. Since actual costs of services cannot be determined until the end of the accounting period, the providers must be paid on an estimated cost basis during the year. While the law provides that interim payments shall be made no less often than monthly, intermediaries are expected to make payments on the most expeditious basis administratively feasible. Whatever estimated cost basis is used for determining interim payments during the year, the intent is that the interim payments shall approximate actual costs as nearly as is practicable so that the retroactive adjustment based on actual costs will be as small as possible.

(c) *Interim payments during initial reporting period.* At the beginning of the program or when a provider first participates in the program, it will be necessary to establish interim rates of payment to providers of services. Once a provider has filed a cost report under the health insurance program, the cost report may be used as a basis for determining the interim rate of reimbursement for the following period. However, since initially there is no previous history of cost under the program, the interim rate of payment must be determined by other methods, including the following:

(1) Where the intermediary is already paying the provider on a cost or cost-related basis, the intermediary will adjust its rate of payment to the program's principles of reimbursement. This rate may be either an amount per inpatient day, or a percent of the provider's charges for services rendered to the program's beneficiaries.

(2) Where an organization other than the intermediary is paying the provider for services on a cost or cost-related basis, the intermediary may obtain from that organization or from the provider itself the rate of payment being used and other cost information as may be needed to adjust that rate of payment to give recognition to the program's principles of reimbursement.

(3) Where no organization is paying the provider on a cost or cost-related basis, the intermediary will obtain the previous year's financial statement from the provider. By analysis of such statement in the light of the principles of reimbursement, the intermediary will compute an appropriate rate of payment.

(4) After the initial interim rate has been set, the provider may at any time request, and be allowed, an appropriate increase in the computed rate, upon presentation of satisfactory evidence to the intermediary that costs have increased. Likewise, the intermediary may adjust the interim rate of payment if it has evidence that actual costs may fall significantly below the computed rate.

(d) *Interim payments for new providers.* (1) Newly established providers will not have a cost experience on which to base a determination of an interim rate of payment. In such cases, the intermediary will use the following methods to determine an appropriate rate:

(i) Where there is a provider or providers comparable in substantially all relevant factors to the provider for which the rate is needed, the intermediary will base an interim rate of payment on the costs of the comparable provider.

(ii) If there are no substantially comparable providers from whom data are available, the intermediary will determine an interim rate of payment based on the budgeted or projected costs of the provider.

(2) Under either method, the intermediary will review the provider's cost experience after a period of 3 months. If need for an adjustment is indicated, the interim rate of payment will be adjusted in line with the provider's cost experience.

(e) *Interim payments after initial reporting period.* Interim rates of payment for services provided after the initial reporting period will be established on the basis of the cost report filed for the previous year covering health insurance services. The current rate will be determined—whether on a per diem or percentage of charges basis—using the previous year's costs of covered services and making any appropriate adjustments required to bring, as closely as possible, the current year's rate of interim payment into alignment with current year's costs. This interim rate of payment may be adjusted by the intermediary during an accounting period if the provider submits appropriate evidence that its actual costs are or will be significantly higher than the computed rate. Likewise, the intermediary may adjust the interim rate of payment if it has evidence that actual costs may fall significantly below the computed rate.

(f) *Retroactive adjustment.* (1) Title XVIII of the Act provides that providers of services shall be paid amounts determined to be due, but not less often than monthly, with necessary adjustments due to previously made overpayments or underpayments. Interim payments are made on the basis of estimated costs. Actual costs reimbursable to a provider cannot be determined until the cost reports are filed and costs are verified. Therefore, a retroactive adjustment will be made at the end of the reporting period to bring the interim payments made to the provider during the period into agreement with the reimbursable amount payable to the provider for the services rendered to program beneficiaries during that period.

(2) In order to reimburse the provider as quickly as possible, an initial retroactive adjustment will be made as soon as the cost report is received. For this purpose, the costs will be accepted as reported—unless there are obvious errors or inconsistencies—subject to later audit. When an audit is made and the final liability of the program is determined, a final adjustment will be made.

(3) To determine the retroactive adjustment, the amount of the provider's total allowable cost apportioned to the program for the reporting year is computed. This is the total amount of reimbursement the provider is due to receive from the program and the beneficiaries for covered services rendered during the reporting period. The total of the interim payments made by the program in the reporting year and the deductibles and coinsurance amounts receivable from beneficiaries is computed. The difference between the reimbursement due and the payments made is the amount of the retroactive adjustment.

(g) *Provision for current financing.* (1) In addition to the basic procedure for payment to a provider following the submission of bills to the intermediary, payment will be made upon request by the provider on a basis designed to reimburse concurrently as services are furnished to beneficiaries. The amount of such payment will be computed by the intermediary initially on an estimated basis and periodically adjusted to represent the average level of services unreimbursed by the basic payment procedure.

(2) A study will be made of the possibility that a financial requirement in the production of services arises prior to the rendition of services to beneficiaries and is not being met by the program. Among the factors to be considered in the study will be the extent to which outlays for consumable items for which payment may be made in advance of rendition of services are offset by outlays for other items, such as wages and salaries, which ordinarily are not made until after services are rendered.

(h) *Cost reporting period.* For cost-reporting purposes, the program will require submission of annual reports covering a 12-month period of operations based upon the provider's accounting year. At the option of the provider, however, during the first year of the program a short period report beginning July 1, 1966, and ending with the provider's accounting year may be submitted, provided such report covers at least 6 months.

Dated: May 27, 1966.

[SEAL] ROBERT M. BALL,
Commissioner of Social Security.

Approved: May 27, 1966.

WILBUR J. COHEN,
Acting Secretary of Health, Education, and Welfare.

[F.R. Doc. 66-6110; Filed, June 1, 1966; 8:50 a.m.]