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Agencies in this issue—

Agricultural Stabilization and Conservation Service
Air Force Department
Atomic Energy Commission
Civil Aeronautics Board
Commerce Department
Comptroller of the Currency
Consumer and Marketing Service
Customs Bureau
Engineers Corps
Federal Aviation Agency
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Home Loan Bank Board
Federal Maritime Commission
Federal National Mortgage Association
Federal Power Commission
Federal Reserve System
Fish and Wildlife Service
Food and Drug Administration
Foreign Assets Control Office
Indian Affairs Bureau
Interior Department
Internal Revenue Service
Interstate Commerce Commission
Land Management Bureau
Navy Department
Securities and Exchange Commission
Wage and Hour Division

Detailed list of Contents appears inside.

FEDERAL REGISTER

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Contents

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

Rules and Regulations

Liquid sugar; requirements relating to importation into continental U.S. ---- 16518

Sugar requirements and quotas; Hawaii and Puerto Rico; establishment of quotas for local consumption in 1967 ---- 16517

AGRICULTURE DEPARTMENT

See Agricultural Stabilization and Conservation Service; Consumer and Marketing Service.

AIR FORCE DEPARTMENT

Rules and Regulations

Air Force Reserve Officers' Training Corps (AFROTC) ---- 16555

ARMY DEPARTMENT

See Engineers Corps.

ATOMIC ENERGY COMMISSION

Notices

Uranium hexafluoride; charges and specifications ---- 16584

CIVIL AERONAUTICS BOARD

Rules and Regulations

Transfer of airlift among air carriers in certain emergencies ---- 16526

Notices

Lake Central Airlines, Inc.; "use it or lose it" and route realignment investigation ---- 16584

COMMERCE DEPARTMENT

Notices

Producers of watches and watch movements located in the Virgin Islands, Guam, and American Samoa; joint notice by Secretaries of Commerce and Interior relating to allocation of quotas and establishment of temporary procedures ---- 16579

COMPTROLLER OF THE CURRENCY

Notices

Statement of policy on advertising for funds by national banks ---- 16581

CONSUMER AND MARKETING SERVICE

Rules and Regulations

Canned orange juice; U.S. standards for grades ---- 16515

Egg products; grading and inspection ---- 16516

Lemons grown in California and Arizona; handling limitations ---- 16520

Milk in southern Illinois marketing area; order terminating certain provision ---- 16520

Proposed Rule Making

Milk in north Texas marketing area; recommended decision ---- 16576

CUSTOMS BUREAU

Rules and Regulations

General provisions; miscellaneous amendments ---- 16563

Notices

Customhouse brokers; notice that licensing shall continue on district basis ---- 16581

Port directors; delegation of authority ---- 16581

Weekly Treasury decisions; notice of change in name of publication ---- 16580

DEFENSE DEPARTMENT

See Air Force Department; Engineers Corps; Navy Department.

ENGINEERS CORPS

Rules and Regulations

Gunston Cove, Va.; navigation regulations ---- 16560

FEDERAL AVIATION AGENCY

Rules and Regulations

Federal aid to airports; review of miscellaneous eligibility criteria and programing standards ---- 16521

Restricted airspace; alteration ---- 16521

Notices

Scripps-Howard Broadcasting Co., and Television Station WPTV; notice of hearing ---- 16584

FEDERAL COMMUNICATIONS COMMISSION

Rules and Regulations

Commission organization; amateur radio service ---- 16567

Commission organization; authority delegated ---- 16566

Proposed Rule Making

Aviation services; scope of aeronautical multicom service ---- 16577

Notices

Hearings, etc.:

Adirondack Television Corp., and Northeast TV Cablevision Corp. ---- 16584

BBPS Broadcasting Corp., and Scott Broadcasting Co. of Pennsylvania, Inc ---- 16585

Bigham, Allen C., Jr ---- 16585

Chance, Albert, et al ---- 16585

Circle L, Inc., et al ---- 16586

Overmyer, D. H., Communications Co., and Maxwell Electronics Corp ---- 16587

FEDERAL DEPOSIT INSURANCE CORPORATION

Notices

Statement of policy on advertising for funds by insured State nonmember banks ---- 16581

FEDERAL HOME LOAN BANK BOARD

Notices

Statement of policy on advertising for funds by financial institutions ---- 16582

FEDERAL MARITIME COMMISSION

Notices

Fahner, Albert, et al.; independent ocean freight forwarder licenses and applications ---- 16588

FEDERAL NATIONAL MORTGAGE ASSOCIATION

Rules and Regulations

Mortgage and loan purchases, servicing, and sales, and short-term loans on security of mortgages and loans ---- 16515

FEDERAL POWER COMMISSION

Rules and Regulations

Annual reports:

Electric utilities and licensees ---- 16560

Natural gas companies (2 documents) ---- 16561, 16562

Notices

Hearings, etc.:

Columbia Gulf Transmission Co ---- 16588

Eastern Shore Natural Gas Co ---- 16588

Lake Shore Line Co ---- 16589

Mantachie Natural Gas District, Miss., and Texas Eastern Transmission Corp ---- 16589

Nantahala Power & Light Co ---- 16589

Northern Natural Gas Co ---- 16589

Saltillo-Guntown Gas District, Miss., and Tennessee Gas Transmission Co ---- 16590

FEDERAL RESERVE SYSTEM

Notices

Statement of policy on advertising for funds by member State banks ---- 16582

FISH AND WILDLIFE SERVICE

Rules and Regulations

Montezuma National Wildlife Refuge, N.Y.; sport fishing ---- 16560

FOOD AND DRUG ADMINISTRATION

Rules and Regulations

Bakery products; identity standard ---- 16564

Change in name of Act ---- 16564

Diuron; tolerances and exemptions ---- 16565

Painting and other coating materials; exemption from labeling requirements ---- 16565

(Continued on next page)

Proposed Rule Making

Canned figs; withdrawal of petition and termination of proposed rule making 16577

Notices

Petitions regarding food additives:
- Amdal Co 16582
- du Pont, E. I., de Nemours & Co 16583
- Elanco Products Co 16583
- Pennsylvania Industrial Chemical Corp 16583
- Pfizer, Chas., & Co., Inc., Chemical Division 16583
- Quaker Chemical Corp 16583
- Union Carbide Corp 16583
- Wyandotte Chemicals Corp 16583
- Wyandotte Chemicals Corp., and Stepan Chemical Co 16484

FOREIGN ASSETS CONTROL OFFICE

Notices

Government of Japan; withdrawal of certain available certifications 16581

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See Food and Drug Administration.

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See Federal National Mortgage Association.

INDIAN AFFAIRS BUREAU

Rules and Regulations

Rolls of Indians; preparation 16565

Notices

Area field representatives; redelegation of authority 16580

INTERIOR DEPARTMENT

See also Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau.

Notices

Bureau of Mines research contracts; temporary delegation of authority 16580

Producers of watches and watch movements located in the Virgin Islands, Guam, and American Samoa; joint notice by Secretaries of Commerce and Interior relating to allocation of quotas and establishment of temporary procedures; cross reference 16580

INTERNAL REVENUE SERVICE

Rules and Regulations

Income tax; electing small business corporations; classes of stock 16527

INTERSTATE COMMERCE COMMISSION

Rules and Regulations

Standards for registration of certificates and permits with States 16567

Notices

Fourth section applications for relief 16592

Motor carrier transfer proceedings 16593

LABOR DEPARTMENT

See Wage and Hour Division.

LAND MANAGEMENT BUREAU

Notices

Wyoming; proposed withdrawal and reservation of lands 16580

NAVY DEPARTMENT

Rules and Regulations

Administrative discharges and related matters concerning separations from naval service 16528

SECURITIES AND EXCHANGE COMMISSION

Notices

Hearings, etc.:
- Columbia Gas System, Inc., and Inland Gas Co., Inc 16591
- Pakco Co., Inc 16590
- Pennsylvania Electric Co 16590

TREASURY DEPARTMENT

See Comptroller of the Currency; Customs Bureau; Foreign Assets Control Office; Internal Revenue Service.

WAGE AND HOUR DIVISION

Notices

Certificates authorizing employment of learners at special minimum rates 16591

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

52 16515
55 16516
812 16517
817 16518
910 16520
1032 16520

PROPOSED RULES:
1126 16576

14 CFR

73 16521
151 16521
290 16526

18 CFR

141 16560
260 (2 documents) 16561, 16562

19 CFR

1 16563

21 CFR

2 16564
17 16564
120 16565
191 (2 documents) 16564, 16565

PROPOSED RULES:
27 16577

24 CFR

1600 16515

25 CFR

41 16565

26 CFR

1 16527

32 CFR

730 16528
870 16555

33 CFR

207 16560

47 CFR

0 (2 documents) 16566, 16567
97 16567

PROPOSED RULES:
87 16577

49 CFR

177b 16567

50 CFR

33 16560

Rules and Regulations

Title 24—HOUSING AND HOUSING CREDIT

Chapter IV—Federal National Mortgage Association, Department of Housing and Urban Development

PART 1600—MORTGAGE AND LOAN PURCHASES, SERVICING, AND SALES, AND SHORT-TERM LOANS ON THE SECURITY OF MORTGAGES AND LOANS

Miscellaneous Amendments

1. Section 1600.12(c) is amended to read as follows:

§ 1600.12 Purchases of mortgages and FHDA loans.

* * * * *

(c) *Commitment contract.* A seller may offer mortgages for future purchase by FNMA by executing a commitment contract which, when accepted, obligates FNMA to purchase in accordance with its terms within the commitment period, but does not obligate the seller to effect delivery. With each such offer the seller pays a Commitment Fee which is nonrefundable if the contract is accepted by FNMA. The seller is required to subscribe for FNMA common stock, as stated in § 1600.15(a). A part of the stock is paid for at the time of the offer; the remainder is paid for if and when the purchases are effected. No Purchase and Marketing Fee is applicable.

* * * * *

2. Section 1600.13 is amended to read as follows:

§ 1600.13 Purchase price.

The price or prices to be paid by FNMA are established within the range of market prices for the particular classes of mortgages or loans involved, as determined by FNMA. The price paid by FNMA for a mortgage may vary according to its interest rate, the location of the security property, the relative equity of the mortgagor, the term of the loan, and other factors. Information concerning FNMA's current mortgage purchase prices may be obtained from the FNMA Agency serving the area in which the mortgaged property is located. The prices paid for FHDA loans will vary according to their yields, and information concerning current prices may be obtained from any FNMA Agency. All prices quoted by FNMA are subject to change without notice. A quotation of prices does not constitute an offer by FNMA but is solely an invitation to the Seller to make an offer to FNMA. FNMA is under no obligation to purchase any mortgage or loan except pursuant to the terms of a written contract executed by FNMA and a Seller.

3. Section 1600.25 is amended to read as follows:

§ 1600.25 Below-market interest rate mortgages.

FNMA is expressly authorized by law to purchase, service, sell, or otherwise deal in below-market interest rate mortgages insured under sections 221(d)(3) and 221(h) of the National Housing Act. As to these mortgages, FNMA's operations are not required to be self-supporting, and such mortgages may be purchased even though they may be offered by, or cover property held by, State, territorial, or municipal instrumentalities.

4. Section 1600.53(b) is amended to read as follows:

§ 1600.53 Offering period.

* * * * *

(b) *Commitment contract.* An offer of a commitment contract covering mortgages may not be delivered to FNMA prior to the issuance of the FHA insurance commitment or the VA Certificate of Reasonable Value. An offer of a commitment contract covering a multifamily housing mortgage may not be delivered to FNMA under the Special Assistance Functions subsequent to the commencement of construction or rehabilitation.

5. Section 1600.54 is amended to read as follows:

§ 1600.54 Maximum mortgage.

In general, the original principal obligation of mortgages purchased under the Special Assistance Functions must not exceed $17,500 for each dwelling unit, or $20,000 for each dwelling unit having four or more bedrooms. These limitations do not apply to mortgages covering property located in Alaska, Guam, or Hawaii; to mortgages insured under section 220 or title VIII of the National Housing Act; to mortgages insured under section 213 of such Act and covering property located in urban renewal areas; to mortgages insured under title X of such Act with respect to new communities approved under section 1004 thereof; or, in certain circumstances of local tax abatement, to below-market interest rate mortgages insured under section 221(d)(3) of such Act.

(Sec. 309, 68 Stat. 620; 12 U.S.C. 1723a)

Issued at Washington, D.C., December 20, 1966.

FEDERAL NATIONAL MORTGAGE ASSOCIATION,
H. M. GILBERT,
Executive Vice President.

[F.R. Doc. 66-13849; Filed, Dec. 27, 1966; 8:47 a.m.]

Title 7—AGRICULTURE

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

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

Subpart—United States Standards for Grades of Canned Orange Juice [1]

Miscellaneous Amendments

A proposal to amend the United States Standards for Grades of Canned Orange Juice (7 CFR 52.1551–52.1562) was published in the FEDERAL REGISTER of November 3, 1966 (31 F.R. 14081). Interested persons were given until December 3, 1966, to submit written data, views, or arguments for consideration in connection with the proposed amendment.

Statement of consideration leading to the amendment to the standards. No comment of any kind has been received concerning the Department's proposal of November 3, 1966. Prior to that publication, however, major citrus interests had urged that the standards be amended as was proposed.

After consideration of all relevant information available, including the aforesaid notice, and pursuant to the authority contained in the Agricultural Marketing Act of 1946 (Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627), the United States Standards for Grades of Canned Orange Juice are hereby amended as follows:

1. In § 52.1559 the tables in paragraph (a)(1) and (a)(2) are revised to read as follows:

Without sweetner.

	Minimum	Maximum
Brix (degrees)	10.5	
Acid (per 100 ml.):		
California or Arizona	0.75 gm	1.45 gms.
Outside California or Arizona.	0.65 gm	1.45 gms.
Brix-acid ratio:		
If Brix less than 11.5°	10:1	19.5:1.
If Brix 11.5° or more	9:1	19.5:1.

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable State laws and regulations.

(2) With sweetener.

	Minimum	Maximum
Brix (degrees)	10.5	
Acid (per 100 ml.):		
California or Arizona	0.75 gm.	1.45 gms.
Outside California or Arizona.	0.65 gm.	1.45 gms.
Brix-acid ratio:		
If Brix less than 15°	12:1	19.5:1.
If Brix 15° or more	9:1	19.5:1.

2. In § 52.1559 the table in paragraph (b)(2) are revised to read as follows:

(2) With sweetener.

	Minimum	Maximum
Brix (degrees)	10.5	
Acid (per 100 ml.):		
California or Arizona	0.65 gm.	1.65 gms.
Outside California or Arizona.	0.60 gm.	1.65 gms.
Brix-acid ratio:		
If Brix less than 15°	12:1	19.5:1.
If Brix 15° or more	9:1	19.5:1.

(Secs. 202–208, 60 Stat. 1087, as amended, 7 U.S.C. 1621–1627)

It is hereby found that good cause exists for not postponing the effective date of this amendment beyond that specified (5 U.S.C. 1003(c)) in that: (1) The processing of canned orange juice is now underway in most producing areas; (2) the processors of canned orange juice have been made aware of the provisions of the amendment and the effect it would have in the canning of orange juice; (3) no changes in production are required which cannot be effectuated immediately; and (4) no objections to the proposed amendment as published in the FEDERAL REGISTER of November 3, 1966, have been registered.

To become effective upon publication in the FEDERAL REGISTER.

Dated: December 22, 1966.

G. R. GRANGE,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 66–13895; Filed, Dec. 27, 1966; 8:50 a.m.]

PART 55—GRADING AND INSPECTION OF EGG PRODUCTS

Miscellaneous Amendments

Under authority contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), the U.S. Department of Agriculture hereby amends the Regulations Governing the Grading and Inspection of Egg Products (7 CFR Part 55) as set forth below.

Statement of considerations. In the amendments to the Regulations Governing the Grading and Inspection of Egg Products (7 CFR Part 55) as published in the FEDERAL REGISTER (31 F.R. 14982) on November 29, 1966, the words "sampler," "sampling service," and similar words were deleted from certain sections of the regulations as these terms are no longer applicable to this service. Through an oversight, these terms were not deleted from §§ 55.2 (j) and (p), 55.5, 55.10, 55.13, 55.15, 55.16, 55.22(c), 55.30(a)(1)(i), 55.60(a), 55.61(b), 55.62(b), the heading for § 55.10 and the heading preceding § 55.20. In order to make the text of the regulations consistent, this amendment will delete these terms from such sections and headings.

In addition, the prefix letters (a) through (dd) preceding the definitions in § 55.2 are deleted. This is being done to be consistent with other similar published regulations and to eliminate voids created when definitions are deleted and relettering when definitions are added.

The amendments are as follows:

1. Paragraphs (j) and (p) of § 55.2 are hereby amended to read:

§ 55.2 Terms defined.

* * * * *

(j) "Grading" means (1) the act of determining, according to the regulations, the class, quality, quantity, or condition of any product by examining each unit thereof or a representative sample drawn by a grader; (2) the act of issuing a grading certificate; or (3) the act of identifying, when requested by the applicant, any product by means of official identification pursuant to the act and this part.

* * * * *

(p) "Office of grading" means the office of any grader or inspector.

* * * * *

2. The prefix letters (a) through (dd) preceding the definitions in § 55.2 are hereby deleted.

3. Section 55.5 is hereby amended to read:

§ 55.5 Where grading service is offered.

Any product may be graded or inspected wherever a grader or inspector is available and the facilities and the conditions are satisfactory for the conduct of the grading service.

4. Section 55.10 is hereby amended to read:

§ 55.10 Licensed graders and inspectors.

(a) Any person who is a Federal or State employee, possessing proper qualifications as determined by an examination for competency and who is to perform services pursuant to this part, may be licensed by the Secretary as a grader or inspector.

(b) All licenses issued by the Secretary are to be countersigned by the officer-in-charge of the poultry grading service of the Consumer and Marketing Service or by any other official of such Service designated by such officer.

(c) No person may be licensed to grade or inspect any product in which he is financially interested.

5. Section 55.13 is hereby amended to read:

§ 55.13 Cancellation of license.

Upon termination of his services as a grader or inspector, each licensee shall surrender his license immediately for cancellation.

6. Section 55.15 is hereby amended to read:

§ 55.15 Identification.

All graders, inspectors, and supervisors of packaging shall each have in possession at all times, and present upon request, while on duty, the means of identification furnished by the Department to such person.

7. Section 55.16 is hereby amended to read:

§ 55.16 Political activity.

All graders and inspectors are forbidden during the period of their respective appointments or licenses, to take an active part in political management or in political campaigns. Political activities in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including, but not being limited to, temporary and cooperative employees and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

§ 55.20 [Amended]

8. The heading preceding § 55.20 is hereby amended to read: "Application for Grading or Inspection Service".

9. Paragraph (c) of § 55.22 is hereby amended to read:

§ 55.22 How application for service may be made; conditions of resident service.

* * * * *

(c) *Form of application.* Each application for grading or inspecting a specified lot of any product shall include such information as may be required by the Administrator in regard to the product and the premises where such product is to be graded or inspected.

10. Subdivision (i) of § 55.30(a)(1) is hereby amended to read:

§ 55.30 Denial of service.

(a) * * *

(1) * * *

(i) The making or filing of an application for any grading service, inspection service, appeal, or regrading service;

* * * * *

11. Paragraph (a) or § 55.60 is hereby amended to read:

§ 55.60 Payment of fees and charges.

(a) Fees and charges for any grading service shall be paid by the interested party making the application for such grading service, in accordance with the applicable provisions of this section and §§ 55.61 to 55.69, both inclusive; and, if so required by the grader or inspector, such fees and charges shall be paid in advance.

* * * * *

12. Paragraph (b) of § 55.61 is hereby amended to read:

§ 55.61 On a fee basis.

* * * * *

(b) In the event the aforesaid applicable rates are deemed by the Administrator to be inadequate fully to reim-

burse the Service for all costs and other items paid or incurred by the Service in connection with such grading service, the fees for such service shall not be based on the rates specified in §§ 55.63 to 55.67, both inclusive, but shall be based on the time required to perform such service and the travel of each grader or inspector, at the rate of $7.20 per hour for the time actually required. The minimum time charged for grading any lot of product in excess of 180 pounds shall be one-half hour.

* * * * *

13. Paragraph (b) of § 55.62 is hereby amended to read:

§ 55.62 Fees for appeal grading.

* * * * *

(b) The fee to be charged for any appeal grading other than as provided in paragraph (a) of this section shall be based on the time required to perform such appeal grading and the travel of each grader or inspector at the rate of $7.20 per hour for the time actually required.

These amendments are of an administrative nature, are nonsubstantive and will in no way affect the applicable industry or the administration of the egg products inspection program. Accordingly, under section 4 of the Administrative Procedure Act (5 U.S.C. 553 (1966)), it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable and unnecessary and good cause is found for making the amendments effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 22d day of December 1966 to become effective on January 1, 1967.

G. R. GRANGE,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 66-13896; Filed, Dec. 27, 1966; 8:50 a.m.]

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

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

PART 812—SUGAR REQUIREMENTS AND QUOTAS: HAWAII AND PUERTO RICO

Establishment of Quotas for Local Consumption in 1967

On page 15323 of the FEDERAL REGISTER of December 7, 1966, there was published a notice of proposed rule making to issue a regulation determining sugar requirements for 1967 and establishing quotas for Hawaii and Puerto Rico for the calendar year 1967. Interested persons were given until December 14, 1966, to submit written data, views, or arguments for consideration in connection with the proposed regulation.

No views or comments were received relative to the proposed regulation.

The proposed regulation is hereby adopted without change.

Effective date: January 1, 1967.

Signed at Washington, D.C., this 21st day of December 1966.

JOHN A. SCHNITTKER,
Acting Secretary.

Basis and purpose. The purpose of Sugar Regulation 812 is to determine pursuant to sections 201 and 203 of the Sugar Act of 1948, as amended (hereinafter referred to as the "Act"), the amount of sugar needed to meet the requirements of consumers in Hawaii and in Puerto Rico and to establish quotas for local consumption in such areas for the calendar year 1967. To the extent required by section 201 of the Act, this regulation establishes sugar requirements based on official estimates of the Department of Agriculture and on statistics published by other agencies of the government.

Since the Act provides that the Secretary of Agriculture determine sugar requirements for local consumption in Hawaii and in Puerto Rico and establish local consumption quotas to be effective on January 1, 1967, it is found to be impracticable and not in the public interest to comply with the 30-day effective date requirements in 5 U.S.C. 553(d) (80 Stat. 378), and these regulations shall be effective January 1, 1967.

Sec.
812.1 Sugar requirements and quota—Hawaii.
812.2 Sugar requirements and quota—Puerto Rico.
812.3 Restrictions on marketing.

AUTHORITY: The provisions of §§ 812.1 through 812.3 issued under sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies secs. 201, 203, 209, 210, 412; 61 Stat. 923, as amended, 925, 928; 7 U.S.C. 1111, 1112, 1119, 1112.

§ 812.1 Sugar requirements and quota—Hawaii.

It is hereby determined, pursuant to section 203 of the Act, that the amount of sugar needed to meet the requirements of consumers in Hawaii for the calendar year 1967 is 50,000 short tons, raw value, and a quota of 50,000 short tons, raw value, is hereby established for Hawaii for local consumption for the calendar year 1967.

§ 812.2 Sugar requirements and quota—Puerto Rico.

It is hereby determined, pursuant to section 203 of the Act, that the amount of sugar needed to meet the requirements of consumers in Puerto Rico for the calendar year 1967 is 130,000 short tons, raw value, and a quota of 130,000 short tons, raw value, is hereby established for Puerto Rico for local consumption for the calendar year 1967.

§ 812.3 Restrictions on marketing.

Pursuant to section 209 of the Act, for the calendar year 1967 all persons are hereby prohibited from marketing, pursuant to Part 816 of this chapter (23 F.R. 1943 and 27 F.R. 1450), in Hawaii or in Puerto Rico, for consumption therein, any sugar or liquid sugar after the quota for the area for the calendar year 1967 has been filled. Pursuant to section 211 (c) of the Act, the quota for each area may be filled only with sugar produced from sugarcane grown in the respective area.

Statement of bases and considerations. Pursuant to section 203 of the Act, the provisions of section 201 of the Act deemed applicable to the determination of the amounts of sugar needed to meet the requirements of consumers in Hawaii and in Puerto Rico relate to (1) the quantities of sugar distributed for local consumption in Hawaii and in Puerto Rico during the 12-month period ended September 30, 1966, (2) deficiencies or surpluses in inventories of sugar, and (3) changes in consumption because of changes in population and demand conditions.

The quantities of sugar distributed for consumption in Hawaii and in Puerto Rico, including that which was lost in refining after charge to the local quotas, during such 12-month period are estimated to have been approximately 42,000 short tons of sugar, raw value, and 121,000 short tons of sugar, raw value, respectively.

The provisional estimate by the Bureau of Census of the total population for Hawaii as of July 1, 1966 is 718,000. This represents a normal increase in population for Hawaii over 1965. No provisional estimate of population is available for Puerto Rico for 1966.

In Hawaii industrial use accounts for a substantial portion of the total consumption of sugar and this demand is a significant factor in the total sugar requirements. During the period 1959 through 1965 sugar consumption in this area has varied from 120.0 to 138.0 pounds, raw value, per person. These wide year-to-year variations suggest the possibility that requirements could be higher in 1967 than in the 12 months ended September 30, 1966, when sugar marketings approximated 42,000 short tons, raw value.

In Puerto Rico during the 12 months ended September 30, 1966, marketings of sugar for local consumption totaled approximately 121,000 short tons, raw value. Refiners' inventories of sugar as of September 30, 1966 were slightly higher than those held on September 30, 1965. After making allowance for possible consumption increases in 1967 resulting from probable population increases, the total sugar needed to meet requirements for local consumption in Puerto Rico in 1967 may be approximately 130,000 short tons, raw value.

Circumstances prevailing in the utilization of quota for local consumption in Hawaii and Puerto Rico are such that no special problems arise nor are the objectives of the Act jeopardized if the 1967 local quota is not completely filled. It is, therefore, desirable to establish the 1967 requirements and quotas sufficiently high initially so that later adjustments may be avoided.

In accordance with the above, the requirements for local consumption in

Hawaii and Puerto Rico for 1967 have been determined to be 50,000 and 130,000 short tons, raw value, respectively.

[F.R. Doc. 66-13898; Filed, Dec. 27, 1966; 8:50 a.m.]

[Sugar Reg. 817, Amdt. 7]

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

Limitations on the Importation of Sugar-Containing Products or Mixtures

Basis and purpose and bases and considerations. This amendment is issued pursuant to authority vested in the Secretary of Agriculture by the Sugar Act of 1948, as amended (61 Stat. 922, as amended), hereinafter referred to as the "Act," and provides for a determination establishing the quantities of certain sugar-containing products or mixtures as hereinafter described that may be imported into the continental United States, Hawaii, and Puerto Rico during the calendar year 1967 and procedural requirements which must be met in making such importations.

In accordance with the rule making requirements in 5 U.S.C. 553(b)(c) (80 Stat. 378) a notice of proposed rule making was published in the FEDERAL REGISTER, on Friday, December 2, 1966 (31 F.R. 15147). The notice provided for written data, views, or arguments for consideration in connection with the proposed regulation to be submitted by interested persons not later than December 12, 1966. All written submissions received pursuant to such notice have been thoroughly considered.

The purpose of this amendment is (1) to provide for quantitative import limitations on mixtures of sugar and butterfat and/or flour during the calendar year 1967 pursuant to section 206 of the Act; and (2) to make minor changes in the procedural requirements governing the importation of sugar-containing products subject to import limitations.

Based on data available to the Department, importations of products that contained more than 25 percent sugar and contained solid ingredients other than sugar consisting principally of either butterfat or flour or both from all countries during the three most recent consecutive years were as follows:

[Pounds]

Country of origin	1964 (1)	1965 (2)	1966 (3)	3-year average (4)
Australia	0	2,239,000	2,016,000	1,418,413
Austria	0	0	2,480,842	827,113
Belgium	0	151,032	42,109,314	14,089,584
Canada	0	0	34,942,461	11,649,816
Denmark	0	1,120,000	4,656,230	1,925,683
France	0	0	612,854	204,300
The Netherlands	0	0	4,144	1,381
Sweden	0	0	1,190,840	396,900
United Kingdom	0	0	6,475,560	2,158,500
West Germany	0	0	336,000	112,000

The quantities shown for 1966 are not necessarily final and the 3-year averages may be subject to adjustment after all 1966 import data are finalized.

Quantitative limitations in terms of pounds of product are established in § 817.10(d) for each country having 3-year average importations in excess of 100 short tons, raw value, of sugar content, except that the quantity established for Australia will be equal to the limitation established for the country having the highest 3-year average importations. Prior to 1966 Australia had been the principal exporter of sugar-butterfat mixtures to the United States. That country beginning in 1963 voluntarily limited exports of these mixtures and as a consequence did not expand its exports in 1966 when a number of countries entered this market and others increased their exports many fold. Consequently the average of the quantities imported during the most recent 3 years is less than could have been expected had Australia not voluntarily limited its exports, and had participated with other countries in the increase in imports of these sugar containing products in 1966. It is determined that such an annual limitation for 1967 for Australia will not substantially interfere with the attainment of the objectives of the Act. Assuming an average sugar content of 55 percent, countries other than Australia receiving quantitative limitations are those whose imports during the 3-year period (1964–66) averaged more than 340,000 pounds of product, which amount on the basis of 55 percent sugar content would contain 187,000 pounds of refined sugar. Importations in 1967 from all countries not having average imports of more than 340,000 pounds of product during 1964–66 will be limited to 100 short tons, raw value, of sugar content which is the equivalent of 187,000 pounds of refined sugar.

Changes in the procedural regulations involve clarification of the port of departure, the country of origin, and the eligibility and priority of applications. An application to be counted separately for priority purposes, must cover all of an importer's shipment scheduled to depart from the same port on the same voyage and having the same destination. Provision is also made for importers to verify the actual weight and composition of the product imported. Failure to so verify may be grounds for withholding approval of an importer's subsequent applications. Also provision is made for cancellation of authorizations covering shipments which do not depart or arrive within reasonable time periods from dates stated on the applications.

In view of the several amendments to Part 817 dealing with sugar-containing products, § 817.10 is restated herein in its entirety for the convenience of interested persons.

Pursuant to the provisions of Section 403 of the Act (61 Stat. 932), section 817.10 of Part 817, Chapter VIII, Title 7, is amended to read as follows:

§ 817.10 Sugar-containing products and mixtures.

(a) The importation or bringing into the continental United States, Hawaii or Puerto Rico of any sugar-containing product or mixture shall not be subject to any import limitations pursuant to the provisions of this part unless and until the Secretary has made effective a determination that the prospective importation of such sugar-containing product or mixture will substantially interfere with the attainment of the objectives of the Act. A proceeding to make a determination required by this section as well as any amendment or repeal thereof will be instituted by the Secretary either upon the Secretary's own initiative, or upon the written petition of an interested person if the Secretary has reasonable grounds to believe, on the basis of information accompanying the petition and other information available to him, that there may be a substantial interference with attainment of the objectives of the Act. Petitions should be submitted to the Director, Sugar Policy Staff, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. A proceeding to make a determination that the importation or bringing into the continental United States, Hawaii or Puerto Rico of a sugar-containing product or mixture will or will not substantially interfere with the attainment of the objectives of the Act, or an amendment or repeal of such a determination, shall be instituted by publishing a notice of the proposed rule making, and affording interested persons an opportunity to submit written data, views and arguments and to submit the same orally if provision is made therefore in the notice. The determination shall be published in the FEDERAL REGISTER. A determination may pertain to one or more sugar-containing products or mixtures or a group of similar sugar-containing products or mixtures. In making a determination that the bringing in or importing of a sugar-containing product or mixture will or will not substantially interfere with the attainment of the objectives of the Act, the Secretary shall give consideration to (1) the total sugar content of the product or mixture in relation to other ingredients therein or to the sugar content of other products or mixtures for similar use; (2) the costs of the mixture in relation to the costs of its ingredients for use in the continental United States, Hawaii or Puerto Rico; (3) the present or prospective volume of importations relative to past importations of the product or mixture; (4) whether it will be marketed to the ultimate consumer in the identical form and package in which it is imported or the extent to which it is to be further subjected to processing or mixing with similar or other ingredients; and (5) other pertinent information. Information relating to the above listed factors should accompany any petition to the Secretary to institute a proceeding as provided in this section or shall be furnished by per-

sons having such information upon request by the Secretary.

(b) If the Secretary has determined pursuant to paragraph (a) of this section that the prospective importation or bringing into the continental United States, Hawaii or Puerto Rico of a sugar-containing product or mixture will substantially interfere with the attainment of the objectives of the Act, a total quantity of such sugar-containing product or mixture shall not be brought or imported into the continental United States, Hawaii or Puerto Rico in any one year from any one country or area in excess of the quantity which the Secretary determines will not so interfere, but not less than (1) the average annual importations of the product or mixture from the country or area during the most recent 3 consecutive years for which reliable data are available; or (2) 100 short tons, raw value, of sugar content of the product or mixture from any one country or area in the event that no reliable data of quantities imported or brought in from the country or area for 3 consecutive years are available. Persons having information or data of quantities of a sugar-containing product or mixture imported or brought in during any of the most recent 3 consecutive years from a country or area may submit such information or data to the Director, Sugar Policy Staff, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250, for consideration of its reliability for use.

(c) (1) Any sugar-containing product or mixture as to which the Secretary has determined that the actual or prospective importation or bringing thereof into the continental United States, Hawaii or Puerto Rico will substantially interfere with the attainment of the objectives of the Act, shall not be imported or brought into the continental United States, Hawaii or Puerto Rico until a release directed to the Collector of Customs has been obtained by the importer from the Secretary. If the Secretary or his delegate determines that the release of the product is permissible in accordance with limitations provided in paragraph (d) of this section such release will be issued upon application to the Sugar Quota Group, Policy and Program Appraisal Division, ASCS, U.S. Department of Agriculture, Washington, D.C. 20250, in quintuplicate on a prescribed form designated as Form SU–9A. Application forms will be available from the above mentioned source and at all Customs Houses, and will provide for the following information regarding the product to be imported on each vessel or carrier:

The name and address of the importer.
The name of the vessel or carrier which is to transport the product to the U.S. port or point of entry.
The port or point of departure of such vessel or carrier.
The date of departure from such point or port.
The port or point of entry.
The date of arrival.
The quantity of product to be imported (total pounds or gallons).
The country of origin (where manufactured).
The name of the product.
Whether the identical product as packaged will be marketed to the ultimate consumer.
The percentage of sugar and each other ingredient in the product including moisture.
A certification that the information contained in the application is true and correct to the best of the importer's knowledge and belief and that he will furnish the Department within 30 days after importation the consumption entry or warehouse withdrawal number, the actual weight entered, and verification of the composition of the product.
The date submitted, signature and title of the person signing the application.

(c) (2) An application for issuance of an authorization to a Collector for the release of a sugar-containing product or mixture shall become eligible for authorization at 12:01 a.m. of the fifth day prior to the date of departure of the shipment as stated on the application, or at the time of receipt of the application whichever time occurs later: *Provided*, That applications received on or before the date this amendment is published in the FEDERAL REGISTER that have dates of departure not later than 5 days after such effective date shall be considered as having been received at the same time and as all having the same date of departure. An authorized application shall be cancelled if the covered shipment does not leave the port or point of departure on or before the fifth day after the scheduled departure date as stated on such application, or if a duty-paid entry on such shipment is not made at the port of entry on or before 15 days after the scheduled arrival date as stated on such application, except that the period during which the application is valid may be extended by the Secretary for good cause satisfactory to the Secretary. The entire quantity of an importer's shipment scheduled to depart on a vessel or carrier from the same port of departure, on the same date of departure, and having the same destination, must be covered by one application. The Secretary shall authorize applications for the release of sugar-containing products by the Collector of Customs in the same order as such applications become eligible for authorization or approval. If two or more applications covering products from the same country become eligible for authorization at the same time, such applications shall be authorized in the order of the date of departure, earliest first, except when applications are considered as having the same date of departure as provided above. If two or more applications for release submitted by different applicants become eligible for authorization at the same time and have or are considered to have the same date of departure and the quantity permissible for importation within the limitations provided in paragraph (d) of this section is less than the total quantity covered by such applications, the quantity authorized for release under each such application shall be determined as follows. An equal share of the quantity permissible for importation shall be calculated by dividing such quantity by the total number of such applications. All such applications that cover a quantity in each application less than such equal share shall be approved and the quantities stated therein shall be authorized for release. The total of the quantities covered by such approved applications shall be deducted from the quantity permissible for importation, the remainder shall be divided equally among the remaining applications but not to exceed the quantity applied for in any such application, and the quantity assigned to each such remaining application as a result of such division shall be authorized for release under such application.

(c) (3) An application made pursuant to this section constitutes a representation by the applicant that at the time the application is made:

(1) He has control of the quantity of the product which is subject to shipment as specified;

(2) Firm commitment has been made by the shipping company for shipment as described on the application; and

(3) The date of departure of the vessel or carrier stated on the application is (i) the date specified to the applicant or shipper by the Master, Owner or Agent of such vessel or carrier as the expected departure date, or (ii) the date the shipper expects the vessel to depart based on the date the vessel or carrier will be available for loading as specified by the Master, Owner or Agent of such vessel or carrier plus the normally required loading time.

(c) (4) Authorizations of applications for the release of the sugar-containing product may be denied if the applicant has failed to report in the manner and within the time prescribed in this section with respect to a previous importation or if any information on an application previously submitted and approved is determined not to be substantially correct.

(d) It is hereby determined upon the basis and considerations heretofore stated and as set forth in Federal Register document 66–7654 (31 F.R. 9495) that prospective importation into the continental United States, Hawaii, and Puerto Rico of the following described sugar-containing products or mixtures will substantially interfere with the attainment of the objectives of the Act and shall be subject to the import limitations provided in this paragraph (d) of this section: Products or mixtures which (i) contain more than 25 percent sugar expressed as a percent of the total weight of solids (excluding moisture and volatile matter); (ii) contain solid ingredients other than sugar consisting principally of either butterfat or flour or both; and (iii) either are to be further subjected to processing or mixing with similar, or other ingredients, or are not to be marketed to the ultimate consumer in the identical form and package in which imported. The total quantity of all such products or mixtures which may be imported during the calendar year 1967 from each of the following countries shall not exceed the amount stated as follows for such country:

Country	Pounds
Australia	14,090,000
Austria	827,000
Belgium	14,090,000
Canada	11,650,000
Denmark	1,926,000
Sweden	397,000
United Kingdom	2,159,000
Any other country	(1)

[1] 100 short tons, raw value, of sugar content (dry basis), the equivalent of 187,000 pounds, refined sugar.

NOTE: The quantities shown in pounds are based partly on preliminary data and are subject to change to reflect final 1966 data.

None of the described products or mixtures shall be imported except pursuant to the procedural requirements contained in paragraph (c) of this § 817.10.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153; sec. 206; 61 Stat. 927 as amended by P.L. 89-331, 79 Stat. 1277)

Effective date. The regulations determining the quantitative limitations on sugar-containing products or mixtures apply to such products to be imported beginning January 1, 1967. Accordingly, it is hereby found to be impracticable and not in the public interest to comply with the 30-day effective date requirements in 5 U.S.C. 553(d) (80 Stat. 378). The aspects relating to the submission and approval or acceptance of applications shall be effective when published in the FEDERAL REGISTER and all other provisions of this regulation shall become effective January 1, 1967.

Signed at Washington, D.C., this 22d day of December 1966.

JOHN A. SCHNITTKER,
Under Secretary.

[F.R. Doc. 66-13856; Filed, Dec. 27, 1966; 8:47 a.m.]

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

[Lemon Reg. 246, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553 (1966)) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of lemons grown in California and Arizona.

Order, as amended. The provisions in paragraph (b)(1) (i), (ii), and (iii) of § 910.546 (Lemon Reg. 246, 31 F.R. 16185) are hereby amended to read as follows:

§ 910.546 Lemon regulation 246.

* * * * *

(b) * * *

(1) * * *

(i) District 1: 30,690 cartons;

(ii) District 2: 71,610 cartons;

(iii) District 3: 125,550 cartons.

* * * * *

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

Dated: December 22, 1966.

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

[F.R. Doc. 66-13894; Filed, Dec. 27, 1966; 8:50 a.m.]

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

[Milk Order 32]

PART 1032—MILK IN SOUTHERN ILLINOIS MARKETING AREA

Order Terminating a Certain Provision

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Southern Illinois marketing area (7 CFR Part 1032), it is hereby found and determined that:

(a) The following provision of the order no longer tends to effectuate the declared policy of the Act:

(1) The last sentence in § 1032.12(c) which reads "For the months of February through August 1967, a supply plant may be a pool plant pursuant to this paragraph if it was a pool plant in each month from the effective date of this order through January 1967."

(b) Thirty days notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

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

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

(3) This provision as contained in the amended order to be effective January 1, 1967, would permit a supply plant qualifying as a pool plant during January 1967 to continue as a pool plant during the following months of February through August.

The Suburban St. Louis order, as amended effective January 1, 1967, is a "continuing" order and is newly designated the Southern Illinois order. The present order (Suburban St. Louis) permits a supply plant qualifying as a pool plant during the months of September through January to automatically continue to be a pool plant during the following months of February through August. However, as shown in the final decision of the Acting Secretary issued October 27, 1966 (31 F.R. 14028), the intent was to continue the present automatic pool supply plant standards of the Suburban St. Louis order whereby only supply plants qualifying as pool plants during the months of September through January may maintain pool plant status during the following months of February through August without making shipments of milk to pool distributing plants. The provision inadvertently inserted in the order does not affect any existing pool supply plant but could provide a means for supply plants not now associated with the market to qualify as pool supply plants in January 1967, and on this basis only, maintain pool plant status during the following months February through August without further shipments of milk to the market.

This action would continue the present pooling requirements and is necessary to maintain orderly marketing of milk in the area.

Failure to terminate this language would therefore result in the inappropriate application of the regulation to the handling of milk in the Southern Illinois market.

(4) Interested parties were afforded opportunity to file written data, views, or arguments concerning this termination (31 F.R. 15598). None were filed in opposition to the proposed termination.

Therefore, good cause exists for making this order effective January 1, 1967.

It is therefore ordered, That the aforesaid provision of the order is hereby terminated.

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

Effective date: January 1, 1967.

Signed at Washington, D.C., on December 22, 1966.

GEORGE L. MEHREN,
Assistant Secretary.

[F.R. Doc. 66-13857; Filed, Dec. 27, 1966; 8:47 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Airspace Docket No. 66-WA-38]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Airspace

The purpose of this amendment is to extend the time of designation of Restricted Area R-5802, Indiantown Gap, Pa.

On December 14, 1966, the Department of the Army stated that an urgent military requirement will exist for the use of Restricted Area R-5802 during the months of January and February 1967 for the development of a classified project. This project involves firing of a classified nature by the Budd Co. for the Picatinny Arsenal, Dover, N.J. The Army has stated that the firing is of such a nature that the controlled firing concept would not be satisfactory.

At the present time, R-5802 is not activated or designated during the months of December, January, or February. It is therefore necessary to designate this area for use during the months of January and February 1967. The area will be required for only a limited number of days during this period. Also, the times of usage and the altitudes required will vary. Therefore, the Army requirement can be met and the public best served by designating the area to be activated by the issuance of a NOTAM 48 hours in advance of desired usage. The Army will specify in each NOTAM the date(s), hours of use and the altitudes required for each test firing. The maximum altitude will not exceed 13,000 feet MSL.

Though there has been insufficient notice for normal procedures to effect this change, arrangements have been made to reflect this alteration on the appropriate en route low altitude navigation chart.

The Administrator has been authorized by Congress to order the use of airspace under such terms, conditions, and limitations as he may deem necessary in order to insure the safety of aircraft and the efficient utilization of airspace. In exercising the authority granted to him, the Administrator also is required to give full consideration to the requirements of national defense.

Since the Department of the Army has stated that the designation of this restricted area is an urgent military requirement, the Administrator has determined that it is contrary to the public interest to comply with the notice, public procedure, and effective date requirements of the Administrative Procedure Act and, therefore, this amendment may become effective in less than 30 days.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended effective 0001 e.s.t., January 5, 1967, as hereinafter set forth:

Section 73.58 (31 F.R. 2333) R-5802, Indiantown Gap, Pa., is amended by adding to the text the following time of designation "January 5 through February 28, 1967, as established by NOTAM issued at least 48 hours in advance."

(Secs. 306 and 307 of the Federal Aviation Act of 1958; 49 U.S.C. 1347, 1348)

Issued in Washington, D.C., on December 22, 1966.

WILLIAM E. MORGAN,
Acting Director,
Air Traffic Service.

[F.R. Doc. 66-13899; Filed, Dec. 27, 1966; 8:50 a.m.]

[Docket No. 7194; Amdt. 151-17]

PART 151—FEDERAL AID TO AIRPORTS

Review of Miscellaneous Eligibility Criteria and Programing Standards

These amendments to Part 151 of the Federal Aviation Regulations add, revise, and clarify certain eligibility criteria and programing standards for obtaining Federal financial assistance for airport development under the Federal-aid Airport Program. This action is taken on the basis of proposals made in Notice 66-5 that was published in the FEDERAL REGISTER on March 17, 1966 (31 F.R. 4523).

It appears to the Agency that further study is needed of Proposal 2 of the Eligibility Criteria Proposals (Adequate Land for Airport Development) and Proposal 5 of the Programing Standards Proposals (Airport Entrance Roads). If further amendment is considered necessary as a result of this study, it will be the subject of separate rule making action. Therefore, these two proposed amendments are withdrawn.

All comments received in response to Notice 66-5 have been fully considered. A number of the proposals have been reduced in scope in light of the comments and upon a careful reexamination of their merits and feasibility at this time.

Comments from two sources concern more than one proposal. Thus, one comment, in its concern about several of the proposals, adverted to the problem of ascertaining hypothetical costs that limit Federal participation but are not actually incurred. For instance, a sponsor may choose to install high intensity runway edge lighting while Federal participation is limited to 50 percent of medium intensity lighting. No bids on medium intensity lighting are invited. This problem is not newly introduced by the present amendments. In the past, the sponsor submitted an estimate of the hypothetical cost in the engineer's report that accompanies the application. The Agency could then adjust the cost figure upon consultation with the sponsor in light of information in its possession or requested of the sponsor, or sometimes also in light of the bids for the work actually to be performed. This procedure never presented any specific problems in the past and the problem is not aggravated by the present amendment.

Another comment expressed fear that some of the proposals would in effect prevent the State Department of Aeronautics from acting as an agent for the airport sponsor in any negotiation with the Federal Government, even though so authorized by a State statute. It has been accepted Agency practice under Part 151 to allow an agent to act for an airport sponsor seeking FAAP assistance if the agent has valid authorization from the sponsor to so act. This practice will apply to the requirements introduced by this amendment.

ELIGIBILITY CRITERIA PROPOSALS

Proposal 1. Compliance with outstanding agreements. This portion of the notice proposed, in part, to expressly set forth a list of the non-FAAP Agreements with the United States that a sponsor must comply with in order to receive Federal assistance; and to provide that assistance is granted in the presence of noncompliance if the sponsor is able to show that the noncompliance was caused by factors beyond his control.

No adverse comment was received on these changes and they are incorporated into § 151.7(a) as proposed in Notice 66-5.

This portion of the notice further proposed to extend the compliance requirement to agreements made by the sponsor with the United States at airports owned or controlled by him other than the airport for which a grant is requested. A number of comments opposed this proposal. Basically these comments contended that a sponsor's noncompliance at one airport should not, of itself, preclude FAAP assistance to the sponsor's other airports since it was not in the public interest to refuse Federal aid for the development of one airport because another airport was not complying with all of its agreements. Some of the commentators based their objection on the ground that the proposed change was unnecessary since the legal remedy of an action for specific performance was available to the FAA in the event of a sponsor's noncompliance. Others felt that there was no basis for the proposed change in terms of safety or improvement of the National Airport System.

After careful consideration of these various viewpoints, the Agency finds them to be without merit. The basic purpose of the majority of the sponsor's covenants required in a project application is to promote safe and efficient operation of airports within a planned National Airport system. For this reason § 151.7(a) currently authorizes the Administrator to expend FAAP funds only if he is satisfied that "the sponsorship requirements have been or will be met under existing and proposed agreements with the United States with respect to the airport involved."

Rather than altering this basic policy of § 151.7(a), this amendment merely extends it well within its rational limits. In actuality, noncompliance is chargeable to the sponsor and not to the individual airport where it occurs. For this reason, it is not considered to be in the public interest to make a grant of FAAP funds to any sponsor who is failing to comply with the provisions of any

agreement with the United States affecting another airport he owns or controls. Likewise although a legal remedy of specific performance exists, it is considered unreasonable for the Federal Government to grant assistance to a sponsor at one airport while at the same time it is forced to initiate legal action to compel the same sponsor to live up to his agreements at another airport.

A number of other comments criticized the proposal for its alleged lack of procedural safeguards for the protection of the sponsor. They asserted a need for: (1) A procedure for the waiving of minor instances of noncompliance with old, non-FAAP Agreements; (2) Giving timely notice of noncompliance; (3) Holding a hearing on the issue of noncompliance; and (4) An appeal procedure for disputed cases of noncompliance.

It should be emphasized that this amendment makes no change to the procedures heretofore utilized or the rights afforded in the enforcement of § 151.7(a). The present procedure makes no provision for an appeal or hearing in the case of noncompliance. Therefore, the comments urging procedural changes are not germane to this amendment. It is also noted that these comments failed to mention any specific instances indicating a need for revision of the procedures currently being utilized by the Agency. In response to the other comments, subparagraphs (2) and (3) (ii) are added to § 151.7(a) to reflect procedures already utilized by the Agency. Subparagraph (2) provides for the issuance of a notice of noncompliance by the Agency to the sponsor. Subparagraph (3)(ii) provides that assistance is not withheld in cases of minor defaults under old agreements where the sponsor is taking reasonable prompt action to correct the deficiency, or where the noncompliance relates to an obsolete obligation.

Sections 151.7(a)(3) (i) and (ii) excuse noncompliance with past agreements only under the specific conditions stated therein. Under the general rule, any continuing noncompliance (such as an exclusive right originally granted in violation of a covenant or agreement with the United States) disqualifies all of the sponsors' airports from FAAP assistance until the sponsor terminates the noncompliance.

This amendment will not be applied retroactively but will only govern grant applications made after its effective date. However, in passing on these future grant applications, the FAA will apply the requirement of compliance to all past agreements that fall within the scope of § 151.7(a)(1).

One comment submitted that the proposal would adversely affect smaller agencies that were not adequately staffed to properly keep pace with the number and variety of new requirements. However, this proposal merely relates to compliance with existing requirements.

Section 151.67 is amended to reflect the new requirements of § 151.7(a), as amended. It is not considered necessary to amend § 151.37 that also was mentioned in Notice No. 66–5.

Proposal 3. Value of donated land. The third of the Eligibility Criteria Proposals stated that appraisals of value of property interests in land acquired by donation should no longer be furnished by the sponsor as now required under § 151.27(c) but that the FAA would make or obtain its own appraisal, and that the property interest would not be eligible for inclusion in any airport development project until that appraisal was made. A comment that the rule of § 151.41(b)(6) should be dropped is not germane to the proposal, and another comment that the FAA should make the value determination before the grant agreement is entered into only suggests what is implicit in the proposal.

Pertinent comments suggest appraisal by two local appraisers and one Federal appraiser; and raise the question of recourse if the sponsor considers the appraisal too low. The first of these suggestions would frustrate the purpose of this proposal. However, in response to the second comment, express provision for reconsideration of appraisals is being made in § 151.27(c). If he wishes, the sponsor may submit local appraisals with his request for reconsideration.

The amendments made to §§ 151.23, 151.27(c), and 151.39 (a) and (c) relate to this proposal. The principle of this proposal is also being applied to the other situations described in § 151.27(c) that require appraisal, and § 151.23 is being conformed accordingly.

Proposal 4. Consideration of local community interest. The purpose of this proposal was to require the sponsor to submit information to the Administrator that adequately demonstrates to him that fair consideration has been given to the interests of the communities in or near which the project is located.

A suggestion that FAA hold a public hearing for this purpose is beyond the scope of the notice. A majority of the adverse comments misconstrued the proposal as shifting to the sponsor the burden of determining whether fair consideration had been given to local community interest. Thus, a number of comments expressed fear that the new amendment would have the effect of delaying or inhibiting needed airport development by requiring the sponsor to enter into prolonged negotiations with local political subdivisions to obtain their approval. Other comments specifically advocated that the FAA should continue to satisfy itself in this matter by independent inquiry.

Section 151.39(a)(5) currently requires that the Administrator be satisfied that fair consideration has been given to local community interest. The amendment does not alter this requirement; it only requires the sponsor to submit with his project application a statement specifying what consideration has been given to local community interest, including the substance of any local objection or approval that has been made known to the sponsor. As amended, § 151.39(a)(5) specifically provides that the Administrator considers all pertinent information including the sponsor's statement. There is no requirement on the sponsor to enter into prolonged or unreasonable negotiations with local political subdivisions.

Sections 151.26 and 151.39(a)(5) are amended accordingly.

Proposal 5. Periodic cost estimate for force account work. The purpose of this proposal was to delete the requirement contained in §§ 151.51(b), 151.57(a)(2), and 151.67(a)(5) that a sponsor using a force account must file a Periodic Cost Estimate (FAA Form 1629) when he applies for a grant payment. The majority of comments received in response to Notice 66–5 were in favor of this change. One comment questioned the justification for the deletion unless the substantiating detail for FAA Form 1630 was submitted in some other manner. However, § 151.55 requires the sponsor to keep records of the itemized costs of force account work and to make these records available to the FAA after proper notice. These records may be used to substantiate FAA Form 1630. Therefore, §§ 151.51(b), 151.57(a)(2), and 151.67(a)(5) are amended as proposed in the Notice.

PROGRAMMING STANDARDS PROPOSALS

Proposal 1. High or medium intensity runway lighting. Programming Standards Proposal 1 related to the percentage of Federal participation in the cost of runway edge lighting. In the case of runways with approved straight-in approach procedures but not equipped with ILS that permits precision approach procedures (as required in certain instances by § 151.13(b)(3)) it proposed a reduction of the percentage of the cost of high intensity lighting from 75 to 50 percent. It proposed the same 50 percent for such lighting on runways with a navigational aid that allows use of instrument approach procedures. Finally, it proposed a Federal share of 50 percent in the cost of medium intensity lighting for runways eligible for runway edge lighting but not eligible for 75 or 50 percent Federal participation in high intensity lighting.

Comments opposed the reduction from 75 to 50 percent on the grounds that air safety is involved and that it would work a hardship in cases of extension in runways that were equipped with high intensity lighting under 75 percent Federal participation where Federal participation in the extension would be reduced to 50 percent. Upon reconsideration in light of these comments and other factors, the proposal to reduce now existing 75 percent participation in high intensity lighting to 50 percent is being dropped. Thus, under § 151.43(d)(1) which is not being substantively amended, Federal participation remains 75 percent of the cost of installing high intensity runway edge lighting on a designated instrument landing runway (where it is required by § 151.13(b)(3)) and on other runways with an approved straight-in procedure (where it is optional).

It was also commented that a sponsor who is willing to install high intensity runway edge lighting should always re-

ceive a Federal share of 50 percent of that cost, and not only 50 percent of the cost of medium intensity lighting. This comment fails to show that the proposed limitation to 50 percent of medium intensity lighting is not consistent with the aim of allocating available aid funds so as to produce the greatest progress towards the policy goals of the Federal Airport Act.

Accordingly, § 151.87(d) is being amended to fix the Federal share in runway edge lighting projects at 50 percent of the cost of medium intensity lighting in all instances where a higher Federal participation is not otherwise provided, except where low intensity lighting is installed. Section 151.43(b) is amended to cross reference the Federal participation provisions in Subpart C such as § 151.87(d), and the words "runway edge" are inserted in subparagraph (d) (1) for conformity.

Proposal 2. In-runway lighting. The purpose of Programing Standards Proposal 2 was to substitute the more accurate and comprehensive terms "touchdown zone lighting system, centerline lighting system and exit taxiway lighting system" in place of the language currently used in §§ 151.43(d) (2), 151.87(e) and Appendix F to describe the "in-runway lighting system." All of the comments to this proposal favored this change and therefore it is incorporated into the amendment as proposed.

Proposal 3. Paving second runways. This portion of the Notice proposed adoption of new standards recently developed by the FAA for the eligibility of second runway paving on the basis of wind conditions on airports that serve only small aircraft, and clarification of the distinction between eligibility based on wind conditions and eligibility based on other factors.

One comment misconstrued the amendment as possibly excluding turf landing strips from the FAAP program. Sections 151.77, 151.79, and new § 151.80 only apply to runway paving and therefore in no way exclude turf landing strips from other FAAP assistance.

One comment contended that wind coverage and noise were not the only factors to be considered in second runway orientation. The Agency believes this contention to be valid and therefore §151.79(a) (3) will provide that due consideration be also given to topography, soil conditions and other pertinent factors in runway orientation.

One comment criticized the amendment for proposing several sets of criteria for eligibility of paving a second runway for general aviation airports. It considered this to be confusing and felt that no proper basis had been given for the proposal. As an alternative, it suggested that a single standard be adopted combining both the cross-wind component and the number of justifying aircraft operations. After careful consideration the Agency finds this comment to be without merit. The effect of the cross-wind varies according to the size of the aircraft. Therefore by classifying airports according to the size of aircraft using them, this amendment provides more accurate standards for determining programming eligibility for various general aviation airports than a single criterion would yield. To make § 151.79 more easily comprehensible, paragraph catch lines have been supplied.

One comment asked what criteria the sponsor should use in demonstrating to the Administrator that aircraft noise has received due consideration in orienting the second runway. Such criteria have not been formulated and the sponsor is only required to state the considerations that have actually caused him to determine the proposed runway orientation, and why he thinks them adequate.

Accordingly, §§ 151.77 and 151.79 are being revised, and § 151.80 is added.

Proposal 4. Economy approach lighting aids. The purpose of this proposal was to provide programming standards for economy approach lighting aids in Part 151. All of the comments received favored this addition and agreed that these items should be eligible for Federal assistance. However, two comments felt that the programming standards as proposed were too restrictive and advocated that Federal assistance for economy approach landing aids not be limited to airports with visual deficiencies. One of the comments suggested that economy approach lighting aids should be eligible for airports with at least medium intensity lighting at the prime runway approach. The other maintained that all systems which simplify the approach and landing process, including economy approach lighting aids, should be eligible for Federal assistance at all air carrier airports.

In response to these comments, economy approach lighting aids are also made eligible at airports where they will reduce minimums for landing purposes. Therefore new § 151.87(j) provides for FAAP assistance where the economy approach lighting aids will either correct a visual deficiency or permit operations at lower minmums. Otherwise the standards suggested by the comments are unacceptable because the resulting benefits would not be commensurate with the Federal funds expended.

One comment opposed the programing standard under which the airport does not qualify for economy approach lighting aids if the FAA will install approach lighting aids under the Facilities and Equipment Program within the next 3 years. Because of the number of permanent airport improvements requiring Federal assistance, it is Agency policy not to expend funds for temporary development or construction except where necessary to permit uninterrupted operation of the airport during stages of construction. The expenditure of FAAP funds for lighting aids that would be replaced within 3 years is contrary to this policy and therefore this requirement is retained in new § 151.87(j). In addition, new § 151.87(j) contains a list of some of the economy approach lighting aids that are within the scope of that section.

Proposal 6. Airport utilities. The purpose of Programing Standard Proposal 6 was to amend § 151.93(b) to limit Federal participation in airport utility construction, installation and connection when the utility serves both eligible and ineligible airport areas and to restate the programing standards for water utility systems.

A number of comments objected to the proposal that costs of airport utilities serving both eligible and ineligible airport areas should be eligible only so far as they exceed the cost of providing utility service necessary for all ineligible airport facilities. One comment advocated the continuation of the present system of prorating these costs while another suggested that the prorating of costs be continued just for the electrical facilities required for runway lighting. A third comment felt that airport utilities should be eligible to the extent of providing service to eligible areas.

We agree that the statutory provisions allow for some exercise of discretion in this area. However, it is established Agency policy that Federal funds should not be used to provide any supporting utility for an ineligible airport area or facility. The proposed amendment to limit the Federal participation merely extends this policy within its logical limits and is considered necessary to ensure that the Federal funds available for assistance are utilized to promote the greatest degree of airport safety. Therefore § 151.93(b) is amended to incorporate the programming standard limitation proposed in Notice 66–5.

One comment suggested a standard for determining the Federal share of the cost for airport water utilities in terms of the cost of installations of a specific size and description. This type of standard is considered to be too narrow in scope to effectively be administered to the number and variety of airports seeking Federal assistance. No other comments were received adverse to this portion of the proposal and therefore it also is incorporated into § 151.93(b).

Proposal 7. Remarking runways and taxiways. It was proposed to clarify the programing standards for runway and taxiway marking and remarking. No adverse comments were received, but one comment suggested that eligibility of remarking necessitated by the obliteration of runway or taxiway markings by construction equipment routing be mentioned specifically. This amendment, together with the suggestion, is being affected by adding a new § 151.15 and amending § 151.95(f).

Proposal 8. Aprons for cargo buildings. The purpose of the last Programing Standards proposal was to remove an ambiguity in Appendix E regarding the eligibility of aprons for cargo buildings. It was originally considered that all aprons for cargo buildings were ineligible and therefore it was proposed to amend item 4 of Appendix E, Typical Ineligible Items, to read: "Aprons for any cargo building." A majority of the comments received opposed this proposal contending that these aprons should be treated the same way as aprons serving terminal buildings.

After careful reconsideration of this problem, the Agency agrees that the primary criterion in the determination of the eligibility of aprons serving cargo buildings should be the type of usage of the apron itself. Therefore, item 5 has been added to the list of Typical Eligible Items in Appendix E to provide for the eligibility of aprons for cargo buildings that serve the public, and item 4 of the Typical Ineligible Items is modified to reflect this change. In addition, several other editorial changes have been made to the list of Typical Eligible Items.

One comment inquired as to the eligibility of taxiways leading to cargo areas. Taxiways are regulated by § 151.81 and Appendix D and are beyond the scope of this amendment.

Other matters. In addition to these proposals contained in Notice 66–5, it is considered that the acquisition of small parcels of land for nonlanding area facilities should be eligible for FAAP assistance. The present restriction is relieved by the deletion of the exception contained in item 1(b) of the list of Typical Eligible Items in Appendix A.

In consideration of the foregoing, Part 151 is amended, effective January 27, 1967, as follows:

1. Section 151.7(a) is amended to read as follows:

§ 151.7 Grant of funds: general policies.

(a) *Compliance with sponsorship requirements.* The FAA authorizes the expenditure of funds under the Federal-aid Airport Program for airport planning and engineering or for airport development only if the Administrator is satisfied that the sponsor has met or will meet the requirements established by existing and proposed agreements with the United States with respect to any airport that the sponsor owns or controls.

(1) Agreements with the United States to which this requirement of compliance applies include—

(i) Any grant agreement made under the Federal-aid Airport Program;

(ii) Any covenant in a conveyance under section 16 of the Federal Airport Act;

(iii) Any covenant in a conveyance of surplus airport property under section 13(g) of the Surplus Property Act (50 U.S.C. App. 1622(g)); and

(iv) Any AP–4 agreement made under the terminated Development Landing Areas National Defense Program and the Development Civil Landing Areas Program.

This requirement does not apply to assurances required under section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1) and § 15.7 of the Federal Aviation Regulations (14 CFR 15.7).

(2) If it appears that a sponsor has failed to comply with a requirement of any of the agreements listed in subparagraph (1) of this paragraph, the FAA notifies him of this fact and affords him an opportunity to submit materials to refute the allegation of noncompliance or to achieve compliance.

(3) If a project is otherwise eligible under the Federal-aid Airport Program, a grant may be made to a sponsor who has not complied with an agreement included in subparagraph (1) of this paragraph if the sponsor shows—

(i) That the noncompliance is caused by factors beyond his control; or

(ii) That the following circumstances exist:

(*a*) The noncompliance consisted of a failure, through mistake or ignorance, to perform minor conditions in old agreements with the Federal Government; and

(*b*) The sponsor is taking reasonable action promptly to correct the deficiency or the deficiency relates to an obligation that is no longer required for the safe and efficient use of the airport under existing law and policy.

2. The following new section is added after § 151.13:

§ 151.15 Federal-aid Airport Program: policy affecting runway or taxiway remarking.

No project for developing or improving an airport may be approved for the Program unless it provides for runway or taxiway remarking if the present marking is obliterated by construction, alteration or repair work included in a FAAP project or by the required routing of construction equipment used therein.

3. The last sentence of § 151.23 is amended to read as follows:

§ 151.23 Procedures: application; funding information.

* * * If any part of the estimated project costs consists of the value of donated land, labor, materials, or equipment, or of the value of a property interest in land acquired at a cost that (as represented by the sponsor) is not the actual cost or the amount of an award in eminent domain proceedings, the sponsor must so state in the application, indicating the nature of the donation or other transaction and the value it places on it.

4. Section 151.26 is amended as follows:

a. The heading of § 151.26 is amended to read as follows:

§ 151.26 Procedures: applications; compatible land use information; consideration of local community interest.

b. The introductory paragraph is designated as paragraph (a) and subparagraphs (a), (b), and (c) are redesignated as (1), (2), and (3), respectively.

c. A new paragraph (b) is added to read as follows:

§ 151.26 Procedures: applications; compatible land use information; consideration of local community interest.

(a) * * *

(b) Each sponsor must submit with his application a written statement specifying what consideration has been given to the interest of all communities in or near which the project is located. This statement must contain the substance of any objection to, or approval of, the proposed project made known to the sponsor by any local individual, group or community.

5. Section 151.27(c) is amended to read as follows:

§ 151.27 Procedures: application, plans, specifications, and appraisals.

* * * * *

(c) If the project involves acquiring a property interest in land by donation, or at a cost that (as represented by the sponsor) is not the actual cost or the amount of an award in eminent domain proceedings, the Administrator, before passing on the eligibility of the project, makes or obtains an appraisal of the interest. If the appraised value is less than the value placed on the interest by the sponsor (§ 151.23), the Administrator notifies the sponsor that he may, within a stated time, ask in writing for reconsideration of the appraisal and submit statements of pertinent facts and opinion.

6. Section 151.39 is amended as follows:

a. Paragraph (a)(5) is amended to read as follows:

§ 151.39 Project eligibility.

(a) * * *

(5) The Administrator is satisfied, after considering the pertinent information including the sponsor's statement required by § 151.26, that fair consideration has been given to the interest of communities in or near which the project is located;

* * * * *

b. Paragraph (c) is amended by deleting the words "the estimated value of the donated land." and inserting in place thereof the words "the value of the donated land as appraised by the Administrator.".

7. Section 151.43 is amended as follows:

Paragraph (b) and (d) (1) and (2) are amended to read as follows:

§ 151.43 United States' share of project costs.

* * * * *

(b) Except as provided in paragraphs (c) and (d) of this section and in Subpart C of this part, the United States' share of the costs of an approved project for airport development (regardless of its size or location) is 50 percent of the allowable costs of the project.

* * * * *

(d) * * *

(1) The costs of installing high intensity runway edge lighting on a designated instrument landing runway or other runway with an approved straight-in approach precedure.

(2) The costs of installing in-runway lighting (touchdown zone lighting system, centerline lighting system, and exit taxiway lighting system).

8. Section 151.51(b) is amended to read as follows:

§ 151.51 Performance of construction work: force accounts.

* * * * *

(b) [Reserved]

§ 151.57 [Amended]

9. Subparagraph (2) of § 151.57(a) is amended by striking out the words "or force account".

§ 151.67 [Amended]

10. Section 151.67(a) is amended as follows:

a. Paragraph (a)(2)(ii) is amended by striking out the words "the existence of any defaults on other obligations to the United States" and inserting the words "the existence of any default on the compliance requirements of § 151.77(a)" in place thereof.

b. Subparagraph (5) is amended by striking out the words "(or the sponsor, in the case of force account work)".

11. The second sentence of § 151.77(a) is amended to read as follows:

§ 151.77 Runway paving: general rules.

(a) * * * Program participation in constructing, reconstructing or resurfacing is limited to a single runway at each airport, unless more than one runway is eligible under a standard in § 151.79 or § 151.80.

* * * * *

12. Section 151.79 is amended to read as follows:

§ 151.79 Runway paving: second runway; wind conditions.

(a) *All airports.* Paving a second runway on the basis of wind conditions is eligible for inclusion in a project only if the sponsor shows that—

(1) The airport meets the applicable standards of paragraph (b), (c), (d), or (e) of this section;

(2) The operational experience, and the economic factors of air traffic at the location, justify an additional runway for the airport; and

(3) The second runway is oriented with the existing paved runway to achieve the maximum wind coverage, with due consideration to the airport noise factor, topography, soil conditions, and other pertinent factors affecting the economy and efficiency of the runway development.

(b) *Airports serving large and small aircraft.* The airport serves both large and small aircraft and the existing paved runway is subject to a crosswind component of more than 15 miles per hour (13 knots) more than 5 percent of the time.

(c) *Airports serving small aircraft only.* The airport serves small aircraft exclusively, and—

(1) The airport has 10,000, or more, aircraft operations each year; and

(2) The existing paved runway is subject to a crosswind component of more than 15 miles per hour (13 knots) more than 5 percent of the time.

(d) *Airports serving aircraft of less than 8,000 pounds only.* The airport serves small aircraft of less than 8,000 pounds maximum certificated takeoff weight exclusively and—

(1) The airport has 5,000, or more, aircraft operations each year; and

(2) The existing paved runway is subject to a crosswind component of more than 15 miles per hour (13 knots) more than 5 percent of the time.

(e) *Airports with limited facilities serving small aircraft only.* The airport serves small aircraft exclusively, has limited facilities, and is limited to VFR operations, and the existing paved runway is subject to a cross-wind component of more than 11.5 miles per hour (10 knots) more than 5 percent of the time.

13. The following new section is added after § 151.79:

§ 151.80 Runway paving: additional runway; other conditions.

Paving an additional runway on an airport that does not qualify for a second runway under § 151.79 is eligible if the Administrator, upon consideration on a case-to-case basis, is satisfied that—

(a) The volume of traffic justifies an additional paved runway and the layout and orientation of the additional runway will expedite traffic; or

(b) A combination of traffic volume and aircraft noise problems justifies an additional paved runway for that airport.

§ 151.87 [Amended]

14. Section 151.87 is amended as follows:

a. Paragraph (d) is amended by adding the words "runway edge" after the words "high intensity" wherever they occur and by adding a sentence at the end, to read as follows:

(d) * * * If a runway is not eligible for 75 or 50 percent Federal participation in high intensity runway edge lighting but is otherwise eligible for runway lighting, the U.S. share of the cost of runway edge lighting is 50 percent of the cost of the lighting installed but not more than 50 percent of the cost of medium intensity lighting.

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

(e) In-runway lighting (touchdown zone lighting system, centerline lighting system, and exit taxiway lighting system) is eligible on the designated instrument landing runway.

c. Paragraph (j) is redesignated as paragraph (k) and new paragraph (j) is added to read as follows:

(j) Economy approach lighting aids are eligible for inclusion in a project at an airport that will not qualify within the next three years for approach lighting aids installed by FAA under the Facilities and Equipment Program if the economy approach lighting aids—

(1) Will correct a visual deficiency on one of the lighted runways of the airport; or

(2) Will permit operations at an airport at lower minimums.

"Economy approach lighting aids" includes a medium intensity approach lighting system (MALS) that may include a sequence flasher (SF); a runway end identifier lights system (REILS); and an abbreviated visual approach slope indicator (AVASI).

15. Section 151.93(b) is amended to read as follows:

§ 151.93 Buildings; utilities; sidewalks; parking areas; and landscaping.

* * * * *

(b) Airport utility construction, installation, and connection are eligible under the Federal-aid Airport Program as follows:

(1) An airport utility serving only eligible areas and facilities is eligible; and

(2) An airport utility serving both eligible and ineligible airport areas and facilities is eligible only to the extent of the additional cost of providing the capacity needed for eligible areas and facilities over and above the capacity necessary for the ineligible areas and facilities.

However, a water system is eligible only to the extent necessary to provide fire protection for aircraft operations, and to provide water for a fire and rescue equipment building.

* * * * *

16. Paragraph (f) of § 151.95 is amended to read as follows:

§ 151.95 Fences; distance markers; navigational and landing aids; and off-site work.

* * * * *

(f) The initial marking of runway and taxiway systems is eligible for inclusion in a project. The remarking of existing runways or taxiways is eligible if—

(1) Present marking is obsolete under current FAA standards; or

(2) Present marking is obliterated by construction, alteration or repair work included in a FAAP project or by the required routing of construction equipment used therein.

However, apron marking that is not allied with runway and taxiway marking systems, is not eligible.

* * * * *

17. Item 1(b) of the list of Typical Eligible Items in Appendix A is amended to read as follows:

APPENDIX A

* * * * *

Typical Eligible Items

1. * * *

(b) Expansion of airport facilities.

18. Appendix E is amended as follows:

a. The list "Typical Eligible Items" is amended by amending Items 3 and 4 and adding a new Item 5, to read as follows:

APPENDIX E

* * * * *

Typical Eligible Items

* * * * *

3. Aprons available for public parking, storage, and service or a combination of any of the three.

4. Aprons serving hangars used for public storage of aircraft or service to the public, or both.

5. Aprons for cargo buildings used for public storage or service to the public, or both.

b. Item 4 of the list of "Typical Ineligible Items" is amended to read as follows:

APPENDIX E

* * * * *

Typical Ineligible Items

* * * * *

4. Aprons for cargo buildings not under Item 5 of "Typical Eligible Items".

19. Item 2 of the list of "Typical Eligible Items" listed in Appendix F is amended to read as follows:

APPENDIX F

* * * * *

Typical Eligible Items

* * * * *

2. In-runway lighting (touchdown zone lighting system, centerline lighting system, and exit taxiway lighting system).

(Secs. 1–15 and 17–20 of the Federal Airport Act; 49 U.S.C. 1101–1114, 1116–1119)

Issued in Washington, D.C., on December 20, 1966.

WILLIAM F. MCKEE,
Administrator.

[F.R. Doc. 66–13848; Filed, Dec. 27, 1966; 8:46 a.m.]

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER–480]

PART 290—TRANSFER OF AIRLIFT AMONG AIR CARRIERS IN CERTAIN EMERGENCIES

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 16th day of December 1966.

In EDR–98, published on March 10, 1966, 31 F.R. 4212, the Board proposed to issue a new Part 290 authorizing transfer of airlift among air carriers in certain emergencies. At the same time it also gave notice of a proposed emergency regulation to be included in the Code of Emergency Federal Regulations (CEFR) regarding the transfer of airlift among air carriers in the War Air Service Program (WASP). We have decided to adopt both regulations in the form proposed. By its terms the proposed Part 290 would authorize the carriers which have furnished aircraft to the Civil Reserve Air Fleet to lease an equal number of replacement aircraft with or without crew for 90-day periods from other air carriers without prior Board approval. This regulation, which goes into effect 30 days after adoption, is based on the Board's present exemption powers and operates on the theory that granting the carriers the necessary authority will enable them voluntarily to enter arrangements for the transfer of aircraft among themselves to meet airlift shortages. The draft emergency regulation which we are also adopting contemporaneously herewith in the form proposed in EDR–98 will not take effect until the War Air Service Program (WASP) has been activated.[1] Under the terms of the emergency regulation, which is based upon power which Executive Order 11090 contemplates will be conferred on this agency in an emergency, the Board could direct any carrier to charter or lease any of its aircraft to other air carriers as required in a defense emergency. We have not prescribed in either regulation the financial provisions which should apply to the transfer of aircraft but contemplate the attachment of such provisions in a subsequent proceeding.

American Air Lines, Inc., Pan American World Airways, Inc., United Air Lines, Inc., and Seaboard World Airlines, Inc., commented on the proposed regulations. After careful consideration of such comments the Board has concluded that the regulations should be adopted in the form proposed. In addition, in order to give the carriers, a full opportunity to participate in the Board's emergency planning, simultaneously with the adoption of the regulations, we are writing to the carriers represented on the Industry Advisory Committee on Aviation Mobilization inviting them to meet with the Board's staff for the purpose of advising and assisting the Board in further planning for the distribution of aircraft.

United Air Lines opposed adoption of the regulations, urging that the Board first formulate a WASP program. It expressed the view that Part 290 would be ineffective and that it fails to carry out the Presidential mandate in Executive Order 11090. United contends that until the Board formulates the WASP program contemplated by the executive order and designates essential air routes and services to be provided in an emergency, and specifies the terms and conditions the Board will impose in directing the transfer of aircraft in an emergency in the event the carriers fail to agree, the carriers cannot and will not voluntarily enter the lease arrangements contemplated by the regulation. United suggests that the Board's WASP planning take into account the necessity to maintain the competitive balance between CRAF and non-CRAF operators on the civil air routes.

It should be recognized that Part 290 is the Board's first step in carrying out that part of its responsibility under Executive Order 11090 which relates to planning for the distribution and redistribution of aircraft. Since the Board does not have the power at this time to compel the carriers to agree on terms or conditions for lease of aircraft, we will utilize such power as we do have by exempting the carriers from the Act to the extent necessary to enter standby lease agreements on a voluntary basis. It is not possible, of course, to determine in advance the extent to which the carriers will use Part 290. However, we are not prepared on the basis of this uncertainty alone to delay the adoption of the regulation until the whole WASP program has been completed. A good deal of planning is still needed in this area and it may be some time before the program is finalized. In the meantime, the regulation will provide the necessary authority for any carriers who are able to negotiate lease agreements. As we stated in EDR–98, since it can be anticipated that there will be little time in an emergency to negotiate mutually agreeable arrangements for the lease or charter of aircraft, the Board strongly urges the carriers to enter such agreements with each other providing for the lease and charter of aircraft to equalize shortages of equipment in emergencies.

Pan American suggests that instead of authorizing carriers to lease the same number of aircraft called up by CRAF the regulation should also authorize them to lease an equivalent capacity. We have not adopted this suggestion. Capacity involves too many factors such as speed, range, configuration, etc., to warrant using it as a measure in a regulation such as Part 290 which has general and automatic applicability. If sufficient aircraft cannot be obtained under the regulation, additional exemption authority can be granted by the Board upon special application.

Seaboard is concerned that it may be left out of any multicarrier leasing negotiations under Part 290 because it is not a member of the Air Transport Association and suggests amendment of the regulation to assure that all interested airlines can participate in any such negotiations. Seaboard's suggestion is premature; it relates to matters not dealt with in the regulation and since, under the procedures we propose, the whole matter will be the subject of further arrangements, Seaboard's problem can be met when it arises.

United Air Lines suggests that the Board provide antitrust immunity for carriers participating in the program. We are not convinced that such immunity should be granted since in our judgment the carriers would have nothing to fear while engaged in genuine efforts to prepare for a mobilization emergency. In any event, it has not been the Board's practice in comparable regulations to confer blanket antitrust immunity.

In regard to the emergency regulation, Pan American and American state that they are aware of no existing power conferred on the Board, even in an emergency, to lease aircraft to another air carrier or carriers for an amount of compensation to be determined by the Board. They suggest that the terms of any aircraft transfer be spelled out by agreement among the carriers and not be prescribed by the Board. American also observes that the emergency regulation does not contain the plans or procedures the Board will follow in transferring aircraft or determining compensation for aircraft. The Board's present responsibility under Executive Order 11090 is to

[1] The Emergency Regulation is not published in the FEDERAL REGISTER, but copies of the regulation in the form proposed in EDR–98 have been forwarded to the Office of Federal Register, General Services Administration, for inclusion in the Code of Emergency Federal Regulations (CEFR).

draft standby or planning regulations to apply when WASP is effective. In order to meet this responsibility it is not necessary that we have at this time the statutory power to put such regulations into effect. Insofar as terms and procedures are concerned, it is anticipated that these will be dealt with, insofar as possible, in the discussions to be held between the carriers and Board staff.

Accordingly, the Board hereby adopts Part 290 of the Economic Regulations (14 CFR Part 290), effective January 16, 1967, as follows:

Sec.
290.1 Definitions.
290.2 Exemption for lease of aircraft.
290.3 Exemption for operations.
290.4 Reports.
290.5 Effect of exemption.
290.6 Extension.
290.7 Termination of exemption.

AUTHORITY: The provisions of this Part 290 issued under sections 204(a), 401, 403, 408, 412 and 416(b) of the Federal Aviation Act of 1958, 72 Stat. 743, 754, 758, 767, 770 and 771; 49 U.S.C. 1325, 1371, 1373, 1378, 1382 and 1386.

§ 290.1 Definitions.

(a) "CRAF" (Civil Reserve Air Fleet) means those air carrier aircraft allocated by the Secretary of Commerce to the Department of Defense to meet essential military needs in the event of an emergency.

(b) "CRAF Operator" means an air carrier which has been required by the Government, under the expanded capability provisions of an airlift procurement contract or other CRAF contract between such air carrier and the Military Airlift Command, to furnish increased airlift to the Government upon a determination that an airlift or national emergency exists or upon the activation of CRAF.

§ 290.2 Exemption for lease of aircraft.

Any CRAF Operator shall be exempt from sections 408(a)(2) and 412 of the Federal Aviation Act of 1958 insofar as the provisions thereof relate to the lease of aircraft by such operator with or without crew from other carriers to replace the aircraft which such operator has been required to furnish under the expanded capability provisions of its contract with the Government in an emergency. Such lease agreements may also include provisions for maintenance and all other ground facilities and services related to the operation of the aircraft. The exemption under this part shall be subject to the following conditions:

(a) No CRAF operator shall lease an aircraft from another air carrier for more than 90 days.

(b) No CRAF operator may have under lease from other air carriers at any one time pursuant to this regulation, more aircraft than it has been required to furnish to the Government.

§ 290.3 Exemption for operations.

An air carrier whose aircraft are leased to a CRAF operator pursuant to this part, shall be exempt: (a) From section 401 of the Act insofar as the provisions thereof would prevent such air carrier from engaging in air transportation, pursuant to the terms of the lease, between points between which the CRAF operator is authorized by certificate or exemption to engage in air transportation; and (b) from section 403 of the Act insofar as the provisions thereof would prevent such air carrier from engaging in such air transportation in accordance with the financial provisions of its lease agreement with the CRAF operator.

§ 290.4 Reports.

(a) Two true and complete copies of all leases and related agreements authorized under this part, and all amendments thereto, shall be filed with the Board within 15 days after the date of execution.

(b) The Board may require additional reports from any CRAF operator or other air carrier with regard to traffic, revenue, or any other matter related to operations authorized under this part.

§ 290.5 Effect of exemption.

The exemption granted by this part shall not be deemed to constitute an "order made under sections 408, 409, and 412" within the meaning of section 414 of the Act.

§ 290.6 Extension.

The exemption granted under this part may be extended beyond 90 days only upon individual application filed with the Board no later than 30 days prior to the expiration of such exemption. When such an application has been filed, the exemption granted herein shall remain in effect pending disposition of the application by the Board.

§ 290.7 Termination of exemption.

The exemption granted by this part may be terminated by the Board, upon reasonable notice, but without hearing, at any time with respect to any lease agreement or arrangement or any operations thereunder which the Board finds to be inconsistent with the public interest.

Effective: January 16, 1967.

Adopted: December 16, 1966.

By the Civil Aeronautics Board.

[SEAL] MABEL MCCART,
Acting Secretary.

[F.R. Doc. 66-13834; Filed, Dec. 27, 1966; 8:46 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6904]

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

Electing Small Business Corporations; Classes of Stock

In order to modify the rules relating to the requirement that an electing small business corporation does not have more than one class of stock, paragraph (g) of § 1.1371-1 of the Income Tax Regulations (26 CFR Part 1) is amended to read as follows:

§ 1.1371-1 Definition of small business corporation.

* * * * *

(g) *Classes of stock.* A corporation having more than one class of stock does not qualify as a small business corporation. In determining whether a corporation has more than one class of stock, only stock which is issued and outstanding is considered. Therefore, treasury stock and unissued stock of a different class than that held by the shareholders will not disqualify a corporation under section 1371(a)(4). If the outstanding shares of stock of the corporation are not identical with respect to the rights and interest which they convey in the control, profits, and assets of the corporation, then the corporation is considered to have more than one class of stock. Thus, a difference as to voting rights, dividend rights, or liquidation preferences of outstanding stock will disqualify a corporation. However, if two or more groups of shares are identical in every respect except that each group has the right to elect members of the board of directors in a number proportionate to the number of shares in each group, they are considered one class of stock. Obligations which purport to represent debt but which actually represent equity capital will generally constitute a second class of stock. However, if such purported debt obligations are owned solely by the owners of the nominal stock of the corporation in substantially the same proportion as they own such nominal stock, such purported debt obligations will be treated as contributions to capital rather than a second class of stock. But, if an issuance, redemption, sale, or other transfer of nominal stock, or of purported debt obligations which actually represent equity capital, results in a change in a shareholder's proportionate share of nominal stock or his proportionate share of such purported debt, a new determination shall be made as to whether the corporation has more than one class of stock as of the time of such change.

Because this Treasury decision liberalizes the regulations relating to the requirement that an electing small business corporation does not have more than one class of stock, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of such Act.

(Sec. 7805 of the Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805)

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

Approved: December 22, 1966.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

[F.R. Doc. 66-13861; Filed, Dec. 27, 1966; 8:47 a.m.]

Title 32—NATIONAL DEFENSE

Chapter VI—Department of the Navy

SUBCHAPTER C—PERSONNEL

PART 730—ADMINISTRATIVE DISCHARGES AND RELATED MATTERS CONCERNING SEPARATIONS FROM THE NAVAL SERVICE

Miscellaneous Amendments

Scope and purpose. Sections 730.50 to 730.69 and 730.160 deal with types of discharges of enlisted personnel of the Marine Corps and are updated in accordance with controlling regulations of the Department of Defense (32 CFR Part 41).

1. Sections 730.50 to 730.69 are revised to read as follows:

Subpart B—Marine Corps

TYPES OF DISCHARGES OF ENLISTED PERSONNEL

Sec.

730.50 General.
730.51 Types and reasons for discharge or release from active duty; general instructions.
730.52 Honorable discharge.
730.53 General discharge.
730.54 Undesirable discharge.
730.55 Bad conduct discharge.
730.56 Dishonorable discharge.
730.57 Table of matters relating to discharges or releases from active duty.
730.58 Discharge for reason of expiration of enlistment or fulfillment of service obligation.
730.59 Discharges at sea.
730.60 Discharge for physical disability.
730.61 Discharge or release from active duty for convenience of the Government.
730.62 Discharge or release from active duty for own convenience.
730.63 Discharge or release from active duty for reason of dependency or hardship.
730.64 Discharge for reason of minority.
730.65 Discharge for reason of unsuitability.
730.66 Discharge for reason of unfitness.
730.67 Discharge by reason of misconduct.
730.68 Discharge adjudged by sentence of court-martial.
730.69 Discharge by reason of security.
730.70 Request for discharge for the good of the service.
730.71 Discharges of Security Forces personnel, Pacific Ocean Area.
730.72 Giving and recording of advice to a respondent, both when the respondent is and when he is not under military control.
730.73 Administrative discharge boards.
730.74 Summary of cases in which administrative discharge board proceedings are required and of cases in which an administrative discharge may be effected without board proceedings.
730.75 Suspension of execution and vacation of suspension of approved administrative discharges.
730.76 Action by the Staff Legal Officer.

AUTHORITY: The provisions of this Subpart B issued under secs. 280, 1162, 1163, Ch. 569, 70A Stat. 14, 89, 391–393, as amended, sec. 1168, 76 Stat. 508, sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 280, 1162, 1163, 1168, Ch. 569.

Subpart B—Marine Corps

TYPES OF DISCHARGES OF ENLISTED PERSONNEL

§ 730.50 General.

(a) *Right and duty.* The Marine Corps has the right, obligation, and duty to separate from the service, with an appropriately characterized discharge certificate, members who are entitled to or who have earned discharge, and members who clearly demonstrate that they are unqualified for retention. At the same time such members have rights which shall be protected.

(b) *Controlling provisions.* All discharges and separations of enlisted personnel will be governed by and effected in accordance with the provisions of §§ 730.50–730.76, which sections are applicable to all enlisted and inducted personnel of the Marine Corps and Reserve components thereof.

(c) *Explanation and counseling.* All commands shall establish appropriate procedures to insure that each member receives periodic explanations and separation counseling as follows:

(1) *Periodic explanations.* The various types of discharge certificates; the basis for their issuance; their possible effect upon the member's reenlistment, veterans' benefits, future civilian employment, and other situations in civilian life wherein the nature of service rendered in, or the character of separation from, the Armed Forces may have a bearing; and related matters will be fully explained to each member at each time the articles of the Uniform Code of Military Justice are explained, pursuant to article 137 thereof. The fact that this explanation has been given will be recorded on page 11 of the member's service record books. Failure on the part of the member to receive or to understand such explanation may be considered by an administrative discharge board and by a Discharge Authority, along with all other factors in the case, in determining whether or not a discharge is appropriate, and, if so, the type and character of discharge to be awarded. However, in no event shall the failure of the member to receive or to understand such explanation be considered a defense in an administrative discharge proceeding or a bar thereto.

(2) *Separation counseling.* The purpose and scope of the Navy Discharge Review Board (Part 724 of this chapter) and the Board for Correction of Naval Records (Part 723 of this chapter) will be explained during the separation processing of any member, whether or not under military control, being discharged under other than honorable conditions. The contents of figure 1 may be used for this purpose.

FIGURE 1

PURPOSE AND SCOPE OF THE NAVY DISCHARGE REVIEW BOARD AND THE BOARD FOR CORRECTION OF NAVAL RECORDS

(a) *Navy Discharge Review Board.* The Navy Discharge Review Board, consisting of five members, was established pursuant to 10 U.S.C. 1553 in order to review, on its own motion; or upon the request of any former member of the Navy or Marine Corps; or in the case of a deceased member or former member of the Navy or Marine Corps, upon the request of his surviving spouse, next of kin, or legal representative, or if incompetent by his guardian; the type and nature of final discharges in order to determine whether or not, under reasonable standards of naval law and discipline, the type and nature of the discharge should be changed, corrected, or modified, and, if so, to decide what change, correction or modification should be made. The Board may also issue a new discharge in accord with the facts presented to it.

(1) The Navy Discharge Review Board may review all final separations from the naval service, irrespective of the manner evidenced or brought about, except either a discharge awarded by a general court-martial, or a discharge executed more than 15 years before an application for review is submitted. Such review is based on all available records of the Department of the Navy pertaining to the former member, and such evidence as may be presented to or obtained by the Board. The former member's service record book is but one of the records of the Department of the Navy which may be considered by the Board.

(2) The Navy Discharge Review Board has no authority to revoke any discharge; nor to reinstate any person in the military service subsequent to discharge; nor to recall any person to active duty; nor to waive prior disqualifying discharges to permit enlistment in the naval service or any other branch of the Armed Forces; nor to cancel enlistment contracts; nor to change, correct, or modify any document other than the discharge document; nor to change the reason for discharge from or to physical disability; nor to determine eligibility for veterans' benefits. The Board may, in its discretion, record a recommendation for reenlistment as part of its decision in any case, however, such recommendation is not binding upon the Commandant of the Marine Corps nor upon the Secretary of the Navy.

(3) Review by the Board of the type and nature of a discharge is subject to review only by the Secretary of the Navy. Unless otherwise authorized by the Secretary of the Navy after final adjudication, further proceedings before the Board are permitted only upon the basis of newly discovered relevant evidence not previously considered by the Board, and then only upon the recommendation of the Board and approval by the Secretary of the Navy.

(4) Relevant and material facts concerning the former member concerned found by a general or special court-martial, or by a court of inquiry or board of investigation where the former member was in the status of a defendant or an interested party, as approved by the reviewing authorities, shall be accepted by the Board as established facts in the absence of manifest error or unusual circumstances clearly justifying a different conclusion. Relevant and material facts stated in a specification to which the former member concerned pleaded guilty before a general or special court-martial, or where, upon being confronted by such a specification, the former member elected to request discharge for the good of the service, shall be accepted by the Board as established facts in the absence of manifest error or unusual circumstances clearly justifying a different conclusion, or unless the former member shall show to the Board's satisfaction, or it shall otherwise appear, that arbitrary or coercive action was taken against him at the time, which action was not apparent to the reviewing authority from the face of the record.

(5) The evidence before the Board which may be considered in connection with a particular discharge document will normally be restricted to that which is relevant and material to the former member's particular term of Marine Corps service terminated by that discharge document, or to the former member's character, conduct, physical condition, or other material matter as revealed at the time of his entry into that particular term of Marine Corps service or during that term of Marine Corps service, or at the time of his separation therefrom.

(6) In order to warrant a change, correction, or modification of the original document evidencing separation from the Marine Corps, the former member concerned must show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the original document was improperly or inequitably issued under standards of naval law and discipline existing at the time of the former member's original separation, or under such standards differing therefrom in the former member's favor which, subsequent to his separation, were made expressly retroactive to separations of the type and character had by the former member.

(b) *Board for Correction of Naval Records.* The Board for Correction of Naval Records, consisting of not less than three members, was established pursuant to 10 U.S.C. 1552, and considers all applications properly before it for the purpose of determining the existence of an error or an injustice, and to make appropriate recommendations to the Secretary of the Navy. Application may be made by the member or former member, or such other persons as the Board determines to be competent for such purpose. The Board for Correction of Naval Records, unlike the Navy Discharge Review Board, may review discharges awarded by a general court-martial. Other types of cases reviewed by this Board include, but are not limited to, those involving requests for physical disability retirement; the cancellation of a physical disability discharge, and substituting, in lieu thereof, retirement for disability; an increase in the percentage of physical disability; the removal of derogatory material from an official record; the review of nonjudicial punishment; and the restoration of rank, grade, or rating. Also, this Board will review the case of a person who is in a Reserve component and who contends that his release from active duty should have been honorable, rather than under honorable conditions. When the relief sought in a case has been denied, i.e., when other available remedies have been exhausted without success, application for relief may then be filed with the Board for Correction of Naval Records.

(1) The law requires that application be filed with the Board for Correction of Naval Records within 3 years of the date of the discovery of the error or injustice. However, the Board is authorized to excuse the fact that the application was filed at a later date if it finds it to be in the interests of justice to consider the application. The Board is empowered to deny an application without a hearing if it determines that there is insufficient evidence to indicate the existence of probable material error or injustice to the respondent.

(2) No application will be considered by this Board until the applicant has exhausted all other effective administrative remedies afforded him by existing law or regulations, and all such other legal remedies as the Board shall determine are practical and appropriately available to the applicant.

(3) An application to the Board for the correction of his military record shall not operate as a stay of any other proceedings being taken with respect to the person involved.

(4) The Board will consider the applicant's case on the basis of all the material before it, including but not limited to, the application for correction filed by the applicant, any documentary evidence filed in support of such application, any brief submitted by or on behalf of the applicant, and all available pertinent records in the Department of the Navy. The applicant's service record is but one of the records which may be considered by the Board.

(5) The record of proceedings of the Board will be forwarded to the Secretary of the Navy, who will direct such action in each case as he determines to be appropriate.

(c) *Condition for relief.* In connection with review of executed discharges by both the Navy Discharge Review Board and the Board for Correction of Naval Records, there is no law or regulation which provides that an unfavorable discharge may be changed to a more favorable discharge solely because of the expiration of a period of time after discharge during which the respondent's behavior has been exemplary. (10 U.S. Code 1571–1577 (Public Law 89–690 of October 15, 1966), providing for the issuance of an Exemplary Rehabilitation Certificate by the Department of Labor to a former serviceman who demonstrates a successful period of rehabilitation in the civilian community, does not change or effect in any way the character of the former serviceman's discharge from the service, nor does such Certificate entitle him to any benefits under the laws of the United States over and above those accruing to him under his discharge from the service.) To permit relief by either of these Boards, an error or injustice must be found to have existed during the period of the enlistment in question and the respondent's good conduct after discharge, in and of itself, is not sufficient to warrant changing an unfavorable discharge to a more favorable type of discharge.

(d) *Applications.* Applications for review and explanatory matter may be obtained by writing the Board for Correction of Naval Records, or the Navy Discharge Review Board, as appropriate, Department of the Navy, Washington, D.C. 20370.

(e) *Regulations and procedures.* Current administrative regulations and procedures governing the Navy Discharge Review Board are contained in NAVEXOS P–70 (1–62) [Part 724 of this chapter]. Current procedures of the Board for Correction of Naval Records are contained in NAVEXOS P–473 (Rev. Dec. 2, 1961) [Part 723 of this chapter].

(d) *Continental United States.* As used in §§ 730.50 to 730.126, the term "continental United States" means the United States, except Alaska and Hawaii, unless otherwise indicated.

(e) *Definitions.* As used within this subpart, the following definitions will apply:

(1) *Discharge.* Complete severance from all military status.

(2) *Release from active duty.* Termination of active duty status and transfer or reversion to a reserve component not on active duty.

(3) *Separation.* A general term which includes discharge and release from active duty. This definition is broader than the definition of the word "separation" used in paragraph 1900.1a, Marine Corps Manual.

(4) *Administrative separation.* Discharge or release from active duty upon expiration of enlistment, period of induction, or other required period of service, or prior thereto, in the manner prescribed herein, by law, by the Secretary of Defense, or by the Secretary of the Navy, but specifically excluding punitive separation by the sentence of a general or special court-martial.

(5) *Military record.* A member's military record comprises all incidents and events of his behavior while in military service, including his general comportment and performance of duty, and reflects the character of the service he has rendered while a member of an armed service. The military record is not limited to entries in a member's service record book, or other specific service documents, but includes all available information pertaining to the individual while a member of an armed service.

(6) *Prior enlistment or period of service.* Service in any component of the armed forces, including the Coast Guard, which culminated in the issuance of a discharge certificate, certificate of service, or report attesting to the type and character of service rendered during that period.

(7) *Separation boards*—(i) *Administrative discharge board.* A board appointed within the purview of §§ 730.54 (b), 730.65(c)(2), 730.66(f), 730.67(c), 730.69, and 730.70(a) to render findings based on the facts of a case, and to recommend a respondent's retention in or separation from the service, and if separation is recommended, to further recommend the reason therefor, and the type of separation or discharge certificate to be furnished. See § 730.73.

(ii) *Dependency or hardship separation board.* A board appointed pursuant to § 730.63(h) to study and evaluate all available relevant information, to interview the applicant, and to make recommendations concerning the ultimate disposition of the case of a member who applies for discharge or release from active duty for reason of dependency or hardship within the purview of § 730.63.

(8) *Discharge Authority.* An official who is, under the provisions of this subpart, authorized to take final action with respect to specified types of administrative discharges. Whenever a Discharge Authority is designated in this subpart, either the official so designated, or his temporary successor in command, is authorized to act as a Discharge Authority. As used in this connection, the phrase "Marine general officers in command" contemplates those Marine commanders in the chain of command between the respondent and the Commandant of the Marine Corps.

(9) *Respondent.* A member who has been notified, as prescribed in this subpart, that action has been initiated to separate him under a specified provision of this subpart.

(10) *Counsel.* A lawyer within the meaning of article 27(b)(1) of the Uniform Code of Military Justice, unless the officer empowered to convene an administrative discharge board having jurisdiction over the member's case (or in cases involving proceedings to vacate a suspended administrative discharge, the officer exercising special court-martial jurisdiction over the respondent) certi-

fies in the permanent record the nonavailability of a lawyer so qualified, and sets forth the qualifications of the substituted nonlawyer counsel and the reasons for the nonavailability of lawyer counsel. See also §§ 730.72, 730.73, and 730.75.

(11) *Member.* An enlisted or inducted man or an enlisted woman of the Marine Corps or Reserve component thereof.

(12) *Convening authority.* The officer who orders the convening of, or who is empowered to order the convening of, the administrative discharge board which initially hears, or (in the event the respondent's case is not actually presented to a board) which would initially hear the respondent's case.

(13) *General bases for administrative discharge.* (i) There are 11 general bases for administrative discharge, as specifically set forth in § 730.51(b)(1)–(11), inclusive.

(ii) In increasing order of favorability to a member, the general bases for administrative discharge which may be utilized by a Discharge Authority pursuant to the provisions of §§ 730.51(r) and 730.73(i)(2)(iii) are as follows:

(a) Misconduct, unfitness, security, or request for discharge for the good of the service.

(b) Unsuitability.

(c) Convenience of the Government.

(14) *Specific bases for administrative discharge.* The specific basis for an administrative discharge is the particular reason for a discharge set forth in this subpart by a paragraph under the section prescribing the general basis for a discharge. For example, "unfitness" is considered to be a general basis for an undesirable discharge, while "an established pattern for shirking" would constitute the specific basis for such discharge.

§ 730.51 Types and reasons for discharge or release from active duty; general instructions.

(a) *Types.* The five types of discharge, with their corresponding character of separation, are as follows. The first three types of discharge are administrative, and the fourth and fifth types of discharge are punitive:

Type of discharge	Character of separation	Given by—
Honorable discharge	Honorable	Administrative action.
General discharge	Under honorable conditions	Do.
Undesirable discharge	Conditions other than honorable	Do.
Bad conduct discharge	do	General or special court-martial.
Dishonorable discharge	Dishonorable	General court-martial.

(b) *General bases.* There are 12 general bases for discharge; the first 11 of which are the general bases for *administrative* discharge or release from active duty, as follows:

(1) *Expiration of enlistment or fulfillment of service obligation, as applicable.* Discharge with an honorable or a general discharge, or release from active duty, as warranted by the member's military record. See § 730.58.

(2) *Convenience of the Government.* Discharge with an honorable or a general discharge, or release from active duty, as warranted by the member's military record, for any of the reasons enumerated in § 730.61.

(3) *Own convenience.* Discharge with an honorable or general discharge, or release from active duty, as warranted by the member's military record, on an individual basis, in accordance with the provisions of § 730.62.

(4) *Dependency or hardship.* Discharge with an honorable or general discharge, or release from active duty, as warranted by the member's military record, in accordance with the provisions of § 730.63.

(5) *Minority.* Discharge with an honorable or general discharge, as warranted by the member's military record, or release by voidance of contract, upon a determination that the individual's age was misrepresented upon enlistment or induction, in accordance with the provisions of § 730.64.

(6) *Disability.* Discharge with an honorable or general discharge, as warranted by the member's military record, when the member has been determined to be unfit, by reason of physical disability to perform the duties of his office, rank, grade, or rating, and is not entitled to retirement under the provisions of Chapter 61, Title 10, U.S. Code. See § 730.60.

(7) *Unsuitability.* Discharge by reason of unsuitability, with an honorable or general discharge, as warranted by the member's military record. See § 730.65.

(8) *Unfitness.* Discharge by reason of unfitness, with an undesirable discharge, unless the particular circumstances in a given case warrant a general or honorable discharge. See § 730.66.

(9) *Misconduct.* Discharge by reason of misconduct, with an undesirable discharge, unless the particular circumstances in a given case warrant a general or honorable discharge. See § 730.67.

(10) *Request for discharge for the good of the service.* Discharge by reason of request for discharge for the good of the service, with an undesirable discharge, unless the particular circumstances in a given case warrant a general or honorable discharge, where a member's conduct rendered him triable by court-martial for an offense punishable by a punitive discharge, subject to the procedures and safeguards specified elsewhere in this subpart. See § 730.70. As used in this subparagraph, the phrase "triable by court-martial" includes alleged offense(s), in violation of the Uniform Code of Military Justice, committed under circumstances where a court-martial would have had jurisdiction over both the member and his alleged offense(s) at the time such offense(s) were allegedly committed. Acceptance of a request for discharge for the good of the service and a resultant discharge based thereon does not require that a case be perfected against a member. Nor is it required that the Discharge Authority have available to him legally admissible evidence sufficient to judicially establish the member's guilt of the alleged offense(s) beyond a reasonable doubt. An offense(s) shall not be considered to be "not triable" because, before a court-martial, the member would have available to him one or more motions in bar of trial. See Executive Order 10214, as amended, Manual for Courts-Martial, 1951, paragraph 68.

(11) *Security.* Discharge, under conditions and procedures stipulated by the Secretary of the Defense when retention is not clearly consistent with the interests of national security. See § 730.69 and Part 729 of this chapter.

(12) *Sentence of a court-martial.* Discharge with a finally approved, unsuspended bad conduct discharge or dishonorable discharge adjudged by sentence of a court-martial. See § 730.68.

(c) *Retention or separation.* In determining whether a member should retain his current military status, or be administratively separated, his entire military record, including records of nonjudicial punishment imposed during a prior enlistment or period of service, all records of convictions by courts-martial, and any other factors which are material and relevant, may be evaluated. Acquittals, charges which have been preferred and dropped, etc., will not ordinarily be considered (see, however, § 730.54(e)(2)). Commanding officers investigating officers, administrative discharge boards, Discharge Authorities, and other agencies charged with making recommendations or determinations as to a member's retention or administrative separation, will consider records of nonjudicial punishment imposed during a prior enlistment or prior period of service only if such records of punishment have, under the particular circumstances of the case, a direct and strong probative value in determining whether retention or administrative separation is appropriate.

(1) Cases in which circumstances may warrant the use of records of nonjudicial punishment imposed during a prior enlistment or a prior period of service shall ordinarily be limited to those involving patterns of conduct which become manifest only over an extended period of time.

(2) When a member has been awarded nonjudicial punishment during his current enlistment or current period of service, isolated incidents and events which gave rise to the nonjudicial punishment and which are remote in time or which have little or no probative value in determining whether retention or administrative separation should be effected, shall not be considered in making the determination to retain or separate the member. By the same token, any other isolated incidents and events concerning the member, which are remote in time or

which have little or no probative value in determining whether the member should be retained or administratively separated, shall not be considered in making the determination to retain or separate him.

(3) If a decision is made that a member should be administratively separated, then the provisions of § 730.51(d) apply in determining the type of discharge. It is of paramount importance to recognize that the decision to retain or discharge a member must be made before any decision can be reached as to the type of discharge which may be appropriate.

(d) *Type and character of discharge or separation.* Regardless of the bases for a discharge, and regardless of the time when the act(s) or omission(s) occurred upon which the discharge is based, the type and character of the discharge certificate or report issued upon a member's administrative separation will be determined solely by the member's military record during his current enlistment or period of service, plus any lawful extensions thereof. The following shall not be considered in determining the type and character of the discharge certificate or report of separation to be issued, even though they may influence the decision to discharge the member.

(1) Activities which have occurred during any of the member's periods of service prior to his current enlistment or current period of service or any lawful extensions thereof, including, but not limited to, records of conviction by court-martial, records of nonjudicial punishment, records of absence without leave, or the commission of other offenses for which punishment was not imposed; or

(2) Activities which have occurred prior to the member's entry into any period of service, excepting deliberate material misrepresentations, including the omission or concealment of facts which, if known at the time thereof, would have reasonably been expected to have precluded, postponed, or otherwise affected the member's eligibility for enlistment or induction. Pertinent provisions are contained in MCO P1100.61, Recruiting Service Manual, Part B, or revisions thereof, and, concerning preservice homosexual acts or tendencies, SECNAV Instruction 1900.9 or revisions thereof and § 730.67(b)(2)(vi).

(e) *Suspension of execution.* A Discharge Authority, or higher authority, may suspend the execution of any approved administrative discharge, in accordance with § 730.75, in order to afford a deserving member a specified probationary period of sufficient length to demonstrate his successful rehabilitation.

(f) *Physical examination.* The Manual of the Medical Department, article 15–48, requires a thorough physical examination by a medical officer prior to discharge in the case of every enlisted member on active duty not discharged or retired for physical disability. The Manual of the Medical Department, article 16–13, contains instructions pertaining to the physical examination of members whose discharge is approved and who are confined by civilian authorities. See also §§ 730.51(q) and 730.105.

(g) *Type of discharge.* Where higher authority directs discharge of a member by reason of expiration of enlistment, convenience of the Government, own convenience, dependency or hardship, minority, disability, or unsuitability, and such authority does not specify the type of discharge or character of separation, the commander effecting the discharge will determine the type of discharge as honorable or general, based on the military record of the individual, in accordance with the applicable provisions of this subpart.

(h) *Report to Naval Intelligence unit.* Any information coming to the attention of a command which is of the nature described below shall be reported immediately to the nearest component of Naval Intelligence, with a copy to the Commandant of the Marine Corps (Code DK). In the case of commands remote from any local Naval Intelligence component, communication should be made directly to the Office of Naval Intelligence, Naval Investigative Service, Washington, D.C. (SECNAV Instruction 5500.27, or revisions thereof):

(1) Members discharged with or because of an abnormal mental condition, which, in the opinion of competent medical authority, is deemed to constitute a threat to the safety of others.

(2) Members discharged for reasons of security, by reason of disability, by reason of unsuitability, by reason of unfitness, by reason of misconduct, or by reason of request for discharge for the good of the service, and who meet one or more of the following criteria:

(i) Evidence of emotional instability, or irrational or suicidal behavior;

(ii) Expressions of strong or violent anti-U.S. sentiment;

(iii) Previous arrests, convictions, conduct, or statements, indicating a propensity for violence and antipathy toward good order in Government.

(i) *Forwarding of recommendation.* Commanders who recommend the administrative discharge of any member where the authority to authorize or direct discharge therefor is reserved to the Commandant of the Marine Corps, or the Secretary of the Navy, shall forward such recommendation to the Commandant of the Marine Corps together with all available information sufficient to permit the Commandant of the Marine Corps, or the Secretary of the Navy, to authorize or direct the member's retention, his retention on probation, or his discharge. Should the recommended discharge be based upon an investigative report, other than an Office of Naval Intelligence (ONI) investigative report, the original investigative report, or a certified true copy thereof, will be forwarded as a supporting document. If the recommended discharge is based upon an ONI report, an identifying reference thereto shall be contained in the recommendation for discharge.

(j) *Civil restraint.* When a commanding officer desires that a respondent be retained in the service and civil restraint (including probationary reporting) exists, civil authorities will be requested to terminate or suspend such restraint for the duration of the respondent's enlistment or induction. This action will be taken or caused to be taken by the respondent's commanding officer who recommends his retention. Where such action has not been taken previously, the Discharge Authority directing the respondent's retention will take or cause such action to be taken. In the event that civil authorities refuse to terminate or suspend the respondent's civil restraint, and persist in such refusal even after appropriate liaison with such civil authorities has been effected, the following action will be taken by Discharge Authorities other than the Commandant of the Marine Corps or the Secretary of the Navy:

(1) Where the Discharge Authority determines that the civil restraint will or may materially interfere with the respondent's military duties, or in cases where the Discharge Authority desires that such determination be made by the Commandant of the Marine Corps, the entire case, including all relevant documents and the Discharge Authority's appropriate recommendation, will be submitted to the Commandant of the Marine Corps (Code DM) for final decision in the member's case.

(2) Where the local Discharge Authority determines that the civil restraint will clearly not materially interfere with the respondent's military duties, the respondent may be retained and neither the case nor a report thereof need be forwarded to the Commandant of the Marine Corps, except as may be required by § 730.54(h) or § 730.65(d).

(k) *Submission of request.* The submission of a request by a member for a discharge for the good of the service, or for the convenience of the Government, or for the member's own convenience, or for dependency or hardship, shall in no case prevent or preclude a Discharge Authority from disapproving such request, or holding it in abeyance, and referring the member to an administrative discharge board, or to a court-martial, or from taking any appropriate punitive, nonjudicial, or administrative action in the member's case.

(l) *Commandant of the Marine Corps as Discharge Authority.* Pursuant to the provisions of this subpart, the appropriate Discharge Authority for the administrative discharge of members because of the procurement of a fraudulent enlistment, induction, or period of active service, through any deliberate material misrepresentation, omission, or concealment of preservice homosexual act(s) or tendencies (§ 730.67(b)(2)(vi)), sexual perversion (§ 730.66(b)(1)), or homosexual or other aberrant sexual tendencies (§ 730.65(a)(7)), is the Commandant of the Marine Corps. In transmitting cases of this nature to the Commandant of the Marine Corps for disposition, the forwarding endorsements will, in addition to the other matters required by this subpart, contain:

(1) As full an identification as possible of all persons involved with, or implicated in, the member's act(s), omissions, conduct, or tendencies, and

(2) Where all military members involved are under the command of the reporting commander, or of the commanders in the chain of command forwarding the report, the report, or the endorsements thereon, shall contain a statement of the action taken or contemplated with regard to all persons involved, and a recommendation as to whether the execution of a discharge should be delayed in any particular member's case pending the processing of other personnel involved. Where individuals from other commands are implicated, the Commandant of the Marine Corps will assume cognizance of these other individuals and will direct action to accomplish the processing of these cases.

(m) *Relation to disciplinary status.* A recommendation for administrative discharge may be made and forwarded, and a member may be administratively discharged, notwithstanding the fact that the member may be in a disciplinary status, i.e., whether under investigation, under pretrial restraint, pending trial by a court-martial or civil court, pending the imposition of nonjudicial punishment, serving a sentence imposed by a court-martial or civil court, performing nonjudicial punishment, or in a probationary status as a result of the suspension of the unexecuted portion of any nonjudicial punishment or sentence by a court-martial or civil court. However, unless the member is to be required to serve the unexecuted portion of his sentence by court-martial which has been approved and ordered executed, or unless he is to be discharged with an honorable discharge when he is under the suspended sentence of a court-martial, the Discharge Authority will take, or request appropriate authority to take, action to remit any portion of the sentence which will remain unexecuted at the time of the member's administrative discharge. See Manual for Courts-Martial, 1951, paragraph 97a; § 719.122 of this chapter; U.S. v. Green, 10 USCMA 561, 28 CMR 127; and U.S. v. Speller, 8 USCMA 363, 24 CMR 173.

(n) *"Accuser" status to be avoided.* In order to obviate difficulties which may otherwise arise when a recommended administrative discharge is not approved and disciplinary action is subsequently taken against the member, the action or decision to forward a recommendation for an administrative discharge, or to authorize or direct the execution of an administrative discharge when a member is in a disciplinary status, including the preliminary determination to administratively discharge a member rather than to try him by court-martial, should be taken or made in such a manner that the commander does not thereby become an accuser within the meaning of Uniform Code of Military Justice, article 1(9).

(o) *Authority.* Except as otherwise provided in this subpart, the Discharge Authority may authorize or direct a member's administrative discharge:

(1) Even though the member withdraws or repudiates an admission or confession of the alleged act(s) or omission(s) upon which, wholly or in part, the discharge is based, and even though the confession is the sole or primary evidence upon which the discharge is based; or

(2) Even though a member withdraws a previously submitted request for discharge for the good of the service (see § 730.70(d)); or

(3) Even though the discharge is based solely or in part upon a final conviction(s) by civil authorities (see § 730.67 (b)(3)); or

(4) Even though the discharge is based solely or in part upon a finally approved nonjudicial punishment(s); or

(5) Even though the discharge is based solely or in part upon a final conviction(s) by court-martial (see § 730.54 (e)(1)); or

(6) Even though the discharge is based solely or in part upon act(s) or omission(s) for which the member was tried and acquitted by court-martial or civil court (see § 730.54(e)(2)); or

(7) Even though the member is in a probationary status as a result of the suspension of a previously approved administrative discharge (see § 730.75 (d) and (h)); or

(8) In lieu of either trial by court-martial, or the imposition of nonjudicial punishment, or despite the existence of pending but untried charges by civil authorities (see § 730.51(m)).

(p) *Authority of the Commandant of the Marine Corps.* Personnel who have been the subject of a completed Background Investigation (as defined in Article 1503.3 of OPNAV Instruction 5510.1C, the Department of the Navy Security Manual for Classified Information) will not be administratively discharged under the provisions of § 730.66 or § 730.67, or discharged with a punitive discharge pursuant to the sentence of a court-martial (including such discharge resulting from vacation of a suspension), without the permission of the Commandant of the Marine Corps. In these cases, the Commandant of the Marine Corps (Code DM) will be advised of the commander's intention to discharge the member, the basis for the contemplated discharge, and the character of the contemplated discharge. Upon receipt of this information, the Commandant will provide appropriate instructions. The provisions of this paragraph apply even though the individual's security clearance has been terminated for cause prior to the date of his contemplated discharge. The provisions of this paragraph do not affect the authority of appropriate reviewing authorities of courts-martial to approve and order executed an administrative discharge. However, the actual execution of such discharges will not be effected without compliance with this paragraph.

(q) *Evidence of possible physical disability.* Where a commanding officer or officer in charge recommends that a member be administratively discharged for any reason, or makes a report of the member's misconduct pursuant to the provisions of § 730.67, the recommendation or report will include all the evidence available to such officer relating to the existence or possible existence of a physical disability or mental infirmity (including character and behavior disorders) on the part of the member concerned. This is essential to permit the appropriate Discharge Authority to evaluate such evidence, along with all the other relevant factors present in the case, in order to determine:

(1) Whether the discharge, if any, should be that recommended or, in lieu thereof, a discharge based upon the physical disability or mental infirmity. See §§ 730.60, 730.65(a) (3) and (5), and 730.105; also part J of chapter 13 of the Marine Corps Personnel Manual.

(2) The extenuating or mitigating effect of the physical disability or mental infirmity on the member's acts or omissions upon which the recommendation for discharge is based.

(r) *Powers of discharge authority.* Subject to the other provisions of this subpart, and except where an administrative discharge board has considered a member's case and made recommendations with regard thereto, the appropriate Discharge Authority may disapprove any recommendations made by lower authority or authorities as to the member's retention in the service or discharge therefrom, and as to the type and character of discharge recommended, or the general and/or specific basis therefor. For example, where a commanding officer makes a report of a member's misconduct pursuant to § 730.67, but recommends the member's retention in the service, and the member's case is not considered by an administrative discharge board because of the member's waiver of all his rights with respect thereto, the Discharge Authority may disapprove the commanding officer's recommendation for retention and direct the member's discharge with an undesirable discharge. See also §§ 730.50(e) (13) and (14) and 730.66(1)(2).

(s) *Referral to the Commandant of the Marine Corps.* In any case where the convening authority of an administrative discharge board, or a Discharge Authority, considers that there is a question as to the proper or appropriate disposition of a particular case, the matter may be referred to the Commandant of the Marine Corps (Code DM) for instructions or disposition, as appropriate.

(t) *Separation of recruits prior to completion of recruit training.* Except as otherwise provided by this subpart, or by higher authority, commanding generals of Marine Corps Recruit Depots or

their temporary successors in command, will determine the type of discharge to be issued to a recruit who is administratively discharged prior to completion of recruit training. The recommendations of boards convened in connection with separation of recruits may be considered in making the determination in each case. BUMED Instruction 1910.1 series contains applicable provisions.

(u) *Notification of parents, spouse, or guardian in certain types of cases.* The Marine Corps Personnel Manual, paragraph 7006, contains provisions for the notification to be given parents, spouses, or guardians of members who are to be discharged prior to expiration of their enlistment.

§ 730.52 Honorable discharge.

(a) *Separation with honor.* An honorable discharge is a separation from the service with honor.

(1) Issuance of an honorable discharge will normally be conditioned upon proper military behavior and proficient performance of duty, with due consideration for the member's age, length of service, grade, and general aptitude. However, see §§ 730.51 (b), (g), and (q), 730.52 (a) (3), (b) to (e), and 730.73(i). A member will not necessarily be denied an honorable discharge solely by reason of a specific number of convictions by courts-martial or punishments under article 15 of the Uniform Code of Military Justice during his current enlistment or period of obligated service, including voluntary or involuntary extensions thereof. Such convictions or nonjudicial punishments will, nevertheless, be considered and weighed in relation to all other relevant aspects of the member's behavior and performance of duty.

(2) In the case of a member serving in the grade of corporal and below, prima facie evidence of proper military behavior and performance of duty justifying the issuance of an honorable discharge will be the possession of a minimum final average conduct mark of 4.0 and a minimum final average duty proficiency mark of 3.0. In the case of a member serving in the grade of sergeant or above, the determination as to what constitutes proper military behavior and proficient performance of duty of the member concerned justifying the issuance of an honorable discharge will be made by the Discharge Authority from the evaluation of the entire character of the member's current period of service.

(3) A member may be eligible for an honorable discharge for one of the following reasons:

(i) Expiration of enlistment or fulfillment of service obligation, as applicable
(ii) Convenience of the Government
(iii) Own convenience
(iv) Dependency or hardship
(v) Minority
(vi) Disability
(vii) Unsuitability
(viii) Eligibility for an undesirable discharge under any of the applicable provisions of this subpart, with a determination by the Discharge Authority, or higher authority, that the member should be discharged with an honorable discharge, as warranted by the member's military record.

(b) *Awards.* A member who has been awarded one of the following listed decorations during his current enlistment, period of obligated service, or any extension thereof, may, where otherwise ineligible therefor, be awarded an honorable discharge: Medal of Honor; Navy Cross; Distinguished Service Medal; Silver Star Medal; Legion of Merit; Distinguished Flying Cross; Navy and Marine Corps Medal; Bronze Star Medal; Commendation Ribbon; Gold Life Saving Medal; Silver Life Saving Medal; or any decoration of the other Armed Forces of the United States comparable to the decorations listed in this paragraph. Each case will be determined on the basis of the member's entire military record.

(c) *Physical disability.* A member who is discharged by reason of physical disability incurred in line of duty, may, where otherwise ineligible, be given an honorable discharge. Each case will be determined on the basis of the member's entire military record.

(d) *Report to Commandant of the Marine Corps.* When doubt exists in a particular case as to whether an honorable or general discharge is appropriate, a full report of the circumstances, with appropriate recommendations from the member's commander, may be forwarded to the Commandant of the Marine Corps (Code DMB) for determination.

(e) *Report to proper Discharge Authority.* In those cases where a member may be issued either an honorable or general discharge upon expiration of enlistment or release from active duty, and the member's commanding officer, officer in charge, or higher authority, is of the opinion that the member concerned should be issued a type of discharge different from that indicated by his conduct and duty proficiency markings, as set forth in §§ 730.52(a) (2) or 730.53 (a) (1), a full report of the circumstances, with appropriate recommendations, shall be forwarded for decision to the proper Discharge Authority, to wit: The Commandant of the Marine Corps (Code DM) or the Marine commander exercising general court-martial jurisdiction over the member. These exceptional cases are limited to those wherein an honorable discharge is recommended in lieu of a general discharge, or a general discharge is recommended in lieu of an honorable discharge. When a member is to be transferred prior to effecting this discharge, these recommendations should be made prior to the member's transfer. A copy of the commanding officer's initial recommendations, together with the decision of the Marine commander exercising general court-martial jurisdiction over the member prior to his transfer, or a copy of the recommendations forwarded to the Commandant of the Marine Corps (Code DM), will be forwarded to the activity to which the member is to be transferred and at which his discharge will be effected.

§ 730.53 General discharge.

(a) *Separation under honorable conditions.* A general discharge is a separation from the service under honorable conditions. Issuance of a general discharge is conditioned upon:

(1) A military record which is, under the provisions of this subpart, not sufficiently meritorious to warrant an honorable discharge (see § 730.52(a) (1) and (2)),

(2) Eligibility for discharge by virtue of one of the reasons listed in § 730.52 (a) (3) (i) to (vii), or eligibility for an undesirable discharge under any of the applicable provisions of this subpart, with a determination by the Discharge Authority, or higher authority, that the member should be discharged with a general discharge, as warranted by the member's military record.

(b) *Awards.* A member who has been awarded one of the decorations listed in § 730.52(b) during his current enlistment, period of obligated service, or any extension thereof, may, where otherwise ineligible therefor, be awarded a general discharge.

(c) *Conduct marks.* Where, in the case of a corporal or below, a member is being considered for discharge with a general discharge because his military record is not considered sufficiently meritorious to warrant an honorable discharge because of average conduct marks below those set forth in § 730.52(a) (2), such marks should be clearly supported by entries on pages 11, 12, or 13 of the member's service record book. When such marks are not so supported, or where the provisions of § 730.52 (b) or (c) are applicable, consideration should be given to awarding the member an honorable discharge.

(d) *Report to Commandant of the Marine Corps.* When doubt exists in a particular case as to whether an honorable or general discharge is appropriate, the provisions of § 730.52(d) apply.

(e) *Report to proper Discharge Authority.* Where a member may be issued either an honorable or general discharge upon expiration of enlistment or release from active duty, and the member's commanding officer, officer in charge, or higher authority is of the opinion that the member concerned should be issued a type of discharge different from that indicated by his conduct and duty proficiency markings, as set forth in § 730.52 (a) (2) or § 730.53(a) (1), the provisions of § 730.52(e) apply.

§ 730.54 Undesirable discharge.

(a) *Separation under conditions other than honorable.* An undesirable discharge is an administrative separation from the service under conditions other than honorable. An undesirable discharge may be issued for any of the following reasons:

(1) Security.
(2) Unfitness.
(3) Misconduct.
(4) Request for discharge for the good of the service.

(b) *Conditions.* Except as provided in § 730.54(c), a member shall not be administratively discharged under conditions other than honorable unless:

(1) He is afforded the right to present his case before an administrative discharge board with the advice and assistance of counsel, and

(2) Such discharge is supported by approved findings of an administrative discharge board, and by an approved recommendation of an administrative discharge board for an undesirable discharge.

(c) *Action by administrative discharge board not required in certain cases.* Where appropriate, an undesirable discharge may be issued without action by an administrative discharge board in any of the following cases:

(1) Where the member is beyond military control by reason of continuous established unauthorized absence of more than 1 year, in which event the member may be issued an undesirable discharge, in absentia, in accordance with the procedures prescribed elsewhere in this subpart. See § 730.72(a)(2)(ii). The Discharge Authority in these cases will normally be the Commandant of the Marine Corps. Separation of members of the Marine Corps Reserve will be subject to the limitations of Title 10, U.S. Code 1163.

(2) Where the member requests discharge for the good of the service in accordance with the provisions of § 730.70.

(3) Where the member waives his right to administrative discharge board action in accordance with the provisions of § 730.72.

(d) *More favorable discharge.* In any case in which an undesirable discharge is authorized by the provision of this subpart, a member may, nevertheless, be awarded an honorable or general discharge, as appropriate, if:

(1) During his current enlistment or period of obligated service, or any voluntary or involuntary extension thereof, or during any prior period of service, he has been awarded one or more of the personal decorations listed in § 730.52(b) or

(2) Such action is otherwise warranted by the particular circumstances of the member's case, as determined by the Discharge Authority, or higher authority. Whenever a member's commanding officer or officer in charge considers that a member should be discharged administratively, but that the Discharge Authority, or higher authority, should give consideration to a discharge more favorable than the undesirable discharge which could be awarded under the circumstances, the commanding officer or officer in charge may make such recommendation to the Discharge Authority. This recommendation will include any alternate recommended general basis for the discharge (i.e. other than by reason of unfitness, security, misconduct, or the member's request for discharge for the good of the service); any alternate recommended specific basis for the discharge (e.g. financial irresponsibility in lieu of an established pattern showing dishonorable failure to pay just debts), and the alternate character of the discharge (i.e. an honorable or general discharge), together with a full development of the commanding officer's or officer in charge's reasons for making such recommendation.

(e) *Limitations.* An undesirable discharge will not be based solely upon:

(1) An offense or offenses for which the member has been tried and convicted by court-martial unless such discharge is with the express approval of the Secretary of the Navy. Cases falling within this category will be submitted to the Commandant of the Marine Corps (Code DK) for submission to the Secretary of the Navy. However, this provision is not applicable, and the Secretary's approval is not required, if the discharge under conditions other than honorable is based upon the member's overall conduct record, even though such record may include one or more convictions by court-martial. Where the Discharge Authority is in doubt as to the applicability of the provisions of this subparagraph, the entire case may be submitted to the Commandant of the Marine Corps (Code DK), for advice or disposition.

(2) Acts or omissions for which the member has been previously tried by court-martial or by civil court resulting in acquittal or action having the effect thereof, except where such acquittal or equivalent disposition is based on a legal technicality not going to the merits. Legal technicalities not going to the merits of a case include but are not limited to, the following: Mistrials; motions to bar trial or dismiss charges which are granted because of: The running of the statute of limitations, former punishment, former jeopardy, lack of speedy trial, withdrawal of charges or nolle prosequi before jeopardy attaches, failure of the charges to allege an offense, pardon (as an act of executive clemency), constructive condonation of desertion, or lack of jurisdiction; and motions for appropriate relief (Manual for Courts-Martial, 1951, paragraph 69) and equivalent motions made in civil court resulting in the termination of proceedings before the attachment of jeopardy.

(i) Where charges are dismissed because of a promise or grant of immunity (Manual for Courts-Martial, 1951, paragraph 68h), such action will be considered, for the purposes of this subpart, as a legal technicality not going to the merits only when the promise or grant, by its terms, specifically excludes administrative discharge proceedings from within the scope of its immunity.

(ii) Acquittals or equivalent dispositions do not include those cases tried by civil court wherein local law, custom, or procedure permit charges to be dismissed or expunged from civil records after the payment of a fine, the successful completion of jail or penitentiary sentences, or the successful completion of periods of probation. See § 730.67(b)(3)(iii).

(f) *Pertinent information.* When a commander or higher authority is considering the case of a member of the grade of sergeant or above for discharge with an undesirable discharge, he may, where he considers it to be appropriate, request from the Commandant of the Marine Corps (Code DG) copies of the member's fitness reports, and any other pertinent information which may be related to the reasons for discharge, or the type of discharge to be issued.

(g) *Waiver of rights.* In the case of a recommendation for an undesirable discharge wherein the member waives all of his rights, the Discharge Authority may nevertheless disapprove the waiver and refer the case to an administrative discharge board, directing that the member be accorded his applicable rights thereat; or he may direct the member's retention; or he may direct the member's discharge by reason of security, misconduct, or unfitness, specifying the type of discharge certificate to be issued. For the various actions which may be taken by the Discharge Authority upon a request for discharge for the good of the service, see § 730.70.

(h) *Review.* When final action has been taken on any report of misconduct, or recommendation for the discharge of a member by reason of unfitness, or upon any request for discharge for the good of the service (§§ 730.66, 730.67 and 730.70), the Discharge Authority will forward all papers, or copies thereof, pertaining to the case to the Commandant of the Marine Corps (Code DK) for review.

§ 730.55 Bad conduct discharge.

A bad conduct discharge is a punitive separation from the service under conditions other than honorable. It may be effected only as a result of the finally approved sentence of a general or special court-martial.

§ 730.56 Dishonorable discharge.

A dishonorable discharge is a punitive separation from the service under dishonorable conditions. It may be effected only as a result of the finally approved sentence of a general court-martial.

§ 730.57 Table of matters relating to discharges or releases from active duty.

The following table of matters relating to discharges or releases from active duty is furnished as a ready reference. The entries in the table are to be considered as a guide only. Pertinent references should be consulted for detailed instructions and exceptions under certain conditions.

TABLE OF MATTERS RELATING TO DISCHARGES

Reason for discharge	Authority (sec.)	Conditions affecting the type and character of discharges (sec.)	Character of discharge	DD Form	Mileage [1]	Transportation in kind [1]	Issue civilian clothing [2]	Cash allowance [3]	Retain and wear uniform home [4]	Reenlistment bonus recoupment [5]
Expiration of enlistment or fulfillment of service obligation as applicable.	730.58 or 730.150 or 730.151.	730.51, 730.52, 730.162(a), 730.51, 730.53, 730.162(a).	Honorable or Under honorable conditions.	DD 256-MC DD 257-MC	Yes	No	No	No	Yes	No.
Convenience of the Government.	730.61 or 730.150 or 730.153 or 730.154-730.159 or 730.164.	730.51, 730.52, 730.162(a), 730.126, 730.152(a)(2), 730.163. 730.51, 730.53, 730.162(a), 730.126, 730.152(a)(2), 730.163.	Honorable or Under honorable conditions.	DD 256-MC DD 257-MC	Yes	No	No	No	Yes	No. [6]
Own convenience	730.62 or 730.150 or 730.127 or 730.152 or 730.164.	730.51, 730.52, 730.162(a), 730.126, 730.152, 730.163. 730.51, 730.53, 730.162(a), 730.126, 730.152, 730.163.	Honorable or Under honorable conditions.	DD 256-MC DD 257-MC	Yes	No	No	No	Yes	Yes.
Dependency or hardship	730.63.	730.51, 730.52, 730.162(a), 730.126. 730.51, 730.53, 730.162(a), 730.126.	Honorable or Under honorable conditions.	DD 256-MC DD 257-MC	Yes	No	No	No	Yes	No.
Minority	730.64.	730.51, 730.52, 730.162(a), 730.124. 730.51, 730.53, 730.162(a), 730.124.	Honorable or Under honorable conditions.	DD 256-MC DD 257-MC	Yes	No	No	No	Yes	No.
Disability	730.60.	730.51, 730.52, 730.162(a). 730.51, 730.53, 730.162(a).	Honorable or Under honorable conditions.	DD 256-MC DD 257-MC	Yes	No	No	No	Yes	No. [7]
Unsuitability	730.65.	730.51, 730.52, 730.162(a). 730.51, 730.53, 730.162(a).	Honorable or Under honorable conditions.	DD 256-MC DD 257-MC	Yes	No	Yes	No	No	No.
Security	730.59.	730.51, 730.52, 730.162(a). 730.51, 730.53, 730.162(a). 730.51, 730.54, 730.162(a).	Honorable or Under honorable conditions. or Undesirable	DD 256-MC DD 257-MC DD 258-MC	Yes No	No Yes	Yes Yes	No Yes	No No	Yes. [8] Yes. [8]
Unfitness	730.66.	730.51, 730.52, 730.162(a), 730.66. 730.51, 730.53, 730.162(a), 730.66.	Honorable or Under honorable conditions. or	DD 256-MC DD 257-MC	Yes	No	Yes	No	No	Yes. [8]
Misconduct	730.67.	730.51, 730.51, 730.52, 730.162(a), 730.67. 730.51, 730.53, 730.162(a), 730.67. 730.51, 730.54, 730.162(a), 730.67.	Undesirable Honorable or Under honorable conditions or Undesirable	DD 258-MC DD 256-MC DD 257-MC DD 258-MC	No Yes No	Yes No Yes	Yes Yes Yes	Yes No Yes	No No No	Yes. Yes. [8] Yes.

See footnotes at end of document.

TABLE OF MATTERS RELATING TO DISCHARGES—Continued

Reason for discharge	Authority (sec.)	Conditions affecting the type and character of discharges (sec.)	Character of discharge	DD Form	Mileage [1]	Transportation in kind [1]	Issue civilian clothing [2]	Cash allowance [3]	Retain and wear uniform home [4]	Reenlistment bonus recoupment [5]
Request for discharge for the good of the service.	730.70.	730.51, 730.52, 730.162(a), 730.70.	Honorable or	DD 256-MC	Yes	No	Yes	No	No	Yes.
		730.51, 730.53, 730.162(a), 730.70.	Under honorable conditions. or	DD 257-MC						
		730.51, 730.54, 730.162(a), 730.70.	Undesirable	DD 258-MC	No	Yes	Yes	Yes	No	Yes.
Sentence of court-martial	730.68.	730.55.	Bad conduct or	DD 259-MC	No	Yes	Yes	Yes	No	Yes.
		730.56.	Dishonorable	DD 260-MC						

[1] See § 730.103; Joint Travel Regulations Chap. 4, Part D, and Chap. 5, Part C; and Navy Travel Instructions, par. 4004.
[2] See § 730.107.
[3] See § 733.109 and Navy Comptroller Manual, par. 044180.
[4] See § 730.117.
[5] See paragraph 14001 of the Marine Corps Personnel Manual and Navy Comptroller Manual, par. 044070-4.
[6] Unless directed by CMC or unless marriage is the basis in the case of a woman member.
[7] Unless resulting from misconduct or willful neglect or unless incurred during a period of unauthorized absence.
[8] When directed by CMC.

§ 730.58 Discharge for reason of expiration of enlistment or fulfillment of service obligation.

Commanders are authorized to discharge enlisted personnel upon normal date of expiration of enlistment, extension of enlistment, or period of induction. The normal date of expiration of enlistment for any enlistment is the date of the month immediately preceding the appropriate anniversary of the date of enlistment as adjusted for the purpose of making up any time lost from the enlistment, extension of enlistment or period of induction. Discharge of enlisted personnel for reason of fulfillment of service obligation will be accomplished in accordance with the provisions of §§ 730.150 to 730.164. Section 730.151 will be cited as the authority for discharge.

§ 730.59 Discharges at sea.

Discharges will not be executed while an enlisted person is attached to a Marine Detachment Afloat, except for the purpose of immediate reenlistment, or accepting a commissioned or warrant grade.

§ 730.60 Discharge for physical disability.

The Commandant of the Marine Corps, and commanders, when specifically authorized by separate directive, may direct or effect discharge for physical disability when, as a result of medical findings, an individual has been found physically unfit to perform the duties of his grade. Discharge for reason of physical disability is given only as the result of an individual's appearance before a physical evaluation board or a medical board. For further instructions, see § 730.105 and paragraph 13305 and Part J of Chapter 13 of the Marine Corps Personnel Manual.

§ 730.61 Discharge or release from active duty for convenience of the Government.

(a) *Reasons.* The Secretary of the Navy, or the Commandant of the Marine Corps, may authorize or direct the discharge or release from active duty of a member for the convenience of the Government for any one of the following reasons:

(1) General demobilization, reduction in authorized strength of the Marine Corps or Marine Corps Reserve, or by an order applicable to all members of a class of personnel specified in the order.

(2) To accept a commission or appointment in the Marine Corps, Marine Corps Reserve, or in another branch of the Armed Forces, for active duty only.

(3) For reasons of national health, safety, or interest, only when recommended by a Government agency authorized to make such determination and recommendation. Cases of this nature will not normally come to the attention of individual commanders, however, when they do, a prompt report thereof, containing all available information, shall be made to the Commandant of the Marine Corps (Code DM).

(4) Erroneous induction (when so stated by the Office of the Director of Selective Service), or erroneous enlistment. Any case coming to a commander's attention which purports to be of this nature shall be investigated, and a complete report shall be made promptly to the Commandant of the Marine Corps (Code DM).

(5) For such other good and sufficient reasons, not elsewhere listed in this subpart, which are specified and published by the Secretary of the Navy in SECNAV Instruction 1910.3, or revisions thereof.

(6) For the purpose of holding public office, as set forth in subparagraph 13050.6 of the Marine Corps Personnel Manual.

(7) When directed by the Secretary of the Navy. See § 41.6(b)(11) of this title.

(b) *Erroneous enlistment of recruits.* Commanding generals of Marine Corps recruit depots may authorize or direct the administrative separation of recruits for the convenience of the Government, citing the authority in paragraph (a)(4) of this section (i.e. erroneous enlistment or induction), under the following conditions:

(1) Upon determination, in accordance with existing regulations, that the recruit failed to meet the required physical standards when accepted for enlistment or induction; or

(2) Upon enlistment the recruit concealed the fact he was married. See, however, § 730.67(b)(2)(v); or

(3) Upon enlistment the recruit concealed a juvenile or youthful offender record. See, however, § 730.67(b)(2)(ii).

(c) *Women members.* Commanders shall discharge for the convenience of the Government or, in the case of overseas commands, will transfer to the continental limits of the United States for discharge:

(1) A married enlisted woman at her written request provided she is not stationed at or sufficiently close to the duty station or residence of her husband to permit the maintenance of a joint residence and provided she meets all applicable conditions set forth below in this subparagraph:

(i) A transfer request to the same or nearby duty station or place of residence of her husband has been submitted by the enlisted woman to the Commandant of the Marine Corps (Code DF) and has been denied.

(ii) The separation of husband and wife has exceeded 18 months.

(iii) The enlisted woman is not serving on an extension of enlistment or reenlistment entered into subsequent to marriage.

(iv) The enlisted woman has completed 24 months' service following completion of a service school if length of course was over 24 weeks.

(2) A woman member, whether married or unmarried, when it is established that such woman member:

(i) Is the parent by birth or adoption of a child under 18 years of age; or

(ii) Has personal custody of a child under 18 years of age; or

(iii) Is the stepparent of a child under 18 years of age and the child is within

the household of the woman member for a consecutive period of more than 30 days a year; or

(iv) During her current enlistment or extension of enlistment, she has given birth to a living child.

(3) A woman member, whether married or unmarried, upon certification by a medical officer that she is pregnant, shall be discharged by her commander, for the convenience of the Government, or in the case of overseas commands, will be transferred to the continental United States for discharge. The character of the discharge certificate issued in these cases will be as warranted by the woman member's service record, regardless of her marital status. In the case of discharge for reason of the pregnancy of a woman member who is an unmarried minor (under 21 years), her commander will notify her parents or guardian of the fact of and reason for the discharge. If, as a result of a spontaneous or therapeutic abortion, or a stillbirth, the woman member's pregnancy is terminated prior to her separation from the service, she will nevertheless be discharged for the convenience of the Government unless she requests, in writing, that she be retained in the service. In such latter case, the woman member may, at the discretion of her commander, be retained in the service, if she is found physically qualified for retention.

(d) *Obesity, low markings, and substandard behavior.* Administrative separation under the provisions of subparagraph 3b(3) through 3b(5), inclusive, of SECNAV Instruction 1910.3 or revisions thereof, will not normally be initiated until the member concerned has been given a reasonable opportunity to overcome his deficiencies. When it is determined by a commander that a member may come within the purview of these specific categories, the member shall be notified of his deficiencies, and he shall be counseled concerning them. A summary of all counseling measures taken in compliance with this subparagraph shall be recorded on page 11 of the member's service record book. If no improvement is forthcoming within a reasonable time, the member should then be recommended for the appropriate type of administrative discharge to the Commandant of the Marine Corps (Code DM) in accordance with paragraph (a)(5) of this section and § 730.51(i). Failure on the part of a member to receive or understand the counseling prescribed herein may be considered by the Secretary of the Navy or the Commandant of the Marine Corps, along with all other factors in the case, in determining whether or not a discharge is appropriate, and, if so, the type and character of the discharge to be awarded. However, in no event shall the failure of the member to receive or understand such counseling be considered a defense in an administrative discharge proceeding, or a bar thereto.

(e) *Immediate reenlistment and early separation.* Discharges for the convenience of the Government to permit immediate enlistment or reenlistment; to provide for early separation of members under various authorized programs and circumstances; and to provide for the discharge of conscientious objectors; shall be processed and effected in accordance with separate directives pertaining specifically to these categories of discharge.

§ 730.62 Discharge or release from active duty for own convenience.

(a) *Authorization.* The Commandant of the Marine Corps may authorize or direct the discharge or release from active duty of Marines for their own convenience. Requests for discharge will, as a policy, not be granted when submitted solely for the purpose of (1) entering another branch of the Armed Forces in an enlisted status, (2) accepting civil employment, or (3) accepting employment with other Government agencies in a civilian capacity.

(b) *Requests.* It is not desired to prevent personnel from applying for discharge for personal reasons; however, when it is evident after interview with the person concerned that his desire for separation is based on personal benefit, such as for one of the reasons stated above, he should be informed of the general policy and discouraged from submitting an official request for discharge for such reasons. If he still wishes to submit a request for discharge, he should be allowed to do so, in which case substantiating documents bearing on his particular case should be required of the applicant to accompany his request. In the case of aliens, the provisions of § 730.126 are applicable.

(c) *Forwarding of requests.* Requests for discharge or release from active duty for own convenience will, together with supporting documents and appropriate endorsements thereon, be submitted to the Commandant of the Marine Corps (Code DM).

(d) *No "purchase."* Discharge "by purchase" will not be authorized.

§ 730.63 Discharge or release from active duty for reason of dependency or hardship.

(a) *Authorization.* The Commandant of the Marine Corps and all Marine general officers in command may authorize and direct the discharge or release from active duty of enlisted personnel for dependency or hardship.

(b) *Requests.* Enlisted persons who desire to request discharge or release from active duty for dependency or hardship reasons shall be informed of these regulations and of the proper procedure to follow. It should be clearly explained to each applicant that submission of a request is no assurance that discharge or release will be authorized. Each request of this nature that is received shall be carefully and sympathetically considered and decided on its individual merits.

(c) *Limitations.* Undue hardship does not exist solely because of altered present or expected income or because the individual is separated from his family or must suffer the inconveniences normally incident to military service. Discharge or release from active duty by reason of hardship or dependency will not be authorized:

(1) For personal convenience alone.

(2) When the Marine requires medical treatment.

(3) Solely by reason of the pregnancy of the Marine's wife.

When a Marine who is in a disciplinary status submits an application for discharge or release from active duty by reason of dependency or hardship, see § 730.51(m).

(d) *Limitations on disapproval.* Discharge or release from active duty will not be disapproved under the provisions of this paragraph solely because:

(1) The enlisted person's services are needed in his organization, or

(2) He is indebted to the Government or to an individual.

(e) *Conditions.* Discharge or release from active duty for hardship or dependency will be warranted and may be authorized and directed when all the following conditions are met:

(1) Undue and genuine dependency or hardship exists.

(2) Dependency or hardship is not of a temporary nature.

(3) The Marine has made every reasonable effort to relieve the hardship by means of application for dependents allowance and voluntary contributions which have proven inadequate.

(4) Conditions have arisen or have been aggravated to an excessive degree since entry into the Marine Corps or entry on current tour of extended active duty. An example of a meritorious case is one in which the evidence shows that, as a result of the death or disability of a member of the Marine's family, his discharge or release from active duty is necessary for the support or care of a member or members of the family.

(5) Discharge or release from active duty will result in the elimination of, or will materially alleviate, the condition, and there are no means of alleviation readily available other than by such discharge.

(f) *Information required.* After explaining the regulations to an applicant, he will be permitted to submit a written application for discharge or release from active duty for dependency or hardship. Consideration and assistance will be given in the preparation of his request. Requests must be accompanied by at least two affidavits substantiating the dependency or hardship claim. Where practicable, one such affidavit should be from the dependent concerned. The request should contain the following additional information:

(1) Reason in full for request.

(2) Complete home address of dependent and applicant.

(3) Names and addresses of persons familiar with the situation.

(4) Statement as to marital status and date of marriage.

(5) Financial obligations; specific amounts and methods of contributions to dependent.

(6) Names, ages, occupations, and monthly incomes of members of the individual's family, if any; where applicable, income will include monetary benefits derived as the result of being beneficiary to a life insurance policy indicating whether payment was made in a lump-sum settlement or on a monthly basis, and the reasons why these members cannot provide the necessary care or support of the individual's family; and a statement that no members of the family have been omitted. Income, as used herein, will include wages, compensation of any type, Social Security benefits, interest and rental income from property and all other sources. If the request is based on financial conditions of specific members of the family, a statement of both monthly income and expenses of such members, and a statement of their assets and liabilities will be included. Assets will include a listing of all property, securities, and funds owned, indicating value, except clothing and household furnishings.

(7) If dependency is the result of death of a member of the Marine's family, occurring after his entrance into the service, a certificate or other valid proof of death should be furnished. If dependency or hardship is the result of disability of a member of the Marine's family, occurring after entrance in the service, a physician's certificate should be furnished showing specifically when such disability occurred, the nature thereof, and probable duration.

(g) *Forwarding endorsement.* The immediate commander will forward such application by endorsement, including:

(1) A definite recommendation.

(2) A statement regarding service obligation.

(3) Status of any disciplinary action pending.

(4) Effective date, amount, and purpose of all allotments. If the applicant claims to be making cash contributions, he shall be required to produce substantiating evidence, such as money order receipts, etc.

(h) *Board.* The Marine commander who exercises special court-martial jurisdiction over the applicant will appoint a board, consisting of not less than three members, before whom the applicant will appear. This board shall consist entirely of military personnel. It will be the responsibility of the board to study and evaluate all available information, interview the applicant, and make recommendations concerning the ultimate disposition of the case, including a recommendation as to whether an applicant who has a remaining service obligation should be discharged or released from active duty. The report of the board will include a brief summary of any factors considered in arriving at its recommendations which are not apparent in the application. The authority contained herein to appoint a board may be limited by higher authority when such action is deemed desirable; e.g., when one board may conveniently consider all cases in a larger command.

(i) *Action.* Upon receipt of a written request for discharge from the individual concerned, together with the supporting evidence outlined in paragraph (f) of this section, the Discharge Authority will take the following action:

(1) Carefully review the basis on which the request is made.

(2) Where specific supplemental information is needed to make a proper determination in the case, request such supplemental information from the American Red Cross pertaining to the application for discharge or release from active duty of an individual for hardship. Such requests will be restricted to those cases where specific supplemental information is needed to make a proper determination. If the member's request for discharge is disapproved after receipt of the American Red Cross report, include such report when forwarding the case to the Commandant of the Marine Corps (Code DMB).

(3) If the case has not previously been considered by a board, appoint a board to consider the case as outlined in paragraph (h) of this section.

(4) If the member's discharge or release from active duty is considered warranted, take final action on the application, regardless of the recommendations of the board. If the member is discharged, his application for discharge and all supporting papers will be forwarded, with his closed-out service records, to the Commandant of the Marine Corps (Code DGH). For those members released from active duty, rather than discharged, the member's application for discharge and all supporting papers will be forwarded to the Commandant of the Marine Corps (Code DGH), and the member's service records will be forwarded to the appropriate Reserve command in accordance with current directives.

(5) If the member's discharge or release from active duty is not considered warranted, forward his application for discharge with all supporting documents, together with a synopsis of the proceedings and recommendations of the local review board, to the Commandant of the Marine Corps (Code DMB) for review and final determination. The synopsis should contain any pertinent information not included in the member's application for discharge, or other supporting documents, that will aid in making a final determination in the case.

(6) If, at any time prior to final action, the applicant indicates a desire to withdraw his application for discharge, or indicates a desire not to be discharged even though his application is not formally withdrawn, the cognizant command will obtain a signed statement from the applicant to that effect. Such statement will be included with the member's application for discharge when forwarded to the Commandant of the Marine Corps (Code DMB), and an entry will be made on page 11 of the member's service record book showing that he signed such a statement.

(j) *Obligated service.* Discharge Authorities are further authorized to make the final determination, when the Marine concerned has a military obligation, as to whether conditions of hardship or dependency for which the individual is being considered may be expected to continue throughout the period of his obligated service. If it is considered that the hardship or dependency will continue throughout the period of his obligated service, the Marine may be discharged, in which case the period of obligated service is terminated. In case of doubt, the Marine will be transferred to or retained in the Marine Corps Reserve to complete his obligated service.

(k) *Procedures.* In effecting separations under this authority, the procedures set forth in this paragraph will be followed:

(1) If the individual to be separated has a home of record in the continental United States:

(i) Commands located in the United States will effect the separation locally.

(ii) Commands located outside the United States will transfer the individual concerned to the nearest Marine Corps activity in the United States for separation.

(2) If the individual to be separated is entitled to and elects transportation to a point outside the United States upon separation, he will be transferred to the Marine Corps activity nearest to the point to which transportation is authorized.

(l) *Confidential nature.* Any information concerning the private affairs of Marines or their families shall be treated as confidential, and shall not be disclosed to persons other than in connection with their official duties, nor will the source of such information be disclosed.

(m) *Related course of action.* In the event that the applicant's request for discharge or release from active duty for reason of dependency or hardship does not meet the criteria specified in this section, the Discharge Authority may give consideration to the applicant's request under the provisions of paragraph 3b(7) of SECNAV Instruction 1910.3, or revisions thereof.

§ 730.64 Discharge for reason of minority.

(a) *Authority.* Subject to the restrictions contained in paragraph (c) of this section, the Commandant of the Marine Corps, and all Marine Corps general officers in command may direct the separation of a member by reason of minority. Oversea commands will transfer personnel to the continental United States for such discharge.

(b) *Report.* In cases involving the possible discharge of a member by reason of minority, organizations not in the chain of command of a Marine Corps general officer in command will forward a report of the case to the Commandant of the Marine Corps (Code DM), including therein the evidence prescribed in paragraph (e)(1) of this section; a definite recommendation as to the desirability for retention of the member; and a

statement from the minor concerned, if, pursuant to the provisions of article 31 of the Uniform Code of Military Justice, the minor desires to submit a statement. If the minor is not considered desirable for retention, he shall be retained at or transferred to a shore station within the continental United States, and the Commandant of the Marine Corps (Code DM) will be so advised.

(c) *Restrictions.* Release of a member from military control by voidance of enlistment, or the discharge of a member by reason of minority, may be effected by the officials described in paragraph (a) of this section, subject to the following restrictions:

(1) Voidance of enlistment will not be effected unless authorized or directed by the Commandant of the Marine Corps. Where a member has apparently been enlisted in the Marine Corps in violation of the prohibitions relative to age contained in 10 U.S.C. 5532 (a male under the age of 14 years or a female under the age of 18 years), the case shall be immediately reported to the Commandant of the Marine Corps (Code DG). After investigation of the facts, and subject to any provision of law pertinent thereto, the Commandant of the Marine Corps will direct the action to be taken and the disposition of the member concerned. See § 730.124.

(2) Male enlisted members of the Regular Marine Corps and Marine Corps Reserve.

(i) If under a verified age of 17 years, the minor will be released from military control by voidance of enlistment, or discharge, regardless of whether his enlistment was effected with the consent of his custodial parents or legal guardians and regardless of the absence of an application for the minor's release from his custodial parents or legal guardians.

(ii) If it has been verified that the minor has passed his 17th birthday but not his 18th birthday, he will be discharged, provided that his enlistment was made without the proper consent of his custodial parents or legal guardians and provided that an application for the minor's release has been made by his custodial parents or legal guardians and such application has been received by his command, the Commandant of the Marine Corps, or by any other agency of the Department of the Navy, within 90 days from the date of the minor's enlistment.

(iii) When it has been verified that the minor has passed his 18th birthday he will be retained, if he is otherwise qualified, regardless of the failure of his custodial parents or legal guardians to have consented to his enlistment and regardless of any application for the minor's release made by his custodial parents or legal guardians.

(3) Inductees. If the minor is under 18 years and 6 months of age, when verified, he will be discharged, regardless of the absence of an application for the minor's release from his custodial parents or legal guardians, unless, pursuant to Selective Service regulations, the minor, after attaining the age of 17 years, volunteered for induction with the written consent of his custodial parents or legal guardians.

(4) Female enlisted members of the Regular Marine Corps or Marine Corps Reserve.

(i) If enlisted and under 18 years of age, the minor will be released from military control by voidance of enlistment, or discharge, regardless of whether her enlistment was effected with the consent of her custodial parents or legal guardians and regardless of the absence of an application for her release from her custodial parents or legal guardians.

(ii) If enlisted without the proper consent of her custodial parents or legal guardians, and she has passed her 18th birthday, but not her 21st birthday, when verified, she will be discharged, provided that an application for her release has been made by her custodial parents or legal guardians and such application has been received by her command, or the Commandant of the Marine Corps, or by any other agency of the Department of the Navy, within 90 days from the date of the minor's enlistment.

(d) *Minimum ages.* The statutory and administrative minimum ages for enlistment are as follows:

	Statutory	Administrative
Regular Marine Corps:		
Men	14	17
Women	18	18
Marine Corps Reserve:		
Men	14	17
Women	18	18

The release from military control, as determined by the Commandant of the Marine Corps (Code DG), by voidance of enlistment, or discharge, of any enlisted member who is determined to be under the statutory minimum age for enlistment is mandatory, and a request of the custodial parents or legal guardians for the minor's release is not required. Any request by custodial parents or legal guardians for the release of a minor who was enlisted while under the minimum statutory age limit, and who remained in the service after reaching the minimum statutory or administrative age for enlistment, will be processed in accordance with paragraph (c) of this section where appropriate.

(e) *Prompt action.* In any case where it becomes apparent, or it is alleged, that there is a discrepancy in the age or name in a minor's enlistment contract, or when the validity of the consent of custodial parents or legal guardians for the minor's enlistment is questioned, prompt action shall be taken by the minor's command to ascertain the facts. Regardless of whether or not such facts provide a basis for the minor's release from military control by voidance of enlistment, or discharge, the minor's local service records will be corrected, where appropriate, and a complete report of the matter will be made to the Commandant of the Marine Corps (Code DG).

(1) The evidence described below will be acceptable for establishing proof of a minor's age and for the correction of a minor's service records, where appropriate (see also paragraph 15057 of the Marine Corps Personnel Manual):

(i) A certified copy of the minor's birth certificate showing the date of the minor's birth, and the date his birth was recorded. To be acceptable, the date his birth was recorded must have been previous to the minor's enlistment.

(ii) A certified copy of the minor's baptismal certificate, or other church record, showing the minor's age or date of birth.

(iii) A certified extract from a school census record.

(iv) A certified hospital record of the minor's birth.

(v) A certified census enumeration extract.

(2) Any difference in the minor's name contained in the evidence described above, and the name under which the minor enlisted or was inducted, must be clarified by public record or affidavits of two disinterested and credible persons testifying from their own knowledge as to the identity of the minor concerned.

(f) *Written consent.* Written consent shall be obtained from the custodial parents or legal guardians in all cases of enlistment of male minors under 18 years of age, and of female minors under 21 years of age. Written consent will also be obtained from the custodial parents or legal guardians in all cases of an extension of enlistment of male minors under 18 years of age, and of female minors under 21 years of age. See paragraph 2206.6 of the Marine Corps Personnel Manual.

(g) *Misrepresentation of age.* The enlistment of a minor with false representation as to age, or without proper consent from his parents or legal guardians, will not, in itself, be considered as a fraudulent enlistment. See § 730.67 (b) (2).

(h) *Notification of next of kin.* The commander effecting a minority discharge shall notify or cause to be notified the minor's next of kin of the type of discharge and, in general terms, the reason for discharge. Care and discretion shall be exercised in phrasing the notification in order that the reason for discharge may not be construed by the person concerned as derogatory to the minor or to reflect adversely on his character.

(i) *Service obligation not affected.* A member whose enlistment or induction is terminated by reason of minority, including voidance of enlistment, shall not, as a result of such enlistment or induction, be considered to have acquired a period of obligated service under law, nor is service under any enlistment or induction which was so terminated creditable toward the fulfillment of any subsequently acquired service obligation.

§ 730.65 Discharge for reason of unsuitability.

(a) *Authorization.* The Commandant of the Marine Corps, and all Marine commanders exercising general court-martial jurisdiction, may authorize or direct the retention in the service or discharge of members recommended for

discharge by reason of unsuitability, except that all cases involving homosexual or other aberrant sexual tendencies as the specific basis for the proposed discharge will be referred to the Commandant of the Marine Corps (Code DK) for disposition. Where there is evidence of homosexual or other aberrant sexual tendencies present in the case, but the local Discharge Authority determines that the specific basis for the proposed discharge should be one of the bases reflected in subparagraphs (1) through (6), he may authorize or direct the member's discharge and is not required to forward the case to the Commandant of the Marine Corps, except for review as provided by paragraph (d) of this section. Except as provided in the foregoing text of this paragraph, all recommendations for a member's discharge by reason of unsuitability submitted by commanding officers or officers in charge not under the command of a Marine commander exercising general court-martial jurisdiction will be forwarded to the Commandant of the Marine Corps (Code DM) for disposition. A discharge for reason of unsuitability will be effected with an honorable or general discharge, as warranted by the member's military record, when it has been determined that a member is unsuitable for further military service because of:

(1) *Inaptitude.* This provision is applicable to those members who are best described as inapt, due to lack of general adaptability, want of readiness or skill, unhandiness, or inability to learn.

(2) *Enuresis.* This provision contemplates a final diagnosis by a medical officer.

(3) *Character and behavior disorders.* As determined by medical authority, this provision contemplates those character and behavior disorders and disorders of intelligence listed in Department of Defense Disease and Injury Codes (TB Med 15 (NAVMED P-5082) AFM 160-24). However, discharges normally should not be effected for combat exhaustion (3263) and other acute situational maladjustments (3264), per se, but they may be effected for more basic underlying character and behavior disorders of which the transient state is a manifestation.

(4) *Financial irresponsibility.* This provision contemplates financial irresponsibility on the part of a member which clearly demonstrates that he is unqualified for retention, even though such financial irresponsibility does not fall within the purview of § 730.66(b)(5) or (6).

(5) *Apathy, defective attitudes, and inability to expend effort constructively.* As a significant observable defect, apparently beyond the control of the member, elsewhere not readily describable.

(6) *Alcoholism.* This provision contemplates a final diagnosis by a medical officer, together with additional supporting information furnished by the member's command. See also SECNAV Instruction 1910.3, paragraph 3b(5)(b), or revisions thereof.

(7) *Homosexual or other aberrant sexual tendencies.* SECNAV Instruction 1900.9 series contains controlling policy and provides for additional action required in homosexual cases. Homosexual or other aberrant sexual act(s) or conduct, as opposed to tendencies, will ordinarily be considered under the provisions of § 730.66(b)(1), rather than under the provisions of this subparagraph.

(b) *Guidelines.* Restrictions and guidelines regarding discharge by reason of unsuitability are as follows:

(1) Action with a view to discharging a member as unsuitable for any of the reasons set forth in paragraph (a)(1), (4), (5), and (6) of this section, will not normally be initiated unless the member has previously been afforded a reasonable opportunity to overcome his deficiencies. When it is determined that a member may come within the purview of any of these specific categories, the member shall be notified of his deficiencies and he shall be counseled concerning them. A brief summary of all counseling measures taken in compliance with this subparagraph shall be recorded on page 11 of the member's service record book. If no improvement is forthcoming within a reasonable time, the member should then be processed for the appropriate type of administrative discharge. Failure of a member to receive or understand the counseling prescribed herein may be considered by administrative discharge boards (in the case of a member with 8 or more years of continuous active military service), or by Discharge Authorities, along with all other factors in the case, in determining whether or not a discharge is appropriate, and, if so, the type and character of the discharge to be awarded. However, in no event shall the failure of member to receive or understand such counseling be considered a defense in an administrative discharge proceeding or a bar thereto.

(2) A member's commanding officer or officer in charge should not normally recommend the member for discharge as unsuitable by reason of character and behavior disorders (paragraph (a)(3) of this section) based solely on one or more psychiatric evaluations. Such recommendations for discharge should be further supported by other evidence of the member's unsuitability, giving due consideration to the member's age, length of service, grade, and general aptitude; or by other evidence that the member is a chronic disciplinary problem. Members considered unsuitable for service because of character and behavior disorders, where the evidence thereof consists solely of one or more psychiatric examinations and reports, should normally be processed by medical board action in accordance with BUMED Instruction 1910.-2D or revisions thereof, rather than for discharge by reason of unsuitability, as authorized herein. In this regard, commanders shall maintain appropriate liaison with Navy psychiatrists and furnish to the psychiatrists the member's service record book and such other pertinent information as will assist the psychiatrist in determining whether to recommend retention or an administrative discharge in accordance with paragraph (a)(3) of this section, or an administrative discharge by medical board action in accordance with BUMED Instruction 1910.2D, or revisions thereof. The provisions of this subparagraph may, in a specific case, also be applicable to a member being considered for administrative discharge by reason of enuresis or alcoholism (paragraph (a)(2) and (6) of this section).

(c) *Referral to discharge authority.* In cases where a commander considers a member unsuitable for further military service, he will refer the case, together with his recommendations and all evidence and documents pertaining thereto, to the appropriate Discharge Authority or convening authority for disposition. At the time of submission of a recommendation for discharge, an entry will be made on page 11 of the member's service record book showing this fact and the reasons therefor. If the recommendation for discharge is finally disapproved, an entry to this effect will likewise be recorded on page 11 of the member's service record book. Prior to recommending the discharge of a member for unsuitability, the commander will investigate or cause the case to be investigated. Where a commander, or higher authority, is considering the case of a member of the grade of sergeant or above for discharge by reason of unsuitability, he may, where considered appropriate, request from the Commandant of the Marine Corps (Code DG), copies of the member's fitness reports and any other pertinent information which may be related to the reasons for discharge, or the type of discharge to be issued.

(1) Where a member with less than 8 years of continuous active military service is recommended for discharge by reason of unsuitability, the member concerned shall be notified in writing of the proposed discharge action and the reason therefor, and he shall be afforded an opportunity to make a statement in his own behalf, or to decline this opportunity in writing. The commander's recommendation and a complete report containing all the circumstances of the case, together with the member's statement, if any, shall be forwarded to the appropriate Discharge Authority.

(2) In all cases involving a recommendation for discharge by reason of unsuitability where the member concerned has 8 or more years of continuous active military service, the instructions and procedures set forth in § 730.66 (f)-(j), as applicable, and those set forth below, in this subparagraph, shall govern:

(i) Where such member is under military control, he has the following rights:

(*a*) To present his case before an administrative discharge board;

(*b*) To be represented by counsel; and

(*c*) To waive the above rights, in writing, after being afforded an opportunity to consult with counsel.

(ii) If a member waives the above rights, in writing, the Discharge Authority may nevertheless disapprove the

waiver and refer the case to an administrative discharge board, directing that the member be accorded his applicable rights thereat; or he may direct the member's retention; or he may direct the member's discharge by reason of unsuitability, specifying the specific basis therefor and the type of discharge certificate to be issued.

(iii) Where the member's case is referred to an administrative discharge board, see § 730.73.

(iv) For the advice to be given a member with 8 or more years of continuous active military service who is recommended for discharge by reason of unsuitability, and for the recording of such advice, see § 730.72.

(v) Should a member refuse to either request or waive his rights, an entry in explanation thereof will be made in the record of the case, and the member's case will be disposed of as if he had requested all of his applicable rights.

(d) *Forwarding to Commandant of the Marine Corps.* When final action has been taken by a Discharge Authority on a recommendation for discharge by reason of unsuitability for any of the specific bases prescribed in paragraph (a) (1)–(6) of this section, such Discharge Authority will forward all papers, or copies thereof, pertaining to the case to the Commandant of the Marine Corps (Code DG) for filing in the official record of the member concerned. However, where the specific basis for the discharge is one of the reasons prescribed in paragraph (a) (1)–(6) of this section, but there is evidence of homosexual or other aberrant sexual tendencies present in the case, the Discharge Authority, after completion of his final action thereon, will forward the case to the Commandant of the Marine Corps (Code DK) for review.

§ 730.66 Discharge for reason of unfitness.

(a) *Authorization.* The Commandant of the Marine Corps, and all Marine commanders exercising general court-martial jurisdiction, may authorize or direct the retention in the service or the discharge of members by reason of unfitness, except that cases involving sexual perversion as the specific basis for the proposed discharge will be referred to the Commandant of the Marine Corps (Code DK) for disposition. Where there is evidence of sexual perversion present in the case, but the local Discharge Authority determines that the specific basis for the proposed discharge should be one of the bases reflected in paragraph (b) (2)–(7) of this section, he may authorize or direct the member's discharge and is not required to forward the case to the Commandant except for review as required by § 730.54(h).

(b) *Specific reasons.* A commanding officer or officer in charge will recommend a member for discharge by reason of unfitness when he determines that the member's military record includes one or more of the following:

(1) Sexual perversion, including, but not limited to:

(i) Lewd and lascivious act(s).

(ii) Homosexual act(s). SECNAV Instruction 1900.9 series contains controlling policy and provides for additional action required in homosexual cases.

(iii) Sodomy. SECNAV Instruction 1900.9 series contains applicable provisions.

(iv) Indecent exposure.

(v) Indecent act(s) with or assault upon a child.

(vi) Other indecent act(s) or offense(s).

(2) Frequent involvement of a discreditable nature with civil or military authorities. No specific number of acts or omissions are contemplated herein. Each case must be evaluated in light of its own particular facts to determine whether, because of such frequent involvement, the member concerned has clearly demonstrated that he is unqualified for retention and, if so, whether the character of his service has been other than honorable.

(3) An established pattern of shirking.

(4) Drug addiction or habituation, or the unauthorized use or possession of narcotics, marijuana, hypnotics, sedatives, tranquilizers, depressant or stimulant drugs, hallucinogens, and other similar drugs, chemicals, or substances, considered to be habit forming, or to have a potential for abuse because of their depressant or stimulant effect on the central nervous system or because of their hallucinogenic effect. As an aid in determining what drugs, chemicals, or substances are included within the purview of this subparagraph, see Article 1270, U.S. Navy Regulations, 1948; Title 21, U.S. Code, Chapters 6 and 9; Public Law 89–74, July 15, 1965 (Drug Abuse Control Amendments of 1965); Title 21, CFR, Part 166, 31 F.R. 1071, 1074, 4679; and such other regulations dealing with these subjects as may from time to time be promulgated by the Secretary of Health, Education, and Welfare, and published in the FEDERAL REGISTER and the Code of Federal Regulations.

(5) An established pattern showing dishonorable failure to pay just debts.

(6) An established pattern showing dishonorable failure to contribute adequate support to dependents, or failure to comply with orders, decrees, or judgments of a civil court concerning support of dependents.

(7) Unsanitary habits. This provision includes, but is not limited to, the occurrence of repeated venereal disease infections during the member's current enlistment or period of service. When reporting repeated venereal disease infections, indicate the date of each admission and the specific nature of the infection. See Department of the Navy General Order No. 18, and SECNAV Instruction 6222.1 or revisions thereof.

(c) *Counseling.* Action with a view to discharging a member as unfit for any of the reasons set forth in paragraph (b) (2), (3), (5), (6), and (7) of this section, will normally not be initiated unless the member has previously been afforded a reasonable opportunity to overcome his deficiencies. When it is determined that a member may come within the purview of these specific categories, the member shall be notified of his deficiencies and he shall be counseled concerning them. A brief summary of all counseling measures taken in compliance with this subparagraph shall be recorded on page 11 of the member's service record book. If no improvement is forthcoming within a reasonable time, the member should then be processed for the appropriate type of discharge. Failure on the part of a member to receive or understand the counseling prescribed herein may be considered by discharge boards and Discharge Authorities, along with all other factors in the case, in determining whether or not a discharge is appropriate, and, if so, the type and character of discharge to be awarded. However, in no event shall the failure of the member to receive or understand such counseling be considered a defense in an administrative discharge proceeding or a bar thereto.

(d) *Investigation.* Before recommending a member for discharge by reason of unfitness, the commanding officer or officer in charge shall investigate or cause each case to be investigated. The circumstances, facts, and offenses shall be substantiated by entries or documents from the member's service records, and/or other pertinent information, and the original or copies thereof shall be enclosed with the recommendation.

(e) *Service record entry.* At the time of submission of a recommendation for discharge, an entry will be made on page 11 of the member's service record book showing this fact and the reasons therefor. If the recommendation for discharge is finally disapproved, an entry to this effect will likewise be recorded on page 11 of the member's service record book.

(f) *Referral to board.* Except as provided in §§ 730.54(c) and 730.74(b), all recommendations for a member's discharge by reason of unfitness will be referred to an administrative discharge board convened and conducted in accordance with § 730.73.

(g) *Advice and according of rights.* A member recommended for an undesirable discharge by reason of unfitness will be advised in accordance with § 730.72, and will be accorded those rights prescribed by §§ 730.54, 730.72, and 730.73. The nature of the advice given and the method by which it is transmitted to a respondent, and the nature of the rights to be accorded a respondent, will, under the applicable provisions of this subpart, depend upon whether or not the respondent is on active duty, whether or not the respondent is under military control, the extent to which a respondent effectively waives his rights, and whether or not the respondent requests discharge for the good of the service.

(h) *Report of board and action thereon.* Where an administrative discharge board is held, the report of the board will be submitted to the convening authority thereof in accordance with § 730.73.

Upon receipt of the board's report, the convening authority will take the following action thereon:

(1) If the convening authority is not the appropriate Discharge Authority, he will forward the record of the case, including the report of the board and his recommendations thereon, to the Marine commander next in the chain of command exercising general court-martial jurisdiction, or to the Commandant of the Marine Corps (Code DK), as appropriate, for disposition.

(2) If the convening authority is the appropriate Discharge Authority, he will take one of the actions permitted by § 730.73(i)(2).

(i) *Action without board proceedings.* Where no administrative discharge board is held because of the applicability of any of the provisions of §§ 730.54(c) and 730.74(b), the authority empowered to convene an administrative discharge board, and to whom the case has been submitted, will take the following action thereon:

(1) If such authority is not the appropriate Discharge Authority, he will forward the entire record of the case, together with his recommendations thereon, to the appropriate Discharge Authority indicated in § 730.66(h)(1) for final disposition.

(2) If such authority is the appropriate Discharge Authority, he will take one of the following actions, regardless of the recommendations of the member's commanding officer or officer in charge (see § 730.51(r)):

(i) Direct the member's retention in the service.

(ii) Approve the member's discharge, specifying the type and bases thereof, but suspending the execution of the discharge for a specified period of probation in accordance with § 730.75.

(iii) Direct the member's discharge, specifying the type and bases thereof.

(j) *Transfer.* Members serving outside the continental United States shall be transferred to the nearest Marine Corps activity in the continental United States by the Marine commander exercising general court-martial jurisdiction who directs or recommends the discharge. Except where the Discharge Authority is the Commandant of the Marine Corps or the Secretary of the Navy, the authority for discharge will be included in the orders transferring the member to the continental United States. Commanders of activities outside the continental United States, not under the command of a Marine commander exercising general court-martial jurisdiction other than the Commandant of the Marine Corps, will transfer to the nearest Marine Corps activity in the continental United States those members who have been recommended for discharge by an administrative discharge board convened under the provisions of § 730.73, or those members who have been recommended for administrative discharge by their commanding officer or officer in charge and have waived, in writing, the right to have their case heard by an administrative discharge board. Such commanders, in their endorsement of the proceedings of the board, or in the recommendation for the member's discharge, will indicate the activity in the continental United States to which the member is being transferred.

(k) *Forwarding for review.* When final action has been taken on any report or recommendation by a Discharge Authority other than the Secretary of the Navy or the Commandant of the Marine Corps, the Discharge Authority will forward all papers pertaining to the case to the Commandant of the Marine Corps (Code DK) for review. See § 730.54(h).

(l) *Action in cases of previous Background Investigation.* For action to be taken before the execution of approved discharges authorized under the provisions of §§ 730.66 and 730.67, see § 730.51(p).

§ 730.67 Discharge by reason of misconduct.

(a) *Authorization.* The Commandant of the Marine Corps, and all Marine commanders exercising general court-martial jurisdiction, may authorize or direct the retention in the service or the discharge of members by reason of misconduct, except that cases involving procurement of a fraudulent enlistment, induction, or period of active service through any deliberate material misrepresentation, omission, or concealment of preservice homosexual act(s) or tendencies will be referred to the Commandant of the Marine Corps (Code DK) for disposition.

(b) *Report.* The commanding officer or officer in charge shall make a report of suspected or apparent misconduct by a member for any of the following reasons, and shall include in the report all relevant and material documentary evidence pertaining to the case, and his specific recommendation for discharge or for retention in the service of the member concerned:

(1) When a continuous unauthorized absence of more than 1 year has been established by official records, but the execution of a finally approved punitive discharge of the member has not been authorized by competent authority. See § 730.54(c)(1) where the member is beyond military control. Where the member has returned or been returned to military control, see § 730.51(m)–(o)), if applicable.

(2) Procurement of a fraudulent enlistment, induction, or period of active service through any deliberate material misrepresentation, including the omission or concealment of facts which, if known at the time thereof, would have reasonably been expected to have precluded, postponed, or otherwise affected the member's eligibility for enlistment or induction. MCO P1100.61, Recruiting Service Manual, Part B, contains pertinent provisions. The enlistment of a minor with false representation as to age, or without proper consent from his parents or legal guardians, will not, by itself, be considered as a fraudulent enlistment. See § 730.64(g). The procurement of a fraudulent enlistment, induction or period of active service may be based upon, but is not limited to, any deliberate material misrepresentation of or concerning the following:

(i) A police record, or conviction by civil court.

(ii) A record as a juvenile delinquent, wayward minor, or youthful offender. See, however, § 730.61(b)(3). Except as otherwise provided in § 730.61(b), and in addition to any other action required by the provisions of this subpart, in a case involving the procurement of a fraudulent enlistment, induction, or period of active service through a deliberate material misrepresentation of or concerning a record as a juvenile delinquent, wayward minor, or youthful offender, the following action will be taken:

(*a*) All the relevant facts pertaining to the case will be ascertained by establishing liaison with the civil authorities in order to determine the actual offense(s) committed by the member; all the circumstances in the case; and the final disposition by juvenile or youthful offender courts (when permitted by local law), including the actual period of confinement served, and whether civil probation exists.

(*b*) Any other information deemed relevant to an evaluation of the member's case will be obtained.

(*c*) An evaluation of: The facts obtained, the member's statement, the character of the member's military service rendered, and the provisions of § 730.51(c), will be made to determine whether the member's discharge or retention should be directed.

(*d*) If discharge is deemed proper in these cases, it should normally be under honorable conditions, unless the particular circumstances of the case clearly warrant a less favorable type of discharge.

(iii) Previous service in any branch of the Armed Forces.

(iv) Physical defects.

(v) Marriage or dependents. See, however, § 730.61(b)(2).

(vi) Preservice homosexual act(s) or tendencies. SECNAV Instruction 1900.9 series contains controlling policy and provides for additional action required in homosexual cases.

(3) Conviction by civil authorities (foreign or domestic), or action taken which is tantamount to a finding of guilty of an offense for which the maximum penalty under the Uniform Code of Military Justice is death or confinement in excess of 1 year; or which involves moral turpitude; or where the offender is adjudged a juvenile delinquent, wayward minor, or youthful offender or is placed on probation or punished in any way as the result of an offense involving moral turpitude. If the offense is not listed in the Manual for Court-Martial Table of Maximum Punishments, or is not closely related to an offense listed therein, the maximum punishment authorized by the U.S. Code, or the District of Columbia Code, whichever is lesser, applies.

(i) A member subject to administrative separation pursuant to the provisions of paragraph (b)(3) of this sec-

tion may be processed therefor notwithstanding the fact that he has filed an appeal or has stated his intention to do so. However, no approved administrative separation from the naval service, which is based solely or in part upon a conviction, or upon a juvenile, wayward minor, or youthful offender adjudication by civil authorities, will, during the period an appeal from such conviction or adjudication is actually pending, or is reasonably expected to be pending, be executed without the prior express approval and direction of the Secretary of the Navy. Requests should not be made to the Secretary of the Navy for his approval and direction of the execution of an administrative discharge under these circumstances, except in those unusual cases where such action is essential in the interests of justice, discipline, and proper administration within the naval service. For example, such requests should be made to the Secretary of the Navy when the member's current period of obligated active or inactive service will expire before final action on the member's appeal can reasonably be expected, or in a case where it appears that the member's continued presence with the command is considered inimical to the health, morals, or welfare of the other members of the command.

(ii) In each case where a member is recommended for discharge by reason of misconduct because of the applicability of the provisions of paragraph (b)(3) of this section, the permanent record will contain, where available, a copy of the court order or order of commitment, or the certificate of the judge or the clerk of the court, advising as to the charge(s) of which the member was convicted, the sentence adjudged, and the disposition of the appeal, if any. Additionally, where available, a copy of the arresting officer's report and/or a copy of the presentence report of the probation officer, if any, will be included. Extreme care must be taken to insure that the particular offense(s) of which the member was convicted by civil authorities and the circumstances of their commission, are clearly and specifically identified and described so that the maximum permissible penalty therefor under the Uniform Code of Military Justice (10 U.S.C. 801–940), or the U.S. Code, or the District of Columbia Code, as applicable, can be ascertained. In making this determination, neither the name or label attached to an offense by civil authorities, nor the characterization of the nature of the crime (i.e. a crime involving moral turpitude, a felony or misdemeanor), by civil authorities is controlling.

(iii) As used in paragraph (b)(3) of this section, the term "convicted (or a conviction) by civil authorities" includes not only final convictions by civilian courts of record, but all final determinations by civil authorities (including those made by a magistrate, a justice of the peace, a municipal court, or other inferior courts) of criminality on the part of a member, and those cases in which civil authorities have adjudged a member a juvenile delinquent, a youthful offender or a wayward minor. It is immaterial whether or not, as a result thereof, probation is imposed; any sentence is executed; execution of a sentence is deferred, delayed or suspended; or whether, by local law, custom or procedure, charges are dismissed or expunged from civil records after payment of a fine, completion of a term in jail or a penitentiary, or completion of a period of probation.

(iv) No member will be administratively discharged under conditions other than honorable if the grounds for such discharge are based wholly or in part upon acts or omissions for which the member has been previously tried in civil court resulting in acquittal or action having the effect thereof, except where such acquittal or equivalent disposition is based on a legal technicality not going to the merits. (See § 730.54(e)(2).)

(v) In cases involving the conviction of members by foreign civil authorities, see SECNAV Instruction 5820.4B, or revisions thereof, particularly Part IV, paragraph 5, on page 12 thereof, which prohibits the discharge of members confined in foreign prisons until the completion of their term of imprisonment and their return to the United States, except that in unusual cases such discharges may be executed upon the express authorization of the Secretary of the Navy. Despite the foregoing, such members may be processed for discharge, and their discharge approved, although not executed, at any time subsequent to their conviction.

(c) *Applicable provisions.* The instructions and procedures set forth in § 730.66(d)–(l) shall also govern the disposition of cases involving members considered for discharge by reason of misconduct.

§ 730.68 Discharge adjudged by sentence of court-martial.

(a) *Definition.* The word "discharge" or "discharges", as used in this section, refers to punitive (i.e. dishonorable and bad conduct) discharges adjudged by sentences of courts-martial.

(b) *Policy.* It has been, and continues to be, the Navy Department's policy that convening and reviewing authorities should approve discharges only in those cases where members' records and conduct show conclusively that they are not fit for retention, and where retention is clearly not in the Government's interest.

(c) *Manual for Courts-Martial.* The appropriateness of a punitive discharge as the sentence, or as part of the sentence, of a court-martial is discussed in the Manual for Courts-Martial, United States, 1951, subparagraphs 76a (6) and (7).

(d) *Synopsis.* A convening authority, in those cases where he approves a punitive discharge, will include in his action a brief synopsis of the disciplinary features, as well as favorable matters, of the accused's service during his current enlistment, as reflected in the accused's service record book.

(e) *Copy of synopsis for accused.* Prior to taking his action, however, the convening authority will furnish a copy of the foregoing synopsis to the accused or his counsel, as appropriate, for such statement in rebuttal or explanation as the accused may desire to make.

(f) *Completion of appellate review.* A punitive discharge will be effected only after appellate review of the proceedings, and clemency action, in accordance with current directives, have been completed. In those cases where confinement is adjudged in addition to a punitive discharge, the discharge shall not be effected until the completion of appellate review or completion of the sentence of confinement, whichever is later. An exception to the foregoing may be made where the period of confinement is to be served in a Federal penal institution. In such cases the discharge may be effected upon the completion of appellate review without waiting until the sentence of confinement is completed. See SECNAV Instruction 5815.3A, or revisions thereof (§ 719.205 of this chapter).

(g) *Transfer from outside the continental United States.* Except when the discharge has been suspended for a stated number of months to permit the person to continue in the service after serving satisfactorily during a probationary period, the transfer of personnel sentenced to discharge (including those to be discharged on account of vacation of suspended sentence) who are serving outside the continental limits of the United States will be governed by the following instructions:

(1) When an enlisted person who has been sentenced to discharge is serving outside the continental limits of the United States, whether it is ashore or on board ship, transfer will be made to the Marine Corps activity within the continental limits of the United States nearest the port of debarkation, for retention or redesignation of a place of temporary custody or confinement in accordance with current directives.

(2) Transfer to the continental limits of the United States in case of a person sentenced to discharge will not be effected until review has been completed by the officer exercising general court-martial jurisdiction, the promulgating order issued, and appropriate entries made in the service record book to show the action taken by the officer exercising general court-martial jurisdiction.

(3) Transfer to the continental limits of the United States, in those cases where, pursuant to the Manual of the Judge Advocate General, the record of trial is submitted directly to the Office of the Judge Advocate General without review by an officer exercising general court-martial jurisdiction, will be effected after appropriate entries have been made in the service record book to show the action taken by the convening authority.

(4) When transfer to the United States is directed, report of same shall be made to the Judge Advocate General of the Navy in accordance with the Manual for Courts-Martial, United States, 1951, paragraph 96, with copy to the Commandant of the Marine Corps

(Code DK), indicating the type of court-martial, sentence as approved at the time of transfer, the name of the activity to which the individual is transferred, and the estimated date of reporting to the new activity. Upon the arrival of such personnel at the new activity, the commander of that activity will immediately advise the Judge Advocate General of the Navy by message, airmail letter, or speedletter, with copy to the Commandant of the Marine Corps (Code DK). When a different activity or Naval Disciplinary Command is redesignated as the place of temporary custody or confinement, this fact will be set forth in the report, and the date of transfer to that activity or command will be stated.

(5) No punitive discharge is to be effected outside the continental limits of the United States, except in accordance with instructions of the Secretary of the Navy or the Commandant of the Marine Corps.

(h) *Disposition of dischargee serving in continental United States.* When an enlisted person serving at a station within the continental limits of the United States has been sentenced to discharge, and the discharge has not been suspended for a stated number of months to permit the person to continue in the service after satisfactorily serving during a probationary period, the individual will be retained at the place of trial or transferred to another activity, or a Naval Disciplinary Command, in accordance with periodic directives of the Commandant of the Marine Corps and the Bureau of Naval Personnel governing designation of places of confinement. When an individual is transferred to another station or to a Naval Disciplinary Command, report of the transfer will be made to the Judge Advocate General of the Navy, with copy to the Commandant of the Marine Corps (Code DK). (See Manual for Courts-Martial, United States, 1951, paragraph 96.)

(i) *Transfer to Naval Disciplinary Command.* When an enlisted person serving within the United States, attached to a vessel or organization destined for transfer to foreign duty, has been sentenced to discharge and the discharge has not been suspended for a stated number of months to permit the person to continue in the service after serving satisfactorily during a probationary period, he shall be transferred to a Naval Disciplinary Command if he meets the established criteria for transfer to such a command; otherwise he shall be transferred to the Marine Corps activity nearest to the port of departure prior to sailing. In such cases, a report of transfer will be made as set forth in paragraph (h) of this section.

(j) *Transfer of enlisted woman.* An enlisted woman who has been sentenced to discharge will be transferred to the nearest post, station, or barracks where women are serving.

(k) *Suspension and vacation of suspension.* Where execution of a portion of a sentence which adjudges a discharge is suspended, subject to a probationary period, the suspension may be vacated pursuant to the procedure set forth in paragraph 97b, Manual for Courts-Martial, United States, 1951. Commanders are directed to give careful consideration to reports of offenses committed by personnel serving in such status, and to undertake proceedings for the vacation of suspension of the sentence only where it is established by the record that such action is appropriate and in the best interest of the Marine Corps. For a new offense the commander may: (1) Award nonjudicial punishment, or recommend or direct trial by court-martial, (2) initiate procedure for vacation of suspension, or (3) both.

(l) *Warrant officer cases.* A chief warrant officer may be dismissed from the service and a warrant officer may be dishonorably discharged from the service, pursuant to the sentence of a general court-martial. In time of war, the President may order the dismissal of such officers.

§ 730.69 Discharge by reason of security.

Only the Commandant of the Marine Corps or the Secretary of the Navy, may direct the discharge of a member with an honorable, general, or undesirable discharge, for reason of security. See § 730.51(b)(11) and Part 729 of this chapter.

§ 730.70 Request for discharge for the good of the service.

(a) *Processing of requests.* All requests for discharge for the good of the service in cases involving security matters; or sexual perversion; or procurement of a fraudulent enlistment, induction, or period of active service through any deliberate material misrepresentation, omission, or concealment of preservice homosexual act(s) or tendencies; will be referred to the Commandant of the Marine Corps (Code DK) for disposition. In other cases, the Commandant of the Marine Corps, or any Marine commander exercising general court-martial jurisdiction, may, without administrative discharge board action, authorize or direct the discharge, with an undesirable discharge, of any member who submits a request for discharge for the good of the service (see § 730.51(b)(10)). Such requests may be submitted and processed where the member's conduct renders him triable by court-martial for an offense punishable by a punitive discharge (see Manual for Courts-Martial, 1951, paragraph 127c, sections A and B; and Uniform Code of Military Justice, articles 77–134); provided that the member has been afforded the opportunity to consult with counsel, and the member certifies in writing his understanding that he will receive a discharge under other than honorable conditions, that he understands the adverse nature of such a discharge, and that he understands the possible consequences thereof. Notwithstanding a member's submission of a request for discharge for the good of the service, the appropriate Discharge Authority may take any of the different courses of action indicated in § 730.51(k), e.g., refer the member concerned to an administrative discharge board.

(b) *Advice.* For the advice to be given a member who requests discharge for the good of the service, and for the recording of such advice, see § 730.72(a) (1) and (3).

(c) *Suspension.* A discharge approved as a result of a member's request for discharge for the good of the service may be suspended. See § 730.75.

(d) *Withdrawal of request.* Where a member submits a request for discharge for the good of the service and subsequently withdraws his request before its approval by the Discharge Authority, the provisions of § 730.51(k) and (o)(2) apply. In such cases, the member may be processed for appropriate punitive or administrative action based upon the acts or omissions upon which his original request for discharge was based, or for other appropriate reasons, as if he had never submitted a request for discharge for the good of the service.

(e) *Types of discharge.* Notwithstanding a member's written acknowledgement that he will receive an undesirable discharge as a result of his submission of a request for discharge for the good of the service, the Discharge Authority, or higher authority, may direct the member's separation with either an honorable or general discharge, as warranted by the member's military record.

(f) *Contents of request.* A member who submits a request for discharge for the good of the service will complete such request by signed statement in tenor as follows, witnessed by at least one witness:

> Article 31, UCMJ, having been read and explained to me, and with full understanding of my rights, I hereby request discharge for the good of the service. This request is based on having been informed that my conduct rendered me triable by court-martial for the following offense(s) in violation of the Uniform Code of Military Justice, the maximum permissible punishment for which, upon conviction, includes a (dishonorable) (bad-conduct) discharge:
>
> ---
> ---
> ---.
>
> Prior to submitting this request I have been afforded the opportunity to consult with counsel. (and I have consulted with the following counsel and I am entirely satisfied with his advice:
>
> ---
> ---.)
>
> I understand that my discharge from the naval service, effected by acceptance of this request, will be with an undesirable discharge, which will be issued without referral to or consideration of my case by an administrative discharge board. I understand that an undesirable discharge is a discharge under other than honorable conditions and that as a result of such discharge I may be deprived of virtually all rights as a veteran under both Federal and State legislation, and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of the discharge received therefrom may have a bearing.

The signatures of the witnesses should follow the signature of the member. Military witnesses should be identified by

name, grade, service number, organization, and Armed Force. Civilian witnesses should be identified by name and address. Where one of the witnesses is the member's counsel, he should be identified as such.

(g) *Forwarding of papers.* For the forwarding of all papers pertaining to the case when final action has been taken thereon by a Discharge Authority other than the Commandant of the Marine Corps or the Secretary of the Navy, see § 730.54(h).

(h) *Overseas cases.* For the action to be taken in cases involving members serving outside the continental United States, see § 730.66(j).

§ 730.71 Discharges of Security Forces personnel, Pacific Ocean Area.

The Commanding General, Fleet Marine Force, Pacific, shall exercise such administrative control over matters relating to administrative discharges involving enlisted members of the Marine Corps Security Forces, Pacific Ocean Area, as is otherwise delegated to all Marine Commanders exercising general court-martial jurisdiction in accordance with §§ 730.100 to 730.126.

§ 730.72 Giving and recording of advice to a respondent, both when the respondent is and when he is not under military control.

(a) *Requirements.* Whether or not a respondent is under military control, no administrative discharge under conditions other than honorable, and, in the case of a member with 8 or more years of continuous active duty no administrative discharge by reason of unsuitability, will be effected unless the respondent is tendered the advice prescribed below:

(1) *Advice to respondent under military control.* In each case where a member on active duty and under military control is recommended for an undesirable discharge, or has 8 or more years of continuous active military service and is recommended for a discharge by reason of unsuitability, or requests a discharge for the good of the service within the purview of § 730.70, the officer empowered to convene an administrative discharge board having jurisdiction over the member will take or cause to be taken the following action:

(i) Notify the member, in writing, of the proposed discharge action and the general and specific bases therefor.

(ii) Advise the member of the purpose and scope of the Navy Discharge Review Board and the Board for Correction of Naval Records. See § 730.50(c)(2).

(iii) Advise the member that he has the following rights, which will, unless he waives such rights in writing, be afforded him: To present to and have his case considered by an administrative discharge board of not less than three officers, at least one of whom will be a field grade officer, and composed in accordance with § 730.73(b); to appear in person before such board, subject to his availability; and to be represented by military counsel, who will be a lawyer within the meaning of article 27(b)(1) of the Uniform Code of Military Justice unless appropriate authority certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel. Advise the member that if he does not waive a hearing before an administrative discharge board, and upon the hearing of his case before such board, he will be entitled to those rights set forth in § 730.73(c)(2) through (5), (12), (14), (15), (18); (f), and (g). The advice as to the respondent's rights contained in the cited paragraphs of § 730.73 may be given in a summarized form. Further advise the member that before waiving any of these rights, in writing, it would be to his advantage to consult with counsel and that he will be given the opportunity to do so.

(iv) Advise the member who indicates that he wishes to submit a request for discharge for the good of the service, pursuant to § 730.70, that, if such request is accepted, he may receive a discharge under other than honorable conditions without administrative discharge board action, and further advise him of the adverse nature of such discharge and the possible consequences thereof. Before a member is permitted to actually submit a request for discharge for the good of the service, he will be advised that it would be to his advantage to consult with counsel and he will be given the opportunity to do so.

(2) *Advice to respondent not under military control.* In each case where a member on active duty is recommended for an undesirable discharge, or has 8 or more years of continuous active military service and is recommended for a discharge by reason of unsuitability, and the member is not under military control because of either his continuous established unauthorized absence of more than 1 year, or because of his confinement by civil authorities, the officer empowered to convene an administrative discharge board having jurisdiction over the member will take or cause to be taken the following action: (Where the member is not under military control because of the continuous established unauthorized absence of more than 1 year, the action prescribed by paragraph (a)(2)(ii) of this section will ordinarily be taken or caused to be taken by the Commandant of the Marine Corps. See § 730.54(c)(1).)

(i) Where the member is not under military control and is unable to appear before an administrative discharge board because of his confinement by civil authorities, advise the member, in writing and by registered mail sent to the civil institution where the member is confined:

(*a*) Of the proposed discharge action and the general and specific bases therefor.

(*b*) Of the type of discharge certificate that may be issued.

(*c*) Of the purpose and scope of the Navy Discharge Review Board and the Board for Correction of Naval Records. See § 730.50(c)(2).

(*d*) Of the fact that administrative discharge action has been suspended to give him the opportunity to exercise the following rights: To request the appointment of a military counsel, who will be a lawyer within the meaning of article 27(b)(1) of the Uniform Code of Military Justice unless appropriate authority certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel, and to have such counsel represent him, and in his absence, present his case before an administrative discharge board; to submit statements in his own behalf; and to waive the foregoing rights, either in writing, or by the failure to reply to the letter of notification within the prescribed time limit specified therein.

(ii) Subject to the provisions of Title 10, U.S. Code 1163, where the member is not under military control by reason of a continuous established unauthorized absence of more than 1 year, advise the member, in writing and by registered mail sent to the current home of record address of the member, or the current address of his next of kin as reflected in the member's service records, as appropriate:

(*a*) Of the proposed discharge action and the general and specific bases therefor.

(*b*) Of the effective date of the proposed discharge action.

(*c*) Of the type of discharge certificate that may be issued.

(*d*) Of the purpose and scope of the Navy Discharge Review Board and the Board for Correction of Naval Records. See § 730.50(c)(2).

(3) *Recording advice given respondent under military control.* In each case where a member on active duty and under military control is recommended for an undesirable discharge, or has 8 or more years of continuous active military service and is recommended for discharge by reason of unsuitability, or requests discharge for the good of the service within the purview of § 730.70, and after the advice prescribed in paragraph (a)(1) of this section has been given and the opportunity to consult with counsel has been afforded, the permanent record will contain either the following, or in lieu thereof, a certification by the officer taking the action prescribed by paragraph (a)(1) of this section that such action has been accomplished:

(i) A copy of the written notification to the member of the general and specific bases for the proposed discharge action.

(ii) The member's written acknowledgement of the advice given him of the purpose and scope of the Navy Discharge Review Board and the Board for Correction of Naval Records.

(iii) The member's written acknowledgement that he was given and understands the advice prescribed in paragraph (a)(1)(iii) and/or (iv) of this section.

(iv) The member's written waiver of any or all of the rights prescribed in paragraph (a)(1)(iii) of this section, and/or the member's written request for discharge for the good of the service, together with the member's

written acknowledgement that he was afforded the opportunity to consult with counsel prior to effecting such waivers and/or request for discharge. The member's written acknowledgement will include the fact that he either chose not to consult with counsel prior to effecting such waivers and/or request for discharge, or, if he did so consult with counsel, the specific identity of the counsel and his legal qualifications.

(4) *Recording advice given respondent not under military control.* In each case where a member on active duty is recommended for an undesirable discharge, or has 8 or more years of continuous active military duty and is recommended for a discharge by reason of unsuitability, and the member is not under military control because of his continuous established unauthorized absence of more than 1 year, or because of his confinement by civil authorities, and after the advice prescribed in paragraph (a)(2) of this section has been given, the permanent record will contain the following:

(i) A certified copy of the registered letter or letters sent to the member pursuant to paragraph (a)(2) (i) or (ii) of this section, including a certification as to the date any letter was mailed and the address to which it was sent.

(ii) The complete reply or replies of the member and/or his next of kin to the registered letter or letters sent pursuant to paragraph (a)(2) (i) or (ii) of this section, or a certification that no reply from the member and/or his next of kin was received by a specified date.

(iii) Evidence that the registered letter or letters sent pursuant to paragraph (a)(2) (i) or (ii) of this section was delivered, or was not delivered, or was undeliverable.

(iv) The member's written waiver, if any, of any or all of his rights prescribed by paragraph (a)(2)(i)(*d*) of this section.

(5) *Advice to a respondent who is a member of the Marine Corps Reserve on inactive duty.* (i) In each case where a Reservist on inactive duty is recommended for an undesirable discharge, or where such Reservist has 8 or more years of continuous active duty and is recommended for discharge by reason of unsuitability, the officer empowered to convene an administrative discharge board having jurisdiction over the member will take or cause to be taken the following action, in the form prescribed in paragraph (a)(5)(ii) of this section:

(*a*) Notify the member, in writing, of the proposed discharge action, the general and specific bases therefor, and the type of discharge certificate that may be issued.

(*b*) Advise the member of the purpose and scope of the Navy Discharge Review Board and the Board for Correction of Naval Records. See § 730.50(c)(2).

(*c*) Advise the member that if he is reasonably available to appear before an administrative discharge board, he has the following rights, which will, unless he waives such rights in writing, be afforded him: To present to and have his case considered by an administrative discharge board of not less than three officers, at least one of whom will be a field grade officer, and composed in accordance with § 730.73(b); to appear in person before such board, subject to his availability; and to be represented by civilian counsel at no expense to the Government, or to be represented by military counsel, who will be a lawyer within the meaning of article 27(b)(1) of the Uniform Code of Military Justice, unless appropriate authority certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel.

NOTE: Despite the fact that military counsel who is a lawyer within the meaning of article 27(b)(1), UCMJ, will not normally be on active duty within a reserve unit, the availability of such counsel must, nevertheless, be determined in each case in accordance with the general principles contained in § 730.73(f).

Advise the member that if he does not waive a hearing before an administrative discharge board, and upon the hearing of his case before such board, he will be entitled to those rights set forth in § 730.73(c) (2) through (5), (12), (14), (15), (18); (f), and (g). The advice as to the respondent's rights contained in the cited paragraphs of § 730.73 may be given in a summarized form. Further advise the member that before waiving any of these rights, in writing, it would be to his advantage to consult with counsel and that he will be given the opportunity to do so.

(*d*) Advise the member that if he either fails to reply to the letter of notification and advice within the prescribed time limit specified therein, or if he replies to such letter and does not waive in writing his right to appear in person before an administrative discharge board but, after being notified of the time and place of the meeting of the board, fails to appear, he will be considered to have effectively waived all of his rights before the board and the board will proceed in his absence with the appropriate disposition of his case.

(*e*) Advise the member that if he does choose to appear in person before an administrative discharge board, such appearance will be at no expense to the Government.

(ii) The giving of the notification and advice required by paragraph (a)(5)(i) of this section will be accomplished by the mailing of a registered letter, containing such notification and advice, addressed to the member concerned at the mailing address which the records of the activity mailing the letter indicate as the most recent one furnished by the member as an address at or from which official mail will be received or forwarded to him. In addition to, or under appropriate circumstances in lieu of, a letter so addressed, a registered letter addressed to the member concerned containing this notification and advice may be directed to any of the following:

(*a*) The city, town, or community in which the member has last been reported to be residing, or the post office address apparently nearest his last reported place of residence, or

(*b*) In care of any person whom the member has at any time designated in his service records (i.e., in blocks 16–18 of DD Form 93–1), as a beneficiary or as one to be notified in the event of his serious injury or death, sent to the mailing address which the records of the authority originating the letter indicate as the most recent one furnished by the member concerned for such person, or

(*c*) In care of any institution in which the member has been reported to be hospitalized or confined.

Neither the absence of an indication of delivery, nor the return as undeliverable, of a registered letter addressed as outlined above, will negate the legal efficacy of such letter as the notification and advice required by paragraph (a)(5)(i) of this section to be given to the member concerned. It is the responsibility of each member of the Marine Corps Reserve to ensure that the records pertaining to him accurately and currently reflect a mailing address at which he can be reached.

(6) *Recording advice given to a respondent who is a member of the Marine Corps Reserve on inactive duty.* In each case where a Reservist on inactive duty is recommended for an undesirable discharge, or where such Reservist has 8 or more years of continuous active duty and is recommended for discharge by reason of unsuitability, and after the notification and advice prescribed by paragraph (a)(5) of this section has been given and the opportunity to consult with counsel has been afforded, the permanent record will contain the following:

(i) A certified copy of the registered letter or letters sent to the member pursuant to paragraph (a)(5) of this section, including a certification as to the date each letter was mailed and the address to which it was sent.

(ii) The complete reply or replies of the member and/or others acting on his behalf to any registered letter sent to him pursuant to paragraph (a)(5) of this section, or a certification that no reply from the member and/or others acting on his behalf was received by a specified date.

(iii) Evidence that any registered letter was delivered, or was not delivered or was undeliverable.

(iv) Evidence that a respondent, who did not waive, in writing, his right to appear before an administrative discharge board, after being notified of the time and place of the meeting of the board, failed to appear. In this event, all the known circumstances relating to such nonappearance should be reflected.

(v) The member's written waiver of any or all of his rights prescribed by paragraph (a)(5)(i)(*c*), together with the member's written acknowledgment that he was afforded the opportunity to consult with counsel prior to effecting such waivers, or a certification reflecting that such opportunity was afforded the member. Certification will be made of the fact that the member chose not to con-

sult with counsel prior to effecting such waivers, or if he did so consult with counsel, the specific identity of the counsel and his legal qualifications.

(b) *Member's refusal.* Should any member affirmatively refuse to either request or waive his rights, and persist in such refusal, an entry in explanation thereof will be made in the record of the case, and the member's case will be disposed of as if he had requested all of his applicable rights.

§ 730.73 Administrative discharge boards.

(a) *Convening authorities.* An administrative discharge board, as required by this subpart, shall be convened by: (1) any Marine commander exercising general court-martial jurisdiction; (2) any director of a Marine Corps District; (3) any commanding officer of a Marine Barracks; or (4) any subordinate commanding officer or officer in charge when specifically authorized to do so by a superior authority who is a Marine commander exercising general court-martial jurisdiction.

When a board is convened under delegated authority, as authorized in this paragraph, the order appointing the board will contain specific reference to the source of such delegated authority, and the recommendations of the member's commanding officer or officer in charge, and the report of the board, with the convening authority's recommendation thereon, will be forwarded to the Marine commander exercising general court-martial jurisdiction for appropriate action. See paragraphs (d) and (i)(1) of this section and § 730.66(h)(1).

(b) *Composition.* The voting membership of an administrative discharge board shall be composed of at least three experienced commissioned officers, at least one of whom must be serving in the grade of major/lieutenant commander or higher.

(1) A nonvoting recorder will be appointed to each administrative discharge board. An assistant recorder may be appointed. The assistant recorder may, under the direction of the recorder, perform any duty or function which the recorder is required or empowered to perform. The recorder's primary responsibility is to exploit all practical sources of information and to bring out all the facts in an impartial manner in order to permit the board to make fully informed findings, opinions (if required by the convening authority), and recommendations concerning the respondent. The recorder and assistant recorder should be experienced officers and may be warrant officers or commissioned officers. The recorder and/or the assistant recorder may be a lawyer within the meaning of article 27(b)(1), UCMJ; however, where the respondent is represented by counsel, neither the recorder nor the assistant recorder will possess any greater legal qualifications than those possessed by the respondent's counsel. The recorder is responsible for insuring that the board is presented only such materials and documents which may properly be considered by it. The recorder is also responsible for insuring that the board is presented all testimony, materials, and documents which are necessary for it to arrive at such findings, opinions (if required by the convening authority), and recommendations, as will permit the Discharge Authority to make a proper disposition of the case. The recorder will conduct a preliminary review of all available evidence, screening out improper matter, and obtaining such additional evidence as appears necessary. See paragraph (c)(13) of this section. The recorder will arrange for the time, date, and place of the hearing after consulting with the chairman of the board and the counsel for the respondent. The recorder will also arrange for the attendance at the hearing of all material witnesses, except those witnesses whose attendance is arranged by the respondent. See (c)(14) of this section.

(i) At the hearing, the recorder will conduct the direct examination of all witnesses, except those requested or called by the respondent. The recorder will not participate in the closed sessions of the board or in the determination of the board's findings, opinions (if any), and recommendations.

(ii) Under the direction of the chairman, the recorder will prepare or cause to be prepared the record of the board's proceedings. The convening authority of the board may appoint a reporter or provide other clerical assistance for the purpose of assisting the recorder in preparing the record. Normally, a summary of the testimony of witnesses personally appearing before the board will suffice. The chairman or convening authority may, at their discretion, direct the preparation of a verbatim or partially verbatim record.

(2) When the respondent is a Woman Marine, the voting membership of the board shall consist of at least one Woman Marine officer.

(3) When the respondent is a member of the Marine Corps Reserve, the voting membership of the board should include a majority of Marine Corps or Naval Reserve officers, if reasonably available. Should a majority of Reserve officers not be reasonably available, at least one voting member of the board will be a Marine Corps Reserve or Naval Reserve officer. Where the requirement that a majority of the voting membership of the board be Reserve officers cannot be met, the convening authority will certify the reasons therefor in the permanent record.

(4) If any of the above prescribed mandatory requirements for the composition of a board cannot be met in a particular case from the officer personnel locally available, the convening authority will notify the Commandant of the Marine Corps (Code DK) and request appropriate instructions.

(5) The attendance at the proceedings of an administrative discharge board becomes the primary duty of an officer designated as a member. No member shall fail in his attendance at the appointed time unless prevented by illness, or ordered away, or excused by competent authority.

(6) Unless at least three voting members of the board are present, no business other than to declare a recess or adjournment shall be transacted by the board. If it appears that a voting member will be absent for more than a short period of time and his absence reduces the voting membership present to less than three members, the convening authority will be advised and he shall then appoint an additional member(s) to insure that at least three voting members of the board are present during the conduct of all business by the board.

(7) The board may, in the absence of a voting member, proceed only if authorized and directed to do so by the convening authority. Where a new member of the board has been appointed (e.g. following a successful challenge against a former member), or where a member of the board who has been temporarily absent returns, that part of the proceedings conducted in his absence may be, with the concurrence of the counsel for the respondent, orally summarized for him in open session by the recorder, or the summarized record of that part of the proceedings conducted in his absence shall be examined by him and that examination noted in the record. The appointment of a new member, or the temporary absence of a member, does not preclude that member's full participation in the deliberations of the board relating to its findings of fact, opinions (if any) and recommendations.

(c) *Procedure.* The following rules shall govern the procedure to be employed by an administrative discharge board. Where questions as to matters of procedure not covered herein are encountered, such questions will be resolved within the discretion of the board or the convening authority.

(1) *Rules of evidence.* An administrative discharge board functions as an administrative, rather than a judicial, body. Accordingly, in the board's proceedings the strict rules of evidence governing trials by courts-martial are not applicable. The admissibility of evidence is a matter within the discretion of the board. There is a sharp and distinct delineation between the administrative process, which has as its purpose the administrative elimination of unsuitable, unfit, or unqualified service members, and the judicial process, the purpose of which is to establish the guilt or innocence of a member accused of a crime and to administer punishment when appropriate. However, the board may impose reasonable restrictions as to the relevancy, competency, cumulativeness, and materiality of all matters to be considered by the board so as to promote orderly procedure and insure a full and impartial hearing.

(2) *Testimony of witnesses.* The testimony of all witnesses appearing in person before the board may, at the discretion of the convening authority or the chairman, as appropriate, be taken under oath or affirmation, except that the respondent may make an unsworn statement, which may include, but is not limited to, matters concerning the acts or

omissions which form the basis for his being considered for discharge, or in extenuation or mitigation thereof. The respondent may not be cross-examined upon his unsworn statement, however, evidence may be introduced to rebut any statements of fact contained therein. The respondent's unsworn statement may be oral or in writing, or both, and may be made by the respondent or his counsel, or by both of them. The respondent's statement should be factual, not argumentative, in nature. See paragraph (c)(18) of this section pertaining to arguments.

(3) *Explanation of respondent's rights.* At the outset of the proceedings, the board will ascertain whether or not the respondent has been fully advised of and understands all his rights before the board. The assurance of the respondent's counsel in this regard will normally suffice. If the board is not satisfied that the respondent has been so advised, or that he does not fully understand any explanation previously given, the board will clearly explain his rights to him.

(4) *Exercise and waiver of respondent's rights.* The respondent will be given a reasonable opportunity to exercise any and all of his rights before the board. However, the failure of the respondent to exercise or invoke any of his specified rights, after he has been apprised of the same, will not be considered as a bar to the board proceedings, findings, opinions (if any), and recommendations, and such rights will be conclusively presumed to be waived by him.

(5) *Self-incrimination prohibited.* Within the purview of paragraph (g)(3) of this section, no witness, including the respondent, appearing before the board shall be compelled to incriminate himself or to answer any questions the answer to which may tend to incriminate him; nor shall he be compelled to make any statement or produce evidence if the statement or evidence is not material to any matter under investigation and may tend to degrade him. Other than the respondent, any person, whether or not charged with or suspected of an offense, may be called as a witness before the board, whether or not he requests to be a witness. See, however, paragraph (c)(14) of this section as to the authority to compel the attendance of witnesses. If a witness who is subject to the Uniform Code of Military Justice, including the respondent, is accused of, suspected of, or charged with, an offense, he shall, prior to his testifying, be informed of the nature of the offense and shall be advised that he does not have to make any statement or give any testimony regarding the offense and that any statement or testimony given by him may be used as evidence against him in a subsequent trial by court-martial. If the witness is not subject to the Code, the foregoing information and advice should be given, but the phrase "any subsequent trial by court-martial" at the end of the warning should be modified as follows, "any subsequent trial." After being so informed, the right to refrain from testifying regarding the offense of which he is accused, suspected, or charged must be claimed by the witness. Despite assertion of such right, however, the witness may be questioned on matters other than the offense of which he is accused, suspected, or charged. (See paragraph (g)(3) of this section regarding waiver of the privilege against self-incrimination by the respondent.) The question of whether a witness is suspected of an offense and must, therefore, be advised in accordance with Article 31, UCMJ, is one for decision by the board and will depend upon the nature of the matter being considered by the board, the reasonable probability that an offense has been committed, and the reasonable probability that the witness was the offender. If the witness states that the answer to a question might tend to incriminate him, he will not be required to answer the question unless it clearly appears to the board that no answer he might make to the question could have that effect or unless the witness has waived the privilege against self-incrimination. The board shall resolve all reasonable doubt in favor of the witness. Each witness appearing before the board should be advised of the subject matter of the board's inquiry.

(6) *Warning the witness.* The board, in its discretion, may direct a witness not to discuss his testimony with other witnesses or persons who have no official interest in the matter until the board's proceedings are completed. This warning is given to insure that the matter before the board can be fairly heard and to eliminate the possibility that disclosures of the substance of the witness' testimony may influence, however, inadvertently, testimony of the witnesses still to be heard.

(7) *Oaths.* While an oath or affirmation to those persons personally appearing before the board as witnesses is required (except for any unsworn statement of the respondent), and while an oath or affirmation to a challenged member may be administered, no oath or affirmation is required for the members of the board, counsel, the recorder, the assistant recorder, or the reporter, if any. The oath or affirmation to be given a challenged member and to all witnesses will be in accordance with JAG Manual, section 0415, and will be administered by the recorder.

(8) *Authority of the chairman.* The chairman shall preserve order and decide upon matters relating to the routine business of the board. He may grant a continuance and recess, and may adjourn the board to meet at a time and a place most convenient and proper. The chairman's rulings are subject to objection by any voting member of the board. Motions or objections pertaining to any matter other than the admissibility of evidence to be considered by the board, and other than matters relating to continuances, recesses or adjournments, do not require a ruling by the chairman of the board, but should be heard and merely noted in the record for resolution thereof by the Discharge Authority. For example, a contention that a respondent is not subject to an administrative discharge because of the applicability of the provisions of § 730.54(e) will not be ruled upon by the chairman of the board, but will be resolved by the Discharge Authority. Should a voting member object to the chairman's ruling on any matter, a vote shall be taken in closed session and a decision of the majority shall govern. In case of a tie vote, the decision of the chairman shall govern, except as to challenges of members.

(9) *Eliciting further information.* Whenever it appears desirable to the members of the board that additional information be elicited or developed in the interest of clarifying any relevant matter, or otherwise for a proper hearing of the matters before the board, the chairman will so advise the recorder and may direct the calling of a witness, the pursuance of further lines of questioning, or the adducing of other evidence.

(10) *Security matters.* If any matter to be heard by the board requires a security clearance, and individual counsel for the respondent or other participants in the board's proceedings have not been granted such clearance, the convening authority shall be advised thereof; see OPNAV Instruction 5510.1C; and JAG Manual, section 0133b (§ 719.133(b) of this chapter).

(11) *Sessions.* The board may be cleared at any time for deliberation or consultation, including final deliberations, whereupon the respondent, counsel, the recorder, the assistant recorder, and the reporter, if any, will withdraw and only the voting members will be present. The open proceedings of the board will be open to the public unless the convening authority directs otherwise.

(12) *Challenges.* (i) The respondent may challenge any voting member of the board for cause only, e.g. that the member cannot approach the case with an open mind and impartiality. A challenged member will be given the right to make a statement with respect to the challenge. The board will not receive a challenge to more than one member at a time. After disclosing his grounds for challenge, the respondent may examine the member as to his competency to sit in that particular case. This examination may or may not be under oath, at the discretion of the respondent, and may be recorded verbatim or summarized, at the discretion of the chairman. The recorder and other members of the board may cross-examine the challenged member. After such examination and cross-examination, any other evidence bearing on the member's competency to sit may be heard.

(ii) The burden of persuasion in establishing the challenge is on the respondent. The challenged member withdraws when the board is cleared to determine the challenge. A majority vote in favor of sustaining the challenge, or a tie vote, disqualifies the challenged member. A member so disqualified shall be excused forthwith from further participation in the case. The board will decide the challenge according to a preponderance of the evidence. If a sustained challenge reduces the number of voting members actually present to less than three, the convening authority will be so informed, and the board will adjourn until the convening authority appoints such addi-

tional voting members as are necessary to bring the number of voting members actually present to at least three. See paragraph (b)(7) of this section. If the board membership actually present is not thereby reduced below three, the board will proceed with the hearing.

(13) *Excluded material and documents.* It is the responsibility of the recorder to insure that the board is presented only those materials and documents which may be properly considered by it. The following materials and documents will neither be provided to nor considered by administrative discharge boards in the evaluation of cases referred to them:

(i) Information concerning polygraph examinations, whether of the respondent or of others, including the results of such examinations, or the fact that the respondent may have declined such examination, unless this information is placed in issue before the board by the respondent. In the latter case, the board may make such inquiry into the polygraph examination as it deems necessary, including, but not limited to, the following:

(*a*) Requesting the agency which administered the examination, e.g., the ONI, or the Provost Marshal, to furnish a written report concerning the examination and the circumstances under which it was administered.

(*b*) Where circumstances of the examination are placed in dispute, the board may request the appearance of the polygraph examiner to provide testimony concerning the administration of the examination, his background and experience, his interpretation of the results of the examination, or such other information concerning the examination which the board may desire.

(ii) Contents of ONI or similar investigative reports which cannot be made available to the respondent or his counsel. Where an ONI or similar investigative report is received by the convening authority of an administrative discharge board, and the report contains matter which cannot be shown to the respondent and his counsel, the convening authority will cause a request to be made to the commanding officer of the locally cognizant Naval Investigative Service Office, or comparable investigative official, to permit the respondent and his counsel access to the report, or to furnish a résumé of the report which can be made available to the respondent and his counsel. The purpose of this provision is to insure that the administrative discharge board considers only matters which are also available to the respondent and his counsel as well as the board. See paragraph (g)(4) of this section.

(14) *Attendance of witnesses.* (i) No authority exists for the issuance of a subpoena in connection with administrative discharge board proceedings. Accordingly, the appearance of all civilians and members of the Armed Forces not on active duty, as witnesses before the board, must be on a voluntary basis and at no expense to the Government. However, either the respondent or the Government may obtain the statements of, or may examine or cross-examine any absent witness, or any witness not available for the hearing, in any form which would render the consideration thereof by the board appropriate within the purview of paragraph (c)(1) of this section. The latter would include, but not be limited to, oral or written depositions, unsworn written statements, affidavits, or testimonial stipulations.

(ii) Before any civilian or member of the Armed Forces not on active duty is invited to appear as a witness before an administrative discharge board, he shall be clearly advised that his appearance before the board will be in performance of public service, since his appearance may not be compelled, and will be at no expense to the Government. Appendix 6 to SECNAV instruction 5521.6A, or revisions thereof, may be adapted for this purpose.

(iii) As prescribed by paragraph (b)(1) of this section, the recorder will be responsible for arranging for the attendance at the hearing of all material witnesses, except those whose attendance is arranged by the respondent. Where reasonably available, all witnesses, including those requested by the respondent, whose testimony would be material to the case, will be called to testify in person before the board. When in dispute, the materiality of a witness' testimony will be determined by the convening authority. In making this determination, the standards which are utilized in determining the materiality of a witness whose testimony is desired before a court-martial may be utilized. The reasonable availability of a material witness will be determined by the convening authority. Where the prospective witness is not within his command, the convening authority will effect appropriate liaison with the witness' commanding officer before determining the availability or nonavailability of the witness. A convening authority will be justified in determining that a witness is unavailable when any of the provisions of article 49(d)(1) through (3), Uniform Code of Military Justice, pertain. Testimony of active duty military personnel not in the immediate area, if needed, should, in most cases, be obtained and presented in the form of written statements.

(iv) Any expenses incident to the appearance of material witnesses on active duty with any of the Armed Forces before an administrative discharge board will be charged to the operation and maintenance allotment of the convening authority of the board.

(15) *Interviewing witnesses.* The respondent, the respondent's counsel, and the recorder have the right to an opportunity to interview a witness, regardless of whether or not that witness has previously testified.

(16) *Exclusion of witnesses.* Unless otherwise authorized by the chairman, all witnesses, other than the respondent, shall be excluded from the room where the board is meeting, except when they are testifying.

(17) *Order of presenting evidence.* The testimony of witnesses and the presentation of other evidence will normally be in the following order: witnesses called and evidence presented by the recorder; witnesses called and evidence presented by respondent; witnesses called and evidence presented by the recorder in rebuttal; witnesses called and evidence presented by the respondent in surrebuttal; and witnesses called and evidence presented at the request of the board. The order of examining each witness is: Direct examination, cross-examination, redirect examination, recross-examination and examination by the board. The foregoing order of presentation and examination of witnesses need not be followed when the board, in the exercise of its sound discretion, feels that a deviation therefrom will secure a more effective presentation of evidence.

(18) *Final arguments.* The recorder and counsel for the respondent will be permitted to present final argument, if they so desire. The recorder has the right to make opening argument and, if argument is made on behalf of the respondent, the closing argument.

(19) *Burden of proof.* The burden of proof before administrative discharge boards with respect to: (i) the separation of the respondent from the naval service, and (ii) such a separation with less than an honorable discharge; rests upon the Government. This burden never shifts. However, after the presentation of the Government's case, certain justifiable inferences which are adverse to the respondent may be drawn from the evidence by the Board, the convening authority and the Discharge Authority. In this latter instance, the burden of going forward with the evidence to avoid the adverse effect of these justifiable inferences may then shift to the respondent.

(20) *Standard of proof.* As to all matters before an administrative discharge board, the standard of proof is a preponderance of the evidence.

(21) *Weight and creditability of evidence.* The board will rely upon its own judgment and experience in determining the weight and credibility to be given material received in evidence.

(d) *Record of proceedings and report of the board.*

(1) The record of proceedings of an administrative discharge board shall be prepared as directed by the convening authority and shall be authenticated by the signatures of the chairman and the recorder or, in the absence of either or both, by a member in lieu of the chairman, or by a member in lieu of the recorder. However, as a minimum, the record of proceedings shall contain:

(i) An authenticated copy of the appointing order and of any other communication(s) from the convening authority.

(ii) A summary of the testimony of all witnesses, including the respondent, appearing in person before the board.

(iii) A summary of the sworn or unsworn statements (of all absent witnesses), considered by the board.

(iv) The respondent's acknowledgment that he was advised of and fully understood all of his rights before the board.

(v) The identity of the counsel for the respondent and the nonvoting recorder, and their respective legal (or quasi-legal) qualifications.

(vi) Copies of those documents required by the applicable provisions of § 730.72.

(vii) Evidence of compliance with the provisions of §§ 730.50(c), 730.65(b)(1) and 730.66(c), where applicable.

(viii) A complete statement of the facts and circumstances, accompanied by appropriate supporting documents, upon which the recommendation for the respondent's administrative discharge is based.

(ix) A summary of any unsworn statements submitted by the respondent or his counsel, and

(x) Copies of all documents, not specifically listed above, and an accurate description of all real evidence, considered by the board in arriving at their findings, opinions (if any), and recommendations.

(2) The record of the board's proceedings shall be transmitted to the convening authority as part of the board's report. Such report shall contain a verbatim record of the board's findings and recommendations, and, where required by the convening authority, a verbatim record of the board's opinions.

(i) The report of the board shall be based upon the concurrence of the majority of the voting members. If a member does not concur in the findings, opinions, or recommendations of the majority, he shall append his minority report to the record and state explicitly the parts of the majority report with which he disagrees and the reasons therefor. The minority report may also include additional findings of fact, opinions, or recommendations.

(ii) All concurring members shall sign the report of the board immediately under the findings of fact, opinions, and recommendations. In the case of a minority report, all members concurring therein shall sign the report in a manner similar to the signing of the majority report.

(3) See paragraph (g)(6) of this section with regard to the respondent's right to a copy of the board's report, or the board's proceedings, or any endorsements thereon.

(4) See paragraph (g)(7) of this section with regard to the notification to a respondent of the recommendations made by an administrative discharge board in his case.

(e) *Recommendations by the board.* The recommendations of the board, as required by paragraph (d)(2) of this section, will include a recommendation for one of the following alternative dispositions of the respondent.

(1) Retention, or

(2) Discharge: If the respondent's discharge is recommended, the general and specific bases therefor (e.g. by reason of unfitness because of an established pattern showing dishonorable failure to pay just debts), and the character and type of the discharge (e.g. under conditions other than honorable with an undesirable discharge), will be specified. If the respondent's discharge is recommended, it is not appropriate for the board to further recommend that the discharge be suspended on probation, that nonjudicial punishment be imposed, or that court-martial proceedings be instituted.

(f) *Counsel for a respondent.* (1) Where, in an appropriate case, a member has not waived a hearing before an administrative discharge board or the right to be represented by counsel before that board, and the member is, under the provisions of this subpart, entitled to a board hearing, he is entitled to be represented by military counsel who shall be a lawyer within the meaning of article 27(b)(1) of the Uniform Code of Military Justice, unless the officer empowered to convene an administrative discharge board having jurisdiction over the member's case certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel. See § 730.50(e)(10). Where such officer (convening authority) does not possess general court-martial jurisdiction over the respondent, he shall, before certifying the nonavailability of lawyer counsel, as contemplated herein, effect appropriate liaison with the officer who exercises general court-martial jurisdiction over the respondent. In every case where a certification of the nonavailability of lawyer counsel is made, such certification will include the reasons for the determination of nonavailability.

(2) Where the respondent desires to be represented by civilian counsel or is represented by military counsel of his choice, he may excuse any appointed military counsel.

(3) If the respondent desires to be represented by civilian counsel, the convening authority shall cause it to be clearly explained to the respondent that civilian counsel will not be provided at any expense to the Government. The respondent will be given a reasonable opportunity to obtain civilian counsel without unduly delaying the administrative discharge board proceedings. If undue delay appears likely, the convening authority may require the respondent to proceed without the desired civilian counsel. In this latter event, the convening authority will set forth the full circumstances thereof in the record, and will appoint available military counsel for the respondent, or will permit the respondent to be represented by reasonably available military counsel of the respondent's choice.

(4) Where the respondent requests a specific military counsel of his own selection, whether or not such counsel is a lawyer within the meaning of article 27(b)(1), Uniform Code of Military Justice, and if the requested military counsel is reasonably available within the convening authority's command, such requested military counsel will normally be provided the respondent. Where requested military counsel is a member of a Marine Corps command not under the command of the convening authority, the convening authority will forward the respondent's request to the commanding officer of such requested military counsel, who will provide the requested counsel if he is reasonably available, or who will notify the convening authority of the unavailability of the requested counsel and the reasons therefor.

(5) In determining if lawyer counsel is reasonably available to be appointed to represent the respondent, the same standards will be applied as are applicable when an accused, who is to be tried by special court-martial, requests to be represented by lawyer counsel. In determining if a specific military counsel of the respondent's own choice is reasonably available, the same standards will be applied as are applicable when an accused, who is to be tried by special court-martial, requests to be represented by a specific military counsel. In determining whether undue delay in administrative discharge board proceedings appears likely to result from either the respondent's efforts to obtain a civilian counsel, or from the availability of such civilian counsel only at a future date which would unduly delay the board's proceedings, the same standards will be applied as are applicable when an accused to be tried by special court-martial desires to be represented by civilian counsel.

(6) Any necessary expenses incident to the authorized travel or per diem of a respondent's military counsel will be born by the operation and maintenance allotment of the convening authority.

(7) If counsel for the respondent is absent, the board shall not proceed until his return, or until new counsel for the respondent is retained by the respondent or appointed by the convening authority. However, the respondent may waive his right to have counsel present at the board's proceedings, provided the respondent understands his right to counsel and the effect of the waiver. The explanation of this right and any waiver thereof shall be reflected in the record.

(g) *Additional rights of the respondent.* In addition to the rights of the respondent which are specifically listed elsewhere in this subpart, a respondent who has not waived a hearing before an administrative discharge board, and whose case is presented to such board, has the following rights:

(1) Subject to his availability, i.e., not in civil confinement or on unauthorized absence, he may appear in person, with or without counsel, or in his absence be represented by counsel, at all open proceedings of the board. However, where the respondent has been on continuous unauthorized absence for more than 1 year, this provision is not applicable, since no administrative discharge board is required in such cases.

(2) He or his counsel, if any, will be notified a reasonable time in advance of the hearing before the board of the time and place of the board's meetings; of the names of all witnesses who are expected to be called to testify against him; and will be given an opportunity to examine all documents, reports, and other evidence which it is expected that the board

will consider. This latter examination will be permitted to the same extent that a defense counsel representing an accused before a court-martial is permitted to examine the files and other material in the hands of the prosecution.

(3) He has the right, at his option, to submit or not submit to examination by the board. The provisions of article 31, Uniform Code of Military Justice, will apply. See paragraph (c)(5) of this section. However, if he elects to testify on his own behalf, he will be considered to have waived the protection accorded him by article 31 and he may be examined by the recorder or by the board on any matters which are relevant to the board's proceedings, regardless of whether or not he testified to these matters on direct examination. Subject to the foregoing and the provisions of paragraph (c)(2) of this section, he may make or submit to the board any statements, sworn or unsworn, oral or written, on his own behalf.

(4) Subject to his availability and the provisions of paragraph (c)(14) of this section, he has the right to examine all witnesses personally appearing before the board to testify on his behalf, and the right to be confronted by and cross-examine all witnesses who personally appear before the board and testify against him. He or his counsel will be given a reasonable opportunity to cross-examine all absent witnesses whose statements are considered against him. This cross-examination may be accomplished by deposition, affidavit, correspondence, or any other means which will elicit answers or statements from the absent witness in a form acceptable to the board. While the reasonable opportunity for such cross-examination must be provided, the fact that an absent witness cannot be located, or is dead or physically incapacitated, or refuses to submit to such cross-examination, or does not reply to communications from the respondent or his counsel, will not, by itself, be a bar to the board's consideration of the absent witness' statements already in its possession. However, if the respondent or his counsel is not given a reasonable opportunity to cross-examine an absent witness whose statement is adverse to him because the witness is an unidentified informant whose name or location an investigative agency refuses to divulge to the respondent or his counsel, then neither the board nor the convening or Discharge Authority will consider the witness' statement in connection with the respondent's case. See paragraph (c)(13)(ii) of this section.

(5) He may at any time before the board convenes, or during the proceedings, introduce or submit any evidence, answer, deposition, sworn, or unsworn statement, affidavit, certificate, or stipulation. This includes but is not limited to depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(6) He shall not be entitled, as a matter of right, to a copy of the board's proceedings, or report, or any endorsements thereon. However, the convening authority or Discharge Authority may authorize the delivery to and retention by a respondent of a copy of the board's proceedings or report, or any endorsements thereon, or any part or summary thereof.

(7) Except as otherwise specifically provided herein, or except as otherwise directed by the convening authority or by the Discharge Authority, he shall not, as a matter of right, be entitled to be notified of the recommendations made in his case by an administrative discharge board or by the convening authority thereof.

(h) *Subsequent administrative discharge board proceedings.* (1) No member will be subjected to administrative discharge board action based upon conduct which has previously been the subject of administrative discharge board proceedings when the evidence before the subsequent board would be the same as the evidence before the previous board, except in those cases where the findings of the previous board favorable to the respondent are determined by the Discharge Authority to have been obtained by fraud or collusion, or except in those cases wherein the Discharge Authority finds legal prejudice to the substantial rights of the respondent. Evidence before a subsequent board is not the same as evidence before a previous board where it includes acts or omissions on the part of the member which have not been considered by the previous board, or where it includes administrative or judicial determinations made with regard to the member which have not been considered by the previous board and which are, pursuant to the provisions of this paragraph, competent for the subsequent board to consider.

(2) Conduct is considered to have previously been the subject of administrative discharge board poceedings when the previous board has submitted the record of its proceedings to the Discharge Authority, which record includes one of the recommendations prescribed by paragraph (e) of this section.

(3) When a subsequent board is convened, no voting member of the subsequent board shall have served on a previous board as a voting member or have been the recorder or assistant recorder of a previous board which considered the same matter. However, the recorder and/or the assistant recorder of the previous board may serve as the recorder and/or assistant recorder of the subsequent board.

(4) The record of the proceedings and report of the previous board may be furnished the subsequent board. However, the subsequent board will not be furnished the findings, opinions or recommendations of the previous board, nor the matter contained in the previous board which was considered by the Discharge Authority to have been prejudicial to the substantial rights of the respondents, nor any matter determined by the Discharge Authority to have been obtained by fraud or collusion, nor the specific comments of the convening authority or Discharge Authority concerning the previous board. Such excluded matter should, however, be furnished the recorder of the subsequent board in order that he may ensure that such matter is not permitted to be injected into the subsequent proceedings. The subsequent board shall submit its findings, opinions (if required by the convening authority), and recommendations, de novo. However, the subsequent board may, in an appropriate case, base its findings of fact, opinions, and recommendations solely upon the evidence properly considered by the previous board, i.e., in cases in which the evidence before the subsequent board is the same as that before the previous board except for the evidence excluded as a result of the Discharge Authority's finding of legal prejudice to the substantial rights of the respondent, or his determination that the findings of the previous board were obtained by fraud or collusion.

(5) When a Discharge Authority sets aside the findings and recommendations of a previous board, pursuant to the provisions of this paragraph, and appoints a subsequent board to hear the respondent's case, no further action is required prior to the subsequent board's hearing of the respondent's case other than the appointment of the subsequent board; notifying the respondent and his counsel of the appointment of the subsequent board and the reasons for setting aside the findings and recommendations of the previous board; and giving the respondent and his counsel timely notice of the time and place of the subsequent board hearing, of the witnesses to be heard, and of the evidence to be considered before the subsequent board.

(6) Subject to the foregoing, the subsequent board's proceedings, and the rights of the respondent thereat, will be the same as if the subsequent board was initially hearing the respondent's case. The subsequent board's proceedings and report will be prepared, forwarded and acted upon in the same manner as if the subsequent board was initially hearing the respondent's case.

(7) If the Discharge Authority sets aside the findings and recommendations of an administrative discharge board because he finds legal prejudice to the substantial rights of the respondent and refers the case to a subsequent administrative discharge board, the Discharge Authority may not approve findings or recommendations of the subsequent board which are less favorable to the respondent than those rendered by the previous board. Where the Discharge Authority sets aside the findings and recommendations of a previous board because he determines that the findings thereof favorable to the respondent were obtained by fraud or collusion, and orders subsequent board proceedings, he is not bound to approve findings or recommendations of the subsequent board which are as favorable or more favorable to the respondent than those rendered by the previous board. In the latter case, however, the Discharge Authority will comply with the provisions of paragraph (i) of this section.

(i) *Action by the convening authority/discharge authority.* (1) The record of proceedings and the report of the board will be submitted to the convening authority. Where the convening authority is not the appropriate Discharge Authority, he will take such action with respect to the board's report as is prescribed in § 730.66(h)(1).

(2) Upon the receipt of the record of proceedings and report of the board, the Discharge Authority will refer such record and report to his staff legal officer for written review prior to taking his action thereon. See § 730.76. Upon completion of the foregoing, the Discharge Authority may take one of the following actions:

(i) Approve the board's recommendations and direct their execution.

(ii) Approve the board's recommendation for discharge and the general and specific bases therefor, but direct a change in the type and character of discharge recommended by the board to a more creditable one. For example, he may approve the board's recommendation that the respondent be discharged for the general basis of unfitness and for the specific basis of an established pattern of shirking, but disapprove the recommended undesirable discharge and direct the respondent's discharge with a general or honorable discharge. Except as provided by §§ 730.52 and 730.53, the Discharge Authority, in upgrading a recommended undesirable discharge, will not normally direct discharge with any more creditable type of discharge than is otherwise warranted by the respondent's military record. Under no circumstances shall the Discharge Authority direct the respondent's discharge with a less creditable type of discharge than that recommended by the board, e.g., he may not direct the respondent's discharge with a general discharge when the board has recommended discharge with an honorable discharge.

(iii) When the record indicates that such action would be appropriate, approve the board's recommendation for the respondent's discharge with the type and character of discharge recommended but direct that the general and specific bases of the recommended discharge be changed. See § 730.50(e)(13)(ii). For example, he may approve the board's recommendation that the respondent be discharged with a general discharge, but disapprove the recommendation that the general basis of the discharge be misconduct and that the specific basis for the discharge be conviction by civil authorities of an offense involving moral turpitude, and he may direct that the general basis of the discharge be changed to discharge for the convenience of the Government and that the specific basis for the discharge be changed to substandard personal behavior which reflects discredit upon the service.

(*a*) It is desirable that the Discharge Authority, in directing a change to the bases for a recommended discharge, specify both the general and specific bases therefor and the specific section, paragraph or subparagraph of this subpart applicable to the type of discharge he directs (e.g., discharge for the convenience of the Government because of substandard personal behavior—§ 730.61(a)(5) and SECNAV Instruction 1910.3, paragraph 3b(5)). However, where there is no specific subparagraph of this subpart which is applicable to the specific basis for the discharge, the Discharge Authority may merely specify the applicable general paragraph. For example, if the board recommends the respondent's discharge with a general discharge for the general basis of misconduct and for the specific basis of conviction by civil authorities of an offense involving moral turpitude, the Discharge Authority may direct the respondent's discharge with a general discharge, but may change the general basis therefor from misconduct to unsuitability and not specify a specific basis for the discharge. In this case, the authority cited for the discharge may be simply the general paragraph citation: § 730.65, since a conviction by civil authorities of an offense involving moral turpitude does not fall within the specific purview of any of the provisions of § 730.65(a)(1) through (7).

(*b*) The Discharge Authority may not direct a change in the general basis of the recommended discharge which is less favorable to the respondent, e.g., he may not direct that the general basis for the respondent's discharge be changed to unfitness or misconduct when the board has recommended a discharge upon the general basis of unsuitability. See also §§730.50(e)(13)(ii) and 730.51(b).

(iv) Combine the alternative actions permitted by paragraphs (i)(2)(ii) and (iii) of this section, i.e., approve the board's recommendation for the respondent's discharge, but direct that the recommended type and character of the discharge be changed to a type and character more favorable to the respondent, and that the recommended bases therefor be changed to bases more favorable to the respondent. For example, if the board recommends that the respondent be discharged with an undesirable discharge with a general basis of unfitness and a specific basis of an established pattern for shirking, the Discharge Authority may approve the respondent's discharge, but may direct that the type of the discharge be changed to a general discharge; that the general basis therefor be changed to unsuitability; and that the specific basis therefor (depending upon the circumstances) be changed to either character and behavior disorders, or apathy, defective attitudes, and inability to expend effort constructively.

(v) Approve the board's recommendation for the respondent's discharge, with the type and bases therefor recommended by the board, or with a more favorable type and/or bases, but suspend the execution of the approved discharge for a specified period of probation in accordance with the provisions of § 730.75.

(vi) Disapprove the board's recommendation for discharge and direct that the respondent be retained in the service.

(vii) Disapprove the board's recommendation for the respondent's retention in the service and direct that the respondent be discharged with the type of discharge and the bases therefor warranted by the circumstances of the case. In this event, however, the Discharge Authority may not direct the member's discharge with an undesirable discharge, i.e., the directed discharge must be with honor, or under honorable conditions, with either an honorable or general discharge, as warranted by the circumstances.

(viii) Set aside the findings and recommendations of the board and refer the respondent's case to a subsequent board in accordance with the provisions of paragraph (h) of this section.

(3) When final action is taken by a Discharge Authority, other than the Commandant of the Marine Corps or the Secretary of the Navy, on any recommendation for discharge by reason of unsuitability in the case of a member with 8 or more years of continuous active duty, or on any report of misconduct or recommendation for discharge by reason of unfitness (regardless of whether or not administrative board action was taken with respect thereto), all papers shall be forwarded to the Commandant of the Marine Corps (Code DK) for review. See §§ 730.54(h) and 730.65(d). These papers shall include the signature of the Discharge Authority recording the final action taken in the case and the date thereof.

§ 730.74 Summary of cases in which administrative discharge board proceedings are required and of cases in which an administrative discharge may be effected without board proceedings.

(a) *Board proceedings required.* An administrative discharge may not be effected without administrative discharge board proceedings in the following cases:

(1) Where a member is recommended for discharge under other than honorable conditions, or a member with 8 or more years of continuous active duty is recommended for discharge by reason of unsuitability, and:

(i) The member does not waive, in writing, as prescribed elsewhere in this subpart (see § 730.72), the right to present his case before an administrative discharge board, or,

(ii) The member waives, in writing, as prescribed elsewhere in this subpart (see § 730.72), the right to present his case before an administrative discharge board, but such waiver is disapproved by the Discharge Authority who directs reference of the member's case to an administrative discharge board.

(2) Where a member is recommended for a discharge for security reasons within the purview of Part 729 of this chapter and, pursuant thereto, proceedings before Security Boards are required.

(b) *Discharge may be effected without board proceedings.* An administrative discharge may be effected without administrative discharge board proceedings in the following cases:

(1) Where a member is recommended for discharge under other than honorable conditions, or a member with 8 or more

years of continuous active duty is recommended for discharge by reason of unsuitability, and:

(i) The member is beyond military control by reasons of a continuous established unauthorized absence of more than 1 year, provided the provisions of §§ 730.54(c)(1), 730.72(a)(2)(ii) and (4) have been complied with; or

(ii) In a case where a member requests discharge for the good of the service within the purview of § 730.70, and provided the provisions of §§ 730.70(a), 730.72(a)(1) and (3) have been complied with; or

(iii) In a case where the member waives his right to board action under the conditions prescribed elsewhere in this chapter and such waiver is not disapproved by the Discharge Authority.

(2) In any case where a member is recommended and processed for an honorable or general discharge, pursuant to the provisions of §§ 730.58 and 730.60 through 730.65, inclusive, except for those cases where a member with 8 or more years of continuous active duty is recommended for discharge by reason of unsuitability. In the latter cases, the provisions of paragraph (a) or (b)(1) of this section apply.

§ 730.75 Suspension of execution and vacation of suspension of approved administrative discharges.

(a) *Authority.* The Commandant of the Marine Corps, and all Marine commanders exercising general court-martial jurisdiction may, prior to the expiration of a member's enlistment or period of obligated active service, suspend the execution of any approved administrative discharge for a specified period of probation, not to exceed 1 year, if the circumstances in a case indicate a reasonable prospect for the member's rehabilitation. If a period of suspension in excess of 1 year is desired, permission therefor will be requested from the Commandant of the Marine Corps (Code DK). Such suspension may be conditioned upon the member's approved request for an extension of his enlistment or period of obligated active duty. During the period of suspension, the member will be afforded an opportunity to demonstrate that he is qualified for retention in the service, i.e., that he is capable of behaving properly for an extended period under varying conditions, and that he can perform his assigned duties efficiently. In determining whether or not to suspend the execution of an approved administrative discharge, such factors shall be considered, among other appropriate criteria, as: The member's maturity, the sincerity of the member's service motivation, the member's potential value to the Marine Corps, and the degree of risk of unsatisfactory performance in a continued term of service.

(b) *Service record entries.* The following actions will be recorded on page 11 of the member's service record book:

(1) The action initially suspending the execution of an approved administrative discharge, together with the date the specified period of suspension will be automatically remitted unless sooner vacated.

(2) Any subsequent action extending the initial period of suspension, together with the date such extended period of suspension will be automatically remitted unless sooner vacated. See paragraph (m) of this section.

(3) The action taken to vacate a suspended administrative discharge, and the ordering of its execution or the execution of a more favorable discharge in lieu thereof.

(c) *Automatic remission.* Except as provided by paragraphs (i) and (j) of this section, upon the expiration of the probationary period (i.e., the period of suspension or of any extension thereof), or upon the expiration of the member's enlistment or period of obligated active service, whichever occurs earlier, unless the suspension is sooner vacated the unexecuted administrative discharge will be automatically remitted.

(d) *Basis for actions.* Additional misconduct or other act(s) or omission(s) which constitute substandard performance of duty, or which demonstrate(s) characteristics of unfitness or unsuitability on the part of the member occurring during the probationary period or extensions thereof, may establish the basis for one or more of the following actions, as may be appropriate:

(1) Either punitive action under the Uniform Code of Military Justice, or new administrative action. Except where alleged violations of probation are required by paragraph (f) of this section to be reported to the Commandant of the Marine Corps for final determination, either of these actions may be initiated and finally completed, notwithstanding the originally suspended administrative discharge. However, see paragraph (e) of this section and §§ 730.51 (m) through (o) and 730.54(e).

(2) Vacation of the suspended administrative discharge and the ordering of its execution, or the execution of a more favorable discharge in lieu thereof.

(3) Retention of the member, despite a violation of his probation, and either continuing the member's original period of probation or extending the original period of probation beyond its normal expiration date for any subsequent period not to exceed 1 year. If an extension of the original period of probation is desired for a subsequent period in excess of 1 year, permission therefor will be requested from the Commandant of the Marine Corps (Code DK).

(e) *Report.* Where a commanding officer or officer in charge does not exercise special court-martial jurisdiction over a member whose approved administrative discharge has been suspended on probation, he shall make a report of a suspected or apparent violation of probation on the part of the member to the Marine officer next in the chain of command exercising special court-martial jurisdiction over the member. Included in this report will be all relevant and material documentary evidence pertaining to the case and the commander's specific recommendation for one or more of the actions described in paragraph (d) of this section. See paragraph (l)(1) of this section when a hearing is required prior to vacation of a suspended administrative discharge. Care should be taken in making any recommendation for punitive action under the Uniform Code of Military Justice, that in acting thereon, the officer exercising special court-martial jurisdiction, the officer exercising general court-martial jurisdiction, or higher authority, does not become an accuser, within the meaning of the Uniform Code of Military Justice, article 1(9). See Manual for Courts-Martial, 1951, Chapter VII. See also § 730.51(n). After taking the action prescribed by paragraph (l) of this section and/or any other action appropriate in the case, the commander exercising special court-martial jurisdiction over the member will forward the case, with his recommendations thereon, to the Marine commander exercising general court-martial jurisdiction over the member. Upon receipt of the report described above in this paragraph, the Marine commander exercising general court-martial jurisdiction over the member shall take one or more of the following actions, as may be appropriate:

(1) Determine that no violation of probation has occurred and take no action in consequence thereof, continuing the member's original period of probation.

(2) Return the entire report to the officer exercising special court-martial jurisdiction over the member concerned for whatever action such officer deems appropriate.

(3) Take or cause to be taken appropriate action pursuant to Manual for Courts-Martial, 1951, paragraph 35.

(4) Determine that a violation of probation has occurred and, provided the prerequisite safeguards have been met and the prerequisite proceedings required by this subpart have been completed:

(i) Authorize or direct the action permitted by paragraph (d)(2) or (3) of this section where he is, pursuant to paragraph (f) of this section, empowered to take such action.

(ii) Authorize or direct the appropriate discharge of the member as a result of new administrative action taken pursuant to paragraph (d)(1) of this section.

(5) Forward the report, together with such other matters as are required by paragraph (f) of this section, to the Commandant of the Marine Corps (Code DK or Code DMB, as appropriate) for disposition.

(f) *Limitation.* Only a Discharge Authority competent to initially authorize or direct the type of administrative discharge which has been suspended, and to initially authorize or direct an administrative discharge as a result of the act(s) or omission(s) which are the basis for the member's alleged violation of probation, may vacate a suspended administrative discharge, or direct the retention of a member despite a violation of his probation. Where the Discharge Authority competent to initially author-

ize or direct the type of administrative discharge which has been suspended is the Commandant of the Marine Corps or the Secretary of the Navy, or where a member's alleged violation of probation consists of act(s) or omission(s) for which the authority to authorize or direct any administrative discharge is reserved to the Commandant of the Marine Corps or the Secretary of the Navy, the Marine commander exercising general court-martial jurisdiction over the member, or the member's commanding officer when the member is not under the command of a Marine commander exercising general court-martial jurisdiction, will forward a full report of the member's alleged violation of probation, together with all documentary evidence pertaining thereto, and his recommendation as to whether or not the suspended discharge should be vacated, to the Commandant of the Marine Corps for final disposition thereof. In the event that the hearing provided for by paragraph (l) of this section is required before vacation of the suspended discharge may be ordered, the full report of this hearing will be forwarded to the Commandant of the Marine Corps, together with the other documents required by this paragraph.

(g) *Condition for vacation of suspension.* Vacation of a suspended administrative discharge and the ordering of its execution, as authorized by paragraph (d)(2) of this section, will not be effected unless the vacation is based upon additional misconduct, or other acts or omissions which constitute substandard performance of duty, or which demonstrate characteristics of unfitness or unsuitability on the part of the member during the probationary period, which, when considered in the light of the member's entire military record during his current enlistment or period of obligated active service, including voluntary or involuntary extensions thereof, clearly demonstrates that the member is unqualified for retention.

(h) *Types of cases in which suspension may be vacated.* Where a member, whose approved administrative discharge has been suspended on probation, allegedly violates such probation and, as a consequence thereof, punitive action or new administrative action is initiated which does not result in the execution of a finally approved punitive or administrative discharge, vacation of the previously suspended administrative discharge and its subsequent execution may nevertheless be effected. The provisions of §§ 730.54(e) and 730.73(h) do not here apply, inasmuch as the administrative discharge resulting from the vacation proceedings is not a discharge based upon the member's act(s) or omission(s) which occasioned the vacation proceedings, but is, in effect, the original discharge which was initially approved and then subsequently suspended. Further, a suspended administrative discharge may be vacated notwithstanding the fact that a member may be in a disciplinary status. In making this decision, the commanding officer or the convening authority or the Discharge Authority will insure that by his actions or decisions in this regard he does not thereby become an accuser. See paragraph (e) of this section.

(i) *Expiration of enlistment.* Unless prior to the expiration of a member's enlistment or period of obligated active service, including voluntary or involuntary extensions thereof, appropriate action is taken pursuant to Manual for Courts-Martial, 1951, paragraph 11d and UCMJ Article 2(1), to effect a continuation of jurisdiction under the Uniform Code of Military Justice over the member, a member whose approved administrative discharge has been suspended on probation and who violates such probation as described herein, may not, because of such violation of probation, be retained on active duty for the purpose of vacating the suspended administrative discharge. In these cases the member will be separated with an honorable or general discharge, as warranted by his military record, in accordance with the provisions of § 730.52 or § 730.53.

(j) *Expiration of probationary period.* Except as provided in paragraph (i) of this section, a suspended administrative discharge may be vacated within a reasonable time after the expiration of the period of suspension where appropriate vacation action cannot be initiated and completed before the expiration of the period of suspension. See, however, paragraph (k) of this section. Examples, which are not inclusive, of the applicability of this provision are cases in which the command fails to discover a member's violation of probation until after the expiration of the period of suspension; or in which a violation of probation, even though discovered, occurs too close to the expiration of the period of suspension to permit the initiation and completion of appropriate vacation action within such period.

(k) *Execution of administrative discharge.* Except as provided by paragraph (l) of this section, where a member, whose approved administrative discharge has been suspended on probation, violates such probation, as described herein, appropriate Discharge Authority may vacate the suspended administrative discharge and order its execution without further hearing or formal proceedings:

(1) When the member has been beyond military control for 15 or more consecutive days. In this event, the discharge may be executed in absentia. See particularly §§ 730.101(b) and 730.105.

(2) When the member has not been beyond military control for 15 or more consecutive days, but the suspended discharge is other than:

(i) An undesirable discharge, or

(ii) A discharge for reason of unsuitability in the case of a member with 8 or more years of continuous active military service.

(l) *Procedure for vacation of suspension of undesirable discharge and certain other cases.* Where a member, whose approved administrative discharge has been suspended on probation, violates such probation, as described in this section, and the suspended discharge is either an undesirable discharge, or a discharge for reason of unsuitability in the case of a member with 8 or more years of continuous active military service, appropriate Discharge Authority may vacate the suspension of such discharge and order execution of the discharge only in accordance with the following procedure:

(1) Upon receipt of a report that a member has allegedly violated his probationally suspended administrative discharge, the Marine commander exercising special court-martial jurisdiction over such member will hold or cause to be held a hearing on the alleged violation of probation. Where the Marine commander exercising special court-martial jurisdiction over the member does not personally conduct such hearing, he shall appoint, as the hearing officer, an officer of the grade of major/lieutenant commander or higher, unless he certifies in the permanent record the nonavailability of an officer of such grade, together with the reasons for such nonavailability.

(2) This hearing will be in the nature of a "show cause" proceeding. That is, the respondent will be given an opportunity to show cause why his alleged violation of probation should not result in the vacation of the suspended administrative discharge and the ordering of its execution. The respondent will be afforded an opportunity to be represented at this hearing by counsel, as defined in § 730.50(e)(10).

(3) The Marine commander exercising special court-martial jurisdiction over the member will submit the report of the hearing, together with his appropriate recommendations thereon, to the Marine commander exercising general court-martial jurisdiction over the member. Unless otherwise provided by the commander exercising general court-martial jurisdiction over the member, the member is not entitled to be furnished a copy of the hearing report or the endorsements thereon.

(4) The Marine commander exercising general court-martial jurisdiction over the member will take whatever action he deems appropriate and which he is empowered to take with regard to the alleged violation of probation. See paragraphs (d), (e), and (f) of this section.

(m) *Interruption of running of probationary period.* The running of any period of suspension of an administrative discharge, or extension thereof, will be interrupted by any occasion, event, occurrence or act which would interrupt the running of a period of suspension in the case of a sentence adjudged by a court-martial. See paragraph (b)(2) of this section and § 719.122(b) of this chapter.

(n) *Honorable or general discharge.* Regardless of the type of administrative discharge which has been suspended, any Discharge Authority competent to vacate its suspension and order its execution may, in lieu of the execution of the specific suspended discharge being vacated, authorize or direct the mem-

ber's discharge with an honorable or general discharge, as warranted by the member's military record, in accordance with the provisions of § 730.52 or § 730.53.

§ 730.76 Action by the staff legal officer.

(a) *Review.* Prior to taking his action with regard to—

(1) The report of any administrative discharge board, or

(2) A report of misconduct, a recommendation for discharge by reason of unfitness, or a request for discharge for the good of the service, which has not been the subject of administrative discharge board proceedings; or

(3) Any administrative discharge matter which, under the provisions of this Chapter, is forwarded to the Commandant of the Marine Corps for advice or final disposition,

a Discharge Authority shall cause the case to be reviewed by his Staff Legal Officer. A Discharge Authority may refer any other administrative discharge matter to the Staff Legal Officer for review.

(b) *Procedure.* The original or a signed copy of the Staff Legal Officer's review will be attached to the record of the case which is forwarded to the Commandant of the Marine Corps, whether so forwarded for advice, or final disposition, or review and retention. The form and content of the Staff Legal Officer's review will be as required by the Discharge Authority. Normally a typed, stamped, or printed statement that the proceedings have been reviewed and found sufficient in law and in fact will constitute an adequate Staff Legal Officer's review as contemplated herein. If the Staff Legal Officer does not find the administrative discharge proceedings to be correct in law and fact, he should briefly set forth the facts and reasoning leading to such determination.

2. Section 730.160 is revised to read as follows:

PROCEDURES FOR DISCHARGE OF MARINE CORPS RESERVISTS ON INACTIVE DUTY

§ 730.160 Recommendations for discharge.

(a) *Reasons.* Commanders may recommend to the Commandant of the Marine Corps (Code DMB) that reservists on inactive duty may be discharged for the following reasons:

(1) Convenience of the Government.
(2) Own convenience.
(3) Hardship.
(4) Minority.
(5) Unsuitability.
(6) Unfitness.
(7) Misconduct.
(8) Security.

(b) *Applicable provisions.* Recommendations will be prepared and processed in accordance with §§ 730.50–730.76.

(c) *Advice to be given and recorded.* See § 730.72 for the advice to be given and the recording of such advice when a reservist on inactive duty is recommended for an undesirable discharge, or when such reservist has 8 or more years of continuous active duty and is recommended for discharge by reason of unsuitability.

(Sec. 1162, ch. 569, 70A Stat. 89, 391–393, as amended, sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 1162, ch. 569)

By direction of the Secretary of the Navy.

[SEAL] WILFRED HEARN,
Rear Admiral, U.S. Navy
Judge Advocate General of the Navy.

DECEMBER 23, 1966.

[F.R. Doc. 66-13917; Filed, Dec. 27, 1966; 8:51 a.m.]

Chapter VII—Department of the Air Force

SUBCHAPTER H—AIR FORCE RESERVE OFFICERS' TRAINING CORPS

PART 870—AIR FORCE RESERVE OFFICERS' TRAINING CORPS (AFROTC)

Part 870 is revised to read as follows:

Subpart A—Background and Organization

Sec.
870.1 Purpose.
870.2 Definitions.
870.3 Policy on officer procurement.
870.4 AFROTC mission and objective.
870.5 AFROTC organization.
870.6 Selection of educational institutions.
870.7 Organization of the training program.

Subpart B—Who is Eligible To Be a Member of the Air Force Reserve Officers' Training Corps

870.8 Policy on eligibility for membership in the General Military Course and the Professional Officer Course.
870.9 Who may not be AFROTC members.
870.10 Character requirements.
870.11 Loyalty requirements.
870.12 Investigative requirements.
870.13 Appointment of graduates.
870.14 Extended active duty for AFROTC graduates.
870.15 Categories of Professional Officer Course cadets.

Subpart C—Conditional Membership, Foreign Students and Special Procedures

870.16 Conditional membership in the POC.
870.17 Enrollment of pursuing students.
870.18 Enrollment of special students.
870.19 Enrollment of foreign students.
870.20 Credit for previous military training.

Subpart D—Transfer, Discontinuance of Membership Assignment, and Discharge Procedures

870.21 Discontinuance of membership in the Air Force ROTC program.
870.22 Discharge from the Air Force Reserve.
870.23 Transfer of AFROTC cadets.

AUTHORITY: The provisions of this Part 870 issued under sec. 8012, 70A Stat. 488; 78 Stat. 1064; 10 U.S.C. 8012, 2101 et. seq., and 50 U.S.C. App. 456(a).

SOURCE: AFR 45-48, August 15, 1966.

Subpart A—Background and Organization

§ 870.1 Purpose.

This part states policies and tells how the Senior Reserve Officers' Training Corps is organized, administered, and operated during peacetime, national emergencies, and full-scale mobilization. It applies to major commands, Hq AFROTC, and AFROTC detachments.

§ 870.2 Definitions.

(a) *Academic year.* Two semesters of three quarters taken consecutively, or the equivalent combination of trimesters or other terms taken consecutively.

(b) *Aerospace studies (AS).* The official designation of the AFROTC program of instruction.

(c) *AFROTC detachment.* An Air Force organization manned by active duty Air Force personnel assigned to AFROTC, with duty station at a civilian educational institution. With concurrence of the institution, the AFROTC detachment has the academic title, "Department of Aerospace Studies," and as such is an integral academic subdivision of the educational institution. It includes all AFROTC activities conducted at the institution as stipulated in the contract with the Air Force.

(d) *AFROTC subdetachment.* An AFROTC detachment under the administrative control of, but located apart from, another (parent) detachment. With concurrence of the institution where it is located, it has the academic title, "Department of Aerospace Studies."

(e) *AFROTC graduate.* A cadet who has successfully completed the AFROTC program prescribed by law and regulation, including the prescribed field training, and has been awarded at least a baccalaureate degree.

(f) *Cadet.* An individual who is either a member of the GMC (AS 100 or AS 200) or the POC (AS 300 and AS 400) and is entitled to all benefits authorized by law.

(1) *Financial assistance cadet.* An AFROTC cadet who is enlisted under the provisions of 10 U.S.C. 2107.

(2) *Contract cadet.* An AFROTC cadet who is enlisted and becomes a member of the POC under provisions of 10 U.S.C. 2104.

(g) *Category.* A membership classification of financial assistance or contract cadets, used to identify their potential utilization as a commissioned officer based on their qualifications, personal preferences, and USAF officer requirements (see § 870.15).

(h) *Completed cadet.* A cadet who has completed the entire AFROTC program of instruction and prescribed field training, and who will complete his degree requirements within 12 months after he finishes the AFROTC program.

(i) *Conditional member.* A student who is enlisted in the Air Force, but is tentatively unable to meet eligibility requirements for membership in the POC because of a condition beyond his control. The conditional membership is authorized only if the condition will be removed before he completes one academic term (semester, trimester, quarter, term).

(j) *Department of Aerospace Studies.* See paragraphs (c) and (d) of this section.

(k) *Designated applicant.* An individual who has applied in writing for membership in the POC of the 2-year

program, using the format established by the Commandant, AFROTC, and has been accepted by a PAS. He remains a designated applicant until he becomes a member, conditional member, or pursuing student in the POC or is released from further consideration.

(l) *Enrollment.* Admission of a student into an academic course of the AFROTC curriculum. (Academic enrollment in the POC is a prerequisite for membership, conditional membership, or pursuing student status in the POC but in itself entitles cadets to neither membership nor subsistence allowance.)

(m) *Financial assistance program (FAP).* A program in which selected cadets of the 4-year program (see paragraph (p) of this section) receive educational financial assistance, including tuition fees, laboratory fees, books and monthly subsistence allowance of $50 per month.

(n) *Foreign student.* A citizen from a foreign country that is on the Department of State list of countries whose citizens are eligible to participate in the AFROTC 4-year program under the provisions of 10 U.S.C. 2103(b).

(o) *Four-week field training (AS 350).* A 4-week period of training for POC cadets conducted at an Air Force installation for cadets who are members of the 4-year program.

(p) *Four-year program.* A program of instruction comprising both the GMC, the POC, and a 4-week field training.

(q) *Full-time student.* A student enrolled in other than correspondence courses who is taking the minimum credit hours specified in the institutional catalog for regularly enrolled students. Any deviation below the established minimum prescribed institutional standards must be approved by the Commandant, AFROTC.

(r) *General Military Course (GMC).* The first and second year of the 4-year program consisting of Aerospace Studies 100 and 200.

(s) *Institutional phase.* That portion of the AFROTC program conducted at a civilian educational institution (as distinguished from the 4-week or 6-week field training conducted at an Air Force installation).

(t) *Member of the Professional Officer Course.* A cadet who has enlisted in the Air Force Reserve, executed a Category Agreement, and enrolled in classes of the POC under the provisions of 10 U.S.C. 2104 or 10 U.S.C. 2107.

(u) *Nonattendance.* Absence of a cadet member of the POC from academic classes of the course because he has been deferred for a period determined by the Commandant, AFROTC. A cadet is not entitled to subsistence allowance while in a period of nonattendance.

(v) *Officer candidate-type training program.* Any portion of training received in OTS, Army OCS, advanced course of the Army or Navy ROTC, FAP or POC of the AFROTC, the Marine Platoon Leaders School, the Coast Guard Academy, or any training received at a service academy (including service academy preparatory school).

(w) *Professional Officer Course (POC).* The third and fourth years of the 4-year program of aerospace studies. Aerospace studies 300 and 400 comprise the first and second years respectively of the 2-year program.

(x) *Professor of Aerospace Studies (PAS).* The senior Air Force commissioned officer assigned to command a detachment or a subdetachment of the AFROTC and given the academic rank of professor by the host institution.

(y) *Pursuing student.* An applicant for the POC who has completed the GMC or its equivalent or 6-week field training but is not fully qualified for membership in the POC because of some factor beyond his control and is temporarily ineligible to enlist in the Air Force Reserve (ORS) (Obligated Reserve Section). Pursuing student status is authorized only if the condition will be removed before the student completes one academic term (semester, trimester, quarter, term). A cadet who is on academic probation or not in good standing at the institution will not be accepted as a pursuing student.

(z) *School year.* The period from September 1 of one year through August 31 of the next year, except for the University of Puerto Rico where the school year extends from the beginning of registration of one year and extends through the day before registration in August of the next year.

(aa) *6-week field training (AS 250).* A 6-week period of military training conducted at an Air Force installation for designated applicants. Successful completion is a prerequisite for membership in the 2-year program.

(bb) *Special student.* A student who is not a member of the AFROTC nor a candidate for appointment as a commissioned officer on the basis of completing the program, but who is permitted to take the institutional phase of the AFROTC for academic credit only.

(cc) *2-year program.* A program of instruction consisting of a 6-week field training and the POC.

§ 870.3 Policy on officer procurement.

AFROTC is a major officer procurement program of the Air Force. It is conducted jointly with the cooperating educational institutions, as outlined in this part. AFROTC will be the officer candidate program conducted in colleges and universities during a national emergency or war.

§ 870.4 AFROTC mission and objective.

The AFROTC mission is to commission, through a college campus program, career-oriented second lieutenants in response to Air Force requirements. AFROTC objectives are to:

(a) Identify, motivate, and select qualified students to complete the Air Force ROTC program.

(b) Provide college-level education that will qualify cadets for commissioning in the U.S. Air Force.

(c) Heighten each cadet's appreciation of and dedication to American principles, give him an understanding of how the U.S. Air Force serves the national interest, and develop his potential as a leader and manager and his understanding of officer professionalism in the U.S. Air Force.

(d) Commission in the U.S. Air Force second lieutenants who are dedicated to their assignment, accept responsibility willingly, think creatively, and speak and write effectively.

§ 870.5 AFROTC organization.

The Department of the Air Force determines plans and policies to implement chapter 103, U.S.C. and other Federal statutes concerning the AFROTC and supervises major command execution of all laws, plans and policies that affect conduct of the AFROTC program.

(a) The AFROTC is organized as an AU subordinate unit and has a central unit, detachments, and subdetachments. An AFROTC detachment or subdetachment is established or disestablished only by direction of the Secretary of the Air Force.

(b) The AFROTC program exists only at accredited degree-granting institutions. It is planned to coincide with the normal academic program leading to a baccalaureate degree. In the event of full-scale mobilization, the educational institution will be responsible for the educational program of the officer candidates. Academic program acceleration and baccalaureate degree requirements will be as follows:

(1) A minimum of 48 weeks of academic instruction per year.

(2) Current credit requirements for baccalaureate degrees, maintained at the respective institutional minimums.

(3) Any off-campus work done by the officer candidates in "cooperative schools" or courses will be in laboratories or industries approved by Air University (AU).

(4) All students will be placed on the same accelerated schedule, if feasible.

(5) The Commandant, AFROTC, may permit compression of the entire program when the academic program of the educational institution is accelerated during full-scale mobilization.

(c) No AFROTC unit of any type will be established at an educational institution which discriminates with respect to admission or subsequent treatment of students on the basis of race, color, or national origin. Any institutions that practice such discrimination will be notified that, commencing with the following school year, no new inputs to courses will be made and the units will be disestablished as the remaining classes complete the program. Exceptions shall be made only in the case of institutions with plans to desegregate and then only upon approval of the Assistant Secretary of Defense (Manpower).

§ 870.6 Selection of educational institutions.

To assure that educational institutions to receive new units of AFROTC or any similar on-campus precommission program are selected on a common and equitable basis under peace-time, national emergency, or full-scale mobiliza-

tion conditions, each institution selected must:

(a) Complete AF Form 1268, "Application and Agreement for the Establishment of a Air Force Senior Reserve Officers' Training Corps Unit."

(b) Be fully accredited by the appropriate regional or national agency.

(c) Provide adequate physical facilities.

(d) Be capable of producing a sufficient number of officers to justify the Department of Defense resources invested, considering (among other factors) the number of students enrolled who are prospective officer candidates, and the proportion of each entering academic class that normally receive degrees from the institution.

§ 870.7 Organization of the training program.

The training program includes two phases—the institutional phase and the field training phase.

(a) *The institutional phase.* This course has two parts: The General Military Course (AS 100 and AS 200) and the Professional Officer Course (AS 300 and AS 400), each 2 academic years in length (i.e., 4 semesters, 6 quarters taken consecutively, or an equivalent consecutive combination of trimesters or other terms). Completion of the GMC, its equivalent, or the 6-week field training is a requisite for, but does not guarantee entrance into, the POC. The PAS may waive all or portions of the GMC, and portions of the POC for cadets who have had previous military training (see § 870.20). Subpart B of this part describes the eligibility requirements for both courses and the categories of membership in the POC. Entrance into the POC is normally phased so that its completion coincides with the awarding of at least a baccalaureate degree. The institutional phase is presented in a 4-year program and a 2-year program.

(1) The 4-year program consists of the 2-year GMC, the 2-year POC, and a 4-week field training. Cadets normally attend the 4-week field training after successful completion of AS 300.

(2) The 2-year program consists of a 6-week field training and a 2-year POC. The 6-week field training is a statutory prerequisite for membership in the POC for the 2-year program.

(3) Compression, curtailment, and concurrent enrollment in courses: The combined GMC and POC are expected to cover 4 full academic years.

(i) *The GMC.* The Commandant, AFROTC, may authorize completion of the GMC in as few as 3 semesters, 4 quarters, or other comparable units of an academic year provided the cadet obtains the same number of contact hours as other GMC cadets in the AFROTC program at the same institution.

(ii) *The POC.* The Commandant, AFROTC, may authorize compression of the POC in exceptional cases for cadets who, during portions of the 2 years' instruction, are absent from campus because of institutional-State Department, industry, or other cooperative programs. A cadet must have 2 academic years remaining at an institution to be eligible for membership in the POC. An applicant who has 2 years remaining when he is admitted as a conditional member or a pursuing student meets this requirement if his condition is removed within the time period outlined in § 870.2 (i) and (y). Periods of extension authorized by the Commander, AU, also meet the requirement.

(4) Financial Assistance Program: This program provides financial assistance (including tuition fees, laboratory fees, books, and monthly subsistence allowance of $50 a month) for selected cadets. Members of and candidates for entry into the 4-year program are eligible to compete for this financial assistance. (Candidates for the 2-year program are not eligible for the Financial Assistance Program.)

(b) *Field training phase.* The 6-week and 4-week field training phases are conducted at an Air Force base as prescribed by current Air Force policy.

Subpart B—Who Is Eligible To Be a Member of the Air Force Reserve Officers' Training Corps

§ 870.8 Policy on eligibility for membership in the General Military Course and the Professional Officer Course.

As many qualified students may be members of the GMC and POC, in each category, as are necessary to fill but not exceed production quotas set by Hq. U.S. Air Force (and suballotted by the Commandant, AFROTC) for the graduating class in which they will be appointed. Each cadet or student must voluntarily apply for the POC and compete with all applicants for selection. The Commandant, AFROTC, establishes selection criteria for the AFROTC program, awards financial assistance grants, and prescribes selection criteria for attendance at the 6-week field training.

(a) Any full-time student of an accredited institution who meets all the eligibility requirements in the table following paragraph (b) of this section may be a member of the AFROTC.

(b) Prospective cadets apply for enrollment under procedures established by the Commandant, AFROTC. The original application determines the category to which a cadet will be assigned (see § 870.15). Individuals who desire to change categories while undergoing AFROTC training may ask for a change of category agreement under procedures established by the Commandant, AFROTC.

Eligibility requirements for membership in the program elements of AFROTC

LINE	If student desires to participate in—	RULE 1	RULE 2	RULE 3	RULE 4
A	The GMC (AS 100 and AS 200)	Yes			
B	6-week field training (AS 250)		Yes		
C	The POC (AS 300 and AS 400)[1 2]			Yes	
D	The Financial Assistance Program [1 3]				Yes
E	Then he must be of good, moral character (see § 870.10) and medically qualified under AFM 160-1 (Medical examinations and medical standards).	X	X	X	X
F	Execute the oath of allegiance	X	X	X	X
G	Be a U.S. citizen	X [4]	X	X	X
H	Enlist in the Air Force Reserve [5]			X	X
I	Have attained age of 14	X			
J	Have attained age of 17		X	X [6]	X [7]
K	Sign deferment agreement (AF Form 1041) (Part 870 of this subchapter)	X [8]		X	X
L	Execute Armed Forces Security Questionnaire (DD Form 98)		X	X	X
M	Execute AFROTC category agreement (AF Form 1056), with parental consent if under 21 years of age.		X	X	X
N	Execute statement of understanding (AF Form 22) (AFR 45-3 (Enlistment in AFROTC Cadets)) with parental consent if under 18 years of age.			X	X
O	Be enrolled in the 4-year program	X			X
P	Successfully complete GMC or receive credit under § 870.20			X	X
Q	Successfully complete the 6-week field training (for 2-year program)			X	
R	Successfully complete any general survey or screening test prescribed for his category.	X [9]	X [9]	X	X

[1] A student who has been a former member of a service academy (including the Coast Guard) or a service academy preparatory school is ineligible unless USAFMPC (AFPMRDC) has granted a waiver, but he may be a "conditional" member or a "pursuing" student while his application is being referred through channels for review and final decision.

[2] Graduate students may be selected for the POC (2-year program) provided they have 2 years remaining on campus after completing the 6-week field training. They are selected in competition with under-graduate students and within prescribed production requirements.

[3] Only cadets in the 4-year program are elegible for membership in the FAP. (Requirements cannot be waived.)

[4] Foreign students who have filed naturalization Form N315, "Declaration of Intent," may be accepted as members of the GMC pending finalization of their citizenship status.

[5] If already a member of any Reserve component of any military department, including the AF Reserve, he must be discharged and reenlist in the AF Reserve or transfer to the AF Reserve.

[6] Must be able to complete all requirements for appointment by age 26½ if he is category I–P or I–N and by age 30, if category II or III.

[7] Must be able to complete all aerospace studies courses, prescribed field training, and degree requirements and not have reached his 25th birthday by June 30 of the calendar year in which he is eligible for appointment. (Requirements cannot be waived.)

[8] A GMC cadet may be given an AFROTC deferment after successful completion of one academic semester, trimester, quarter, or academic term—including an Aerospace Studies course—at the institution.

[9] Must complete mental examination prescribed by AFROTC.

§ 870.9 Who may not be AFROTC members.

(a) Commissioned officers (present or former) of any component of the Army, Navy, Air Force, Marine Corps, or Coast Guard.

(b) Officers (present or former) of the U.S. Public Health Service.

(c) Members of any component of the U.S. Armed Forces on extended active duty.

(d) Conscientious objectors.

§ 870.10 Character requirements.

Good moral character is a prerequisite for membership and continuance in the AFROTC; a candidate becomes ineligible under the following circumstances:

(a) *Military or civil offenses.* A student who has been convicted by a court-martial or a civil court for any offense except a minor traffic violation, will not be certified for Selective Service deferment as a GMC member nor accepted for membership or continued in the POC unless the Commander, AU, or the Commandant, AFROTC, grants a waiver.

(1) The Commander, AU, has authority to waive all offenses; the Commandant, AFROTC, to grant or deny waivers of nonrecurrent minor violations that are not prejudicial to the applicant's performance of duty as an Air Force officer and do not indicate unacceptable traits of character. The Commandant, AFROTC may delegate to the PAS authority to waive nonrecurrent minor violations.

(2) Offenses resulting in less than a conviction (such as deferred prosecution, adjudication as a youthful offender under State or Federal statutes, suspension of imposition of sentencing, or other judicial actions) may indicate unacceptable traits of character. When such offenses are disclosed, the Commandant, AFROTC, is authorized to evaluate them and determine the individual's eligibility for membership or continuation in the Air Force ROTC Program.

(b) *Elimination from service academy or other officer training program.* (1) A student eliminated from an officer candidate-type training program because of military inaptitude, indifference, major honor violations, or undesirable traits of character may not be accepted for membership in AFROTC nor wear the AFROTC uniform. This exemption includes persons who resign in the face of impending charges, as well as those eliminated by official action.

(2) A student eliminated for disciplinary reasons may be a member of the GMC but he cannot be certified for Selective Service deferment nor can he enter into the POC without a waiver from USAFMPC (AFPMRDC).

(3) A student eliminated for academic deficiency may be a member of the GMC or a conditional member or a pursuing student of the POC. His application for membership in the POC must be referred to Air University for review. If application is approved and a waiver is obtained from USAFMPC (AFPMRDC), he may be enrolled (see Subpart C of this part for procedures).

(c) *Ineligible to reenlist.* A former service man who, for any reason, is not eligible to reenlist will not be accepted for membership in AFROTC (see AFM 33–3 (Enlistment in the Regular Air Force)).

§ 870.11 Loyalty requirements.

No U.S. citizen may be accepted as a member of AFROTC or wear the AFROTC uniform who fails to:

(a) *Sign the oath of allegiance.* The student must sign the following certificate, which becomes part of his record. (He may, because of conscientious scruple, substitute "affirm" for "swear" and delete "so help me God.")

I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign or domestic; and I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservations or purpose of evasion; so help me God.

(b) *Complete the Armed Forces Security Questionnaire.* (1) The student must file the DD Form 98 sufficiently in advance of the announced date of scheduled membership to permit a National Agency Check (NAC) or other investigation that may be required.

(2) If an applicant for POC or FAP fails or refuses, after instruction, to fill out DD Form 98, "Armed Forces Security Questionnaire," in its entirety, the PAS will deny him membership. Also, if he makes entries on this form which provide reasons to believe that his enrollment is not clearly consistent with the interests of national security, or if he qualifies an entry by a remark other than "none" or "none to my knowledge" in the Remarks section, he will be denied membership or appointment until a full and complete investigation discloses that his membership or appointment is not prejudicial to the national interest.

§ 870.12 Investigative requirements.

(a) *National Agency Check (NAC).* A favorable NAC must be completed before an applicant is appointed. (See AFRs 205–6 (Personnel Investigations, Security Clearances and Access Authorizations) and 35–62 (Security Program).) Results should be available during the first term, quarter, or semester following acceptance.

(1) If a U.S. citizen applicant for commission has traveled in Communist oriented countries listed in attachment 6, AFM 33–3, unless he was there under the auspices of the U.S. Government, he must be the subject of a favorable NAC prior to enlistment or appointment. The OSI will expand the NAC as it deems necessary to obtain all of the information pertinent to an evaluation of the reasons for and the extent of the travel.

(2) If a foreign student from a country not listed in attachment 6, AFM 33–3, who is not applying under § 870.19, is a candidate for commission, he must have a favorable NAC before enlistment.

(b) *Background investigation (BI).* A BI must be completed with favorable results on any applicant for membership, conditional membership, or enrollment in the POC or for membership in the FAP who has a spouse, parent, brother, sister, or offspring currently residing in any country listed in attachment 6, AFM 33–3.

§ 870.13 Appointment of graduates.

Membership in the POC does not in itself constitute a right to a commission in any Air Force component. If he is otherwise qualified, a graduate of the course is appointed second lieutenant when:

(a) He successfully completes the prescribed military training and is awarded a baccalaureate degree; or

(b) An authorized institution official certifies that he has qualified for a degree that will be officially awarded at a later date.

§ 870.14 Extended active duty for AFROTC graduates.

Under the terms of his AFROTC Category Agreement, a cadet enrolled in one of three categories and commissioned from it upon graduation from the AFROTC normally will enter active duty within one year of his graduation, unless a delay is approved under AFR 45–31 (Delay in Active Duty for AFROTC Graduates). A graduate must serve the period specified in the agreement under which he was originally appointed, even though later he may be reappointed (e.g., as an MSC (Medical Service Corps)).

§ 870.15 Categories of Professional Officer Course cadets.

The PAS uses AF Form 1056, "AFROTC Category Agreement," to classify students accepted in the POC or FAP as follows:

(a) *Category I.* Cadets who qualify for flying training. This category has two subcategories:

(1) IP—pilot candidates: A cadet may not be classified IP if he has ever been eliminated from a military pilot training course.

(2) IN—navigator candidate: A cadet may not be classified IN if he has ever been eliminated from a military navigator training course.

(b) *Category II.* Cadets enrolled in a college program leading to a baccalaureate degree with a major in a prescribed scientific or engineering career area (see AFR 36–23 (Officer Career Development)).

(c) *Category III.* Cadets enrolled in a college program leading to a baccalaureate degree, usually with a major other than in a scientific or engineering career area (see AFR 36–23).

Subpart C—Conditional Membership, Foreign Students and Special Procedures

§ 870.16 Conditional membership in the POC.

The Commandant, AFROTC, has prescribed a specific policy for conditional membership of cadets which enables the PAS to tentatively accept a cadet in the POC until his eligibility is determined or the membership quota is received. Before he becomes a conditional member,

a cadet must enlist in the Air Force Reserve and sign the following statement:

I understand and agree that no rights or benefits will be made available to me, or in my behalf, unless and until it is determined by proper authority that I am fully qualified and selected for membership in the Professional Officer Course of the AFROTC; that, upon such determination being made by proper authority, I will be entitled to receive all rights and benefits I would have earned and accrued but for the conditional nature of my membership from the date upon which I began work in the Professional Officer Course under the terms of this agreement. I further understand and agree that, if I am found to be not fully qualified and selected for such membership, I will be considered not to have been a Professional Officer Course Cadet, will not be entitled to any rights or benefits under the terms of this agreement, and will be discharged from the Reserve.

§ 870.17 Enrollment of pursuing students.

(a) A student candidate for an Air Force commission who cannot be enlisted in the Air Force Reserve may pursue the POC until he is eligible to enlist in the Reserve and become a member of the course. A pursuing student is not entitled to subsistence, uniform allowance, or Government uniforms, but he may purchase the required AFROTC uniform at his own expense to wear during the course.

(b) Each pursuing student must sign the following statement:

I, ----------, do hereby agree
(Name)
and understand that as a pursuing student I am not a member of the AFROTC; that notwithstanding the fact that I am permitted to pursue the Professional Officer Course, I am not qualified for an Air Force commission nor eligible for any benefits available to cadets who are members of the Professional Officer Course. I further understand that when I become eligible for either membership or conditional membership in the Professional Officer Course, I will be eligible to compete for selection to it under the then existing membership criteria and will receive credit for that portion of the course which I have successfully completed.

§ 870.18 Enrollment of special students.

(a) A student who cannot be a member of the AFROTC program but whom the institutional authorities and the PAS have authorized to take the GMC or POC, may take these courses for academic credit only.

(b) A special student must sign the following statement:

I, ----------, do hereby
(Name)
agree and understand that as a special student, I am not a member of the AFROTC; that, notwithstanding the fact that I am permitted to take the AFROTC course for academic credit, I am not qualified for, nor will the Air Force tender me, a commission in the Air Force Reserve based upon my successful completion of the institutional phase of the Professional Officer Course, nor will I be permitted to attend the field training.

§ 870.19 Enrollment of foreign students.

Active recruitment of foreign students for AFROTC is prohibited. Participation in the AFROTC 4-year program is optional for the foreign student as one aspect of an American college-level education. A foreign student will not be enlisted in the Air Force Reserve nor administered the Oath of Allegiance.

§ 870.20 Credit for previous military training.

(a) *For the GMC and the POC.* (1) The PAS may waive all or portions of the GMC and portions of the POC for cadets who have had previous military training.

(2) The Commandant, AFROTC, may excuse from a portion of the GMC and the POC, including a 4-week field training, any cadet found qualified on the basis of his previous education, military experience, or both. However, a cadet cannot be granted such advanced standing for training he received:

(i) As a member of a Reserve component of any of the Armed Forces of the United States while not in active military service; or

(ii) At any institution that did not have a commissioned officer of the active military forces assigned by orders of a military department as professor of military science, professor of naval science, or professor of aerospace studies.

(b) *For field training.* The Commandant, AFROTC, is authorized to grant a cadet accreditation toward the field training required to complete the 4-year program for comparable training he took while a member of another officer training program. However, successful completion of the 6-week field training is a requisite for membership in the POC of the 2-year program.

CREDIT FOR THE GENERAL MILITARY COURSE

Rule	A If the cadet has completed—	B Then the PAS may waive—
1	The basic course or portions of the basic course while a member of Army or Navy ROTC.	Up to, but not exceeding an equivalent portion of the General Military Course.
2	The General Military Course or portions of the General Military Course while a member of the AFROTC.	
3	Three years of junior level (high school) ROTC.	One year of the General Military Course.
4	Military Schools Division Courses MST 1, MST 2, MST 3, and MST 4 of Army ROTC (high school level) at a military school or academy.	The General Military Course, or a portion of it.[1]
5	Sufficient training in the CAP and has received a Carl A. Spaatz Award.	
6	Four months active duty in any military department.	

[1] Rather than waive the entire GMC, consider requiring the cadet to complete at least one quarter or semester to give a basis on which to evaluate him for entrance into the POC.

CREDIT FOR THE PROFESSIONAL OFFICER COURSE

Rule	A If the cadet has successfully completed—	B Then the PAS may waive—
1	Portions of officer training conducted by service academies.	Portions of the Professional Officer Course on a year-for-year basis (2d classman equals AS 300).
2	Advanced training of the Army or Navy ROTC.	Portions of the Professional Officer Course on a year-for-year basis.
3	Portions of the Professional Officer Course of AFROTC.	

Subpart D—Transfer, Discontinuance of Membership Assignment, and Discharge Procedures

§ 870.21 Discontinuance of membership in the Air Force ROTC program.

The PAS will discontinue a cadet from membership in the POC and may discontinue a cadet from the GMC, with the concurrence of the institutional authorities, for any of the following reasons:

(a) Inability, without discredit, to continue regular enrollment in the institution.

(b) Failure to remain medically qualified for commission.

(c) Failure to maintain acceptable retention standards under prescribed competitive criteria.

(d) Individual request for release for justifiable reasons.

(e) Inaptitude, indifference to training, incompatibility, evading the terms of the Category Agreement, disciplinary reasons, or reasons involving undesirable traits of character.

§ 870.22 Discharge from the Air Force Reserve.

When a cadet discontinues or is discontinued from the POC or FAP, he must be discharged from the Air Force Reserve or reported for involuntary call to extended active duty under AFR 45–3 (Enlistment of AFROTC Cadets).

§ 870.23 Transfer of AFROTC cadets.

(a) Interservice transfer of students between Army ROTC and AFROTC is authorized under the Statement of Joint ROTC Policies.

(b) Transfer of AFROTC cadets between detachments is authorized.

By order of the Secretary of the Air Force.

LUCIAN M. FERGUSON,
Colonel, U.S. Air Force, Chief, Special Activities Group, Office of The Judge Advocate General.

[F.R. Doc. 66-13803; Filed, Dec. 27, 1966; 8:45 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 207—NAVIGATION REGULATIONS

Gunston Cove, Va.

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), § 207.126 is hereby prescribed establishing and governing the use and navigation of a restricted area in Gunston Cove at Whitestone Point, Va., effective 30 days after publication in the FEDERAL REGISTER, as follows:

§ 207.126 Gunston Cove, at Whitestone Point, Va.; U.S. Army restricted area.

(a) *The area.* The waters within an area beginning at a point on the shoreline at longitude 77°08'36"; thence to latitude 38°40'22", longitude 77°08'39"; thence to latitude 38°40'14", longitude 77°08'22"; thence to a point on the shoreline at longitude 77°08'18" and thence along the shoreline to the point of beginning.

(b) *The regulations.* No person, vessel, or other craft shall enter or remain in the area at any time except as authorized by the enforcing agency.

(c) The regulations in this section shall be enforced by the District Engineer, U.S. Army Engineer District, Philadelphia, Pa., and such agencies as he may designate.

(Regs., December 2, 1966, 1507-32 (Gunston Cove, Va.)-ENGCW-ON) (Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

KENNETH G. WICKHAM,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 66-13845; Filed, Dec. 27, 1966; 8:45 a.m.]

Title 50—WILDLIFE AND FISHERIES

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

PART 33—SPORT FISHING

Montezuma National Wildlife Refuge, N.Y.

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

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

NEW YORK

MONTEZUMA NATIONAL WILDLIFE REFUGE

Sport fishing on the Montezuma National Wildlife Refuge, N.Y., is permitted from January 1, 1967, through December 31, 1967, on the areas designated by signs as open to fishing. Those open areas, comprising 3 acres, are delineated on maps available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Mass. 02109. Sport fishing shall be in accordance with all applicable State regulations subject to the following special condition:

[1] No boats may be left on the refuge overnight.

The provisions of this special regulation supplement the regulations governing fishing on wildlife refuge areas generally which are set forth in Title 50, Part 33, Code of Federal Regulations, and are effective through December 31, 1967.

EUGENE E. CRAWFORD,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 19, 1966.

[F.R. Doc. 66-13850; Filed, Dec. 27, 1966; 8:47 a.m.]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

[Docket No. R-313; Order 332]

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

FPC Form No. 1 and 1-F; Annual Reports of Electric Utilities and Licensees; Schedules for Reporting Pumped Storage Data; Miscellaneous Amendments

DECEMBER 22, 1966.

FPC Form No. 1, prescribed by § 141.1 of the Commission's regulations for electric utilities, licensees and others, is filed by several licensees which operate pumped storage facilities. Such licensees, in order to supply the complete information with respect to their projects required by the form, have submitted the data relating to their pumped storage operations on schedules of their own devising because there is no appropriate provision therefor in the form. Necessary revisions have been suggested but the matter is still under consideration though we anticipate that they will be included, probably among others, in a notice of proposed rule making to be issued early next year in order that such, or substantially similar, revisions may be prescribed for inclusion in the annual report for the reporting year 1967.

In the meantime, a request has been made on behalf of those licensees and transmitted to us through the Office of Statistical Standards in the Bureau of the Budget that they be permitted to report their pumped storage data in FPC Form No. 1 for the year 1966 in accordance with revised schedules which they have suggested, notwithstanding the schedules have not as yet been prescribed by the Commission for inclusion in the form. Since the submission of the data on the revised schedules, more particularly described below, will inure not only to the benefit of the licensees but, as well, to the Commission and other interested persons and agencies, we are permitting their use for the reporting year 1966 in lieu of the same schedules now included in the form.

It has come to the attention of the Commission that some of the companies submitting Form No. 1 issue not only their annual reports to stockholders but, as well, other regular reports of financial, statistical, and operational reviews for the information of stockholders, security analysts and other interested persons. Some of these publications have come into our hands and we have found them to be of considerable value in the exercise of our functions. Accordingly, we are here amending the instructions in Form No. 1 to require the filing not only of any published annual reports to stockholders but also of any such other reports or similar documents which a reporting company may regularly issue for the information of its stockholders and others. Since we are requiring only the submittal of material which the respondents have already prepared, albeit for other purposes, the added burden of submittal will be minimal.

The other amendments here made to FPC Forms Nos. 1 and 1-F are minor editorial revisions in several of the schedules, some of which have been suggested by the respondents which file the forms and others for the purpose of conforming these forms with similar revisions already prescribed for reporting in the Power System Statements—the Form 12 series.[1]

Finally, we approve the substitution, heretofore made, of a "Verification" for an "Attestation" page in FPC Form No. 1-F and here amend § 141.2 to prescribe and codify that change.

The Commission finds:

(1) The revisions of the several schedule pages of the annual reports, FPC Form No. 1 and 1-F, and to § 141.2 are necessary and appropriate to the administration of the Federal Power Act.

(2) Since it is apparent from the foregoing discussion, that the revisions here prescribed are of a minor or clarifying nature and impose no added burden on the respondents, it is unnecessary to comply with the requirements of section 4 of the Administrative Procedure Act with respect to prior notice and opportunity to comment.

The Commission, acting pursuant to the authority granted by the Federal Power Act, as amended, particularly sections 4(a), 304, 309, and 311 thereof (41 Stat. 1065; 49 Stat. 839, 855, 858, 859; 16 U.S.C. 797(a), 825c, 825h, 825j), orders:

(A) The annual report FPC Form No. 1, prescribed for Classes A and B public utilities, licensees and others by § 141.1, Part 141, Subchapter D, Chapter I, Title 18 of the Code of Federal Regulations, is amended, effective for the reporting year 1966 and thereafter, as follows:

1. General Instruction No. 14 is revised to read as follows:

[1] Order No. 312 in Docket No. R-289, 34 FPC ____, 30 F.R. 16106.

14. In addition to filing this form, the respondent shall also file with the Commission, immediately upon publication, five copies of its latest annual report and, immediately upon publication, five copies of any regular financial, statistical, or operational reviews or reports that a company may prepare for distribution to stockholders, bondholders, other security holders, security analysts, prospective stockholders, or any other interested parties. If such reports are not prepared, that fact should be stated below:

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2. The schedule (page 228) "Investment Tax Credits Generated and Utilized" is revised to read as set out in Attachment A [1] hereto.

3. The second sentence of instruction paragraph 2 of the schedule (page 412) "Sales for Resale (Account 447)" is revised to read as follows: "* * * For each sale designate statistical classification in column (b) thus: FP, for firm power supplying total system requirements of customer or total requirements at a specific point of delivery; FP(C), for firm power supplying total system requirements of customer or total requirements at a specific point of delivery with credit allowed customer for available standby; FP(P), for firm power supplementing customer's own generation or other purchases; DP, for dump power; O, for other * * *."

4. In instruction paragraph 1 of the schedule (page 432) "Steam Electric Generating Plant Statistics (Large Plants)", delete "10,000 kw" and insert in lieu thereof "25,000 kw".

5. In instruction paragraph 1 of the schedule page (433a) "Hydroelectric Generating Plant Statistics (Large Plants)," delete "2,500 kw" and insert in lieu thereof "10,000 kw".

6. In instruction paragraph 1 of the schedule (page 434) "Generating Plant Statistics (Small Plants)", delete "10,000 kw" and "2,500 kw" and insert in lieu thereof "25,000 kw" and "10,000 kw", respectively.

7. In instruction paragraph 1. of the schedule (page 436) "Steam-Electric Generating Plants". delete "10,000 kw" and insert in lieu thereof "25,000 kw".

8. In instruction paragraph 1. of the schedule (page 438) "Hydroelectric Generating Plants", delete "2,000 kw" and insert in lieu thereof "10,000 kw".

(B) Part 141, Subchapter D, Chapter I, Title 18 of the Code of Federal Regulations, is amended as follows:

1. In § 141.2, paragraph (c) is amended by deleting the last item, "Verification", in the list of schedules there set out and inserting, in lieu thereof, the item "Attestation".

(Secs. 4(a), 304, 309, 311, 41 Stat. 1065, 49 Stat. 839, 855, 858, 859; 16 U.S.C. 797(a), 825c, 825h, 825j)

(C) The annual report FPC Form No. 1–F prescribed for Classes C and D public utilities and licensees by the said § 141.2 is amended, effective for the reporting year 1966 and thereafter, as follows:

1. The schedule (page 9) "Investment Tax Credits Generated and Utilized" is revised to read as set out in Attachment B [1] hereto.

(D) Licensees, required to submit FPC Form No. 1, which operate pumped storage facilities may submit, for the reporting year 1966, their pumped storage data on the following entitled schedule pages—

Electric Plant In Service (continued), page 401.
Accumulated Provisions for Depreciation of Electric Plant, page 408.
Electric Operation and Maintenance Expenses (continued), pages 418, 419, 419a, and 420.
Depreciation and Amortization of Electric Plant, page 429.
Electric Energy Account, page 431.
Pumped Storage Generating Plant Statistics (large plants), pages 433c and 433d.
Generating Plant Statistics (small plants), page 434.
Pumped Storage Generating Plants, pages 439a and 439b.

appended hereto in Attachment C [1] (pages 1 through 13).

(E) The amendments here made to the Commission's regulations and to FPC Forms Nos. 1 and 1–F and the permission granted by ordering paragraph (D) shall be effective December 31, 1966.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

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

[F.R. Doc. 66–13863; Filed, Dec. 27, 1966; 8:47 a.m.]

[Docket No. R–314; Order 333]

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

FPC Form Nos. 2 and 2–A; Annual Reports of Natural Gas Companies; Uniform Pressure Base; Miscellaneous Amendments

DECEMBER 22, 1966.

In the course of the Commission's continuing review of the annual reports which are required to be filed by the members of the electric power and natural gas companies subject to its jurisdiction, including the FPC Forms Nos. 2 and 2–A required of all classes of natural gas companies pursuant to §§ 260.1 and 260.2 of its regulations, respectively, here under consideration, many opportunities for simplification and improvement became apparent, either from our own review or as a result of suggestions made by the persons required to file the forms. Except for the two matters discussed below, all the amendments to the two forms here being ordered are minor editorial revisions in the several schedules affected and described below in detail.

It has come to the attention of the Commission that some of the companies submitting Form No. 2 issue not only their annual reports to stockholders but, as well, other regular reports of financial, statistical and operational reviews for the information of stockholders, security analysts and other interested persons. Some of these publications have come into our hands and we have found them to be of considerable value in the exercise of our functions. Accordingly, we are here amending the instructions in Form No. 2 to require the filing not only of any published annual reports to stockholders but also of any such other reports or similar documents which a reporting company may regularly issue for the information of its stockholders and others. Since we are requiring only the submittal of material which the respondents have already prepared, albeit for other purposes, the added burden of submittal will be minimal.

It will be noted that the General Instructions (page i) is being amended by adding a new instruction (paragraph 15) to require that all gas volumes reported in the form "are to be stated on a pressure base of 14.73 p.s.i.a. and a temperature base of 60° F., pursuant to Exhibit H of Circular No. A–46 of the Bureau of the Budget issued February 15, 1966." Conforming changes have been made, as well, in several of the schedules requiring information relative to volumes of gas. On the basis of the Bureau of the Budget Circular the printing of the blank forms for the reporting year 1966 was initiated. Subsequently, on November 17, 1966, the Bureau issued a Clarification of Circular A–46 (Exhibit H—Standard Gas Pressure Base) to the effect that Exhibit H "is applicable to information pertaining to 1967 and thereafter." In view of this "clarification" we are providing that gas volumes may be reported for 1966 as they have been in the past, notwithstanding that the blank forms provided require use of the standard (14.73—60°) pressure base.

The Commission finds:

(1) The revisions of the several schedule pages of the annual reports, FPC Forms Nos. 2 and 2–A, are necessary and appropriate to the administration of the Federal Power Act.

(2) Since it is apparent from the foregoing discussion, that the revisions here prescribed are of a minor or clarifying nature and impose no added burden on the respondents, it is unnecessary to comply with the requirements of section 4 of the Administrative Procedure Act with respect to prior notice and opportunity to comment.

The Commission, acting pursuant to the authority of the Natural Gas Act, particularly sections 10 and 16 thereof (52 Stat. 826, 830; 15 U.S.C. 717i, 717o), orders:

(A) Effective for the reporting year 1966 and thereafter, Annual Report, FPC Form No. 2, prescribed by § 260.1, Subchapter G, Chapter I of Title 18 of the Code of Federal Regulations, is amended as follows:

1. The General Instructions (page i) are amended by revising paragraph 1.; adding a new paragraph 15.; revising and redesignating as paragraph 16. the existing paragraph 15., all as set out in Attachment A [1] hereto.

2. The schedule (page 228) "Investment Tax Credits Generated and Util-

[1] Attachments A, B, and C filed as part of the original document.

ized" is revised to read as set out in Attachment B [1] hereto.

3. In the schedule (page 229) "Accumulated Deferred Investment Tax Credits", the words "Electric Utility:" on line 1 of column (a) are changed to "Gas Utility:".

4. The schedule (page 548) "Natural Gas Reserves" is revised to read as set out in Attachment C [1] hereto.

5. In the schedule (page 553) "Natural Gas Production Statistics (Continued)" instruction paragraph 7. is revised to read as follows: "7. In stating pressure base of measuring M.c.f. of gas, pressure base should be reported at 14.73 p.s.i.a. at 60° F."

6. In the schedule (page 554) "Products Extraction Operation—Natural Gas", clause (c) in the second sentence of instruction paragraph 2. is revised to read as follows: "(c) M.c.f. (14.73 p.s.i.a. at 60° F.) of gas received,"

7. In the schedule (page 560) "Underground Gas Storage" instruction paragraph 5. is revised to read as follows: "5. Pressure base of gas volumes reported below is 14.73 p.s.i.a. at 60° F."

8. In the schedule (page 563) "Manufactured Gas Production Statistics" instruction paragraph 6. is revised to read as follows: "6. Pressure base of gas reported in this schedule is 14.73 p.s.i.a. at 60° F."

9. In the schedule (page 564) "Liquefied Petroleum Gas Operations" instruction paragraph 7. is revised to read as follows: "7. Pressure base of gas reported in this schedule is 14.73 p.s.i.a. at 60° F., and Btu content * * *."

(B) For the reasons set out above, all gas volumes may be reported for the year 1966 on whatever pressure base respondents have been using in reporting such information in Form No. 2 for prior years. In all cases the pressure base used shall be stated.

(C) The annual report FPC Form No. 2–A, prescribed for Classes C and D natural gas companies by § 260.2 of the said Title 18, is amended, effective for the reporting year 1966 and thereafter, as follows:

1. The schedule (page 11) "Investment Tax Credits Generated and Utilized" is revised to read as set out in Attachment D [1] hereto.

(D) The amendments here made to FPC Forms Nos. 2 and 2–A shall be effective December 31, 1966.

(E) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66–13864; Filed, Dec. 27, 1966; 8:48 a.m.]

[1] Attachments A, B, C, and D filed as part of the original document.

[Docket No. R–283; Order 310–B]

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

FPC Form Nos. 2 and 2–A; Annual Reports of Classes A, B, C, and D Natural Gas Companies Subject to Natural Gas Act; Miscellaneous Amendments

DECEMBER 22, 1966.

The amendments to Annual Report FPC Form No. 2 [1] here being considered are among those proposed in the notice initiating this proceeding [1a] but action thereon was deferred in our Order No. 310, herein, which adopted several of the amendments also proposed in that notice.[2] More recently the proposal also included in the notice relating to the schedule "Service Interruptions," page 568, was considered, revised and promulgated by Order No. 327.[3]

Comments on these particular proposals were received from or on behalf of 16 companies, INGAA, 4 State commissions, and a Federal regulatory agency.[4] We have given careful consideration to all the points raised, objections offered and suggestions made. As usual, they have been extremely helpful in our consideration. Since no one submittal referred to all of the 8 schedules now before us, we will take them up seriatim by Form No. 2 page number for convenience.

Page 102: We are adopting this amendment which will require reporting the names and businesses of companies associated, through common control, with the respondent. The information is not generally available from other sources and though it may be gleaned from data reported in one or more of the other schedules in Form 2, the data is not sufficient to spell out the actual associations and corporate relationships existing in an affiliated group. The added reporting burden is insignificant and is outweighed by the desirability of having a "family tree" of corporate interrelationships in one place. In our opinion, disclosure of the information is fully justified in the public interest and as an aid to the Commission's regulatory responsibilities.

Page 302: Although the state commissions listed in note 4, supra, objected to the proposed deletion of this schedule for reporting "Income from Merchandising, Jobbing and Contract Work," we have now been informed either that the objection has been withdrawn or that the information can be obtained by the states from other sources. The schedule is, therefore, being deleted as proposed.

Page 517: Though there were no industry comments with respect to the amendment to this schedule "Sales of Natural Gas by Communities" the Commission, upon further consideration, now believes that the proposal should not be adopted. However, instruction paragraph 4., relating to pressure base, on page 517 has been deleted. (Where appropriate, necessary changes in the other schedules here under consideration have been made where reporting volumes of gas is involved.) The instruction has become obsolete in view of the establishment by the Bureau of the Budget of a standard pressure measurement base of 14.73 p.s.i.a. and a temperature base of 60° F. for the statement of volumes of natural gas, effective January 1, 1967.[5] A clarifying comment by the Federal Communications Commission was received. We appreciate their interest, but, since it was directed at instruction 1. on page 516 which is not involved in this proceeding, we defer it for future consideration.

[1] Filed as part of the original document.

[1a] Notice of Proposed Rulemaking, issued Sept. 20, 1965, and published in the FEDERAL REGISTER on Sept. 28, 1965, 31 F.R. 12361.

[2] Order No. 310, issued Dec. 8, 1965, 34 FPC ____, 30 F.R. 15465. Amendments to two remaining schedules proposed in the original notice herein (Gas Purchases, p. 535, and Contingent Gas Purchase Payments (new)) and not considered in Order No. 310, will be considered separately and apart from the order now being issued.

[3] Issued Sept. 8, 1966, in Dockets Nos. R–283 and R–291, 36 FPC ____, 31 F.R. 12015.

[4] Carnegie Natural Gas Co.; Columbia Gas System Service Corp. on behalf of Atlantic Seaboard Corp., Columbia Gulf Transmission Co., Cumberland & Allegheny Gas Co., Home Gas Co., Kentucky Gas Transmission Corp., the Manufacturers Light & Heat Co., the Ohio Fuel Gas Co. and United Fuel Gas Co.; El Paso Natural Gas Co.; Natural Gas Pipeline Co. of America; Northern Natural Gas Co.; Panhandle Eastern Pipe Line Co.; Tennessee Gas Transmission Co.; Texas Gas Transmission Corp.; Trunkline Gas Co.; Independent Natural Gas Association of America (INGAA); Virginia State Corporation Commission; Iowa State Corporation Commission; Public Service Commission of the District of Columbia; Kansas State Corporation Commission; Federal Communications Commission.

[5] On Feb. 15, 1966, the Bureau of the Budget advised all Federal agencies, through the issuance of an Exhibit H to its Circular No. A–46, that the standard base referred to in the text is to be used in connection with the collection and publication of information on natural gas to promote uniformity and comparability of data. On the basis of the Bureau of the Budget Circular the printing of the blank forms for the reporting year 1966 was initiated. Subsequently, on Nov. 17, 1966, the Bureau issued a clarification of Circular A–46 (Exhibit H—Standard Gas Pressure Base) to the effect that Exhibit H "is applicable to information pertaining to 1967 and thereafter." In view of this "clarification" we are providing that gas volumes may be reported for 1966 as they have been in the past, notwithstanding that the blank forms provided require use of the standard (14.74—60°) pressure base.

Page 519: We are adopting editorial and clarifying changes suggested by El Paso and Natural Gas Pipeline to this schedule for reporting mainline industrial sales of natural gas.

Page 521: "Sales for Resale" and Page 524: "Revenue for Transportation of Gas of Others." The revisions to these schedules, as was stated in the notice, require only a summarization of information presently supplied and though some objection as to page 521 was expressed by Columbia Gas System, we do not think that the added reporting burden is significant since the information is readily available. Clarifying suggestions, which we have adopted in essence, were made by El Paso and Tennessee Gas. In response to a request in the interest of uniform reporting by Northern Natural that the industry be furnished with a current list of "interstate pipeline companies," we note that such a list is issued, periodically, and is available to all respondents required to file Form No. 2.

Pages 567, 567A: "Gas Account—Natural Gas." As revised, the two pages of this schedule now distinguish between industrial sales made in the field and those which are transmission line sales and, as well, provide for reporting information with annual volumes of each respondent's own production and that received from or delivered to LNG storage. The first change was made in response to a suggestion from Natural Gas Pipeline and the latter information on each company's own produced gas and the receipts and deliveries of LNG storage gas will give a more complete picture of the source and destination of the gas handled by each respondent—the basic purpose of the schedule.

Of the two new schedules proposed in the notice we are here prescribing the new schedule page for reporting "Unauthorized Overrun Penalties and Waiver of Penalties" in a form slightly modified from that which appeared in the notice. Suggested changes have been made as follows: The cutoff date has been changed to the calendar year instead of April 1; the word "unauthorized" is used to indicate that only such overruns are involved; and provision has been added to allow reporting by rate zones if deemed appropriate. In response to the opposition expressed by Trunkline, we reiterate the statement in the notice herein that the reporting requirement is in lieu of imposing a uniform unauthorized overrun penalty provision in all pipeline tariffs—as was proposed in Docket No. R–242—so that we can obtain information as to the actual experience and practice of the pipeline companies in administering their various penalty provisions. With this information we will be able to determine whether such a uniform provision in tariffs should be inserted to eliminate discriminatory practices.

The Commission finds:

(1) Adoption of these amendments to the Annual Report FPC Form No. 2 is necessary and appropriate for the administration of the Natural Gas Act.

(2) Since the revisions here adopted which did not appear in the notice herein do not constitute substantive changes in the amendments there proposed, further notice and opportunity for comment thereon under section 4 of the Administrative Procedure Act prior to adoption is unnecessary.

The Commission, acting pursuant to the authority of the Natural Gas Act, particularly sections 10 and 16 thereof (52 Stat. 826, 830; 15 U.S.C. 717i, 717o), orders:

(A) Effective for the reporting year 1966 and thereafter, Annual Report, FPC Form No. 2, prescribed by § 260.1, Subchapter G, Chapter I of Title 18 of the Code of Federal Regulations, is amended as follows:

1. The schedule "Control Over Respondent" (p. 102) is amended by adding to the instruction the following new sentence: "If other companies are controlled by the organization which holds control over the respondent, list the names of such companies and the kind of business each is engaged in."

2. The schedule "Income From Merchandising, Jobbing, and Contract Work" (p. 302) is deleted.

3. Instruction paragraph 4. on page 517 of the schedule "Sales of Natural Gas by Communities (Continued)" is deleted.

4. The following four schedules are revised and as so revised are adopted in the form set out in the schedule pages appended hereto:

"Main Line Industrial Sales of Natural Gas"—page 519.

"Sales for Resale—Natural Gas"—page 521.

"Revenue From Transportation of Gas of Others—Natural Gas"—page 524.

"Gas Account—Natural Gas"—pages 567, 567A.

(B) The following new schedule is prescribed for the reporting year 1967 in the form set out in the schedule page 515 appended hereto.

"Unauthorized Overrun Penalties and Waivers of Penalties."

(C) Paragraph (c) of the said § 260.1 is revised (1) by deleting from the list of schedules there set out the line "Income From Merchandising, Jobbing, and Contract Work" and (2) by adding after the title "Gas Operating Revenues" a new line as follows: "Unauthorized Overrun Penalties and Waivers of Penalties."

(Secs. 10, 16, 52 Stat. 826, 830; 15 U.S.C. 717i, 717o)

(D) For the reasons set out in footnote 5 above, all gas volumes may be reported for the year 1966 on whatever pressure base respondents have been using in reporting such information in Form No. 2 for prior years. In all cases the pressure base used shall be stated.

(E) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66–13865; Filed, Dec. 27, 1966; 8:48 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 67–8]

PART 1—GENERAL PROVISIONS

Miscellaneous Amendments

All functions, rights, privileges, powers, and duties vested in collectors of customs or appraisers of merchandise were delegated to district directors and regional commissioners of customs by Customs Delegation Order No. 22 of August 24, 1965 (T.D. 56470, 30 F.R. 11180). That delegation was extended to include the assistant regional commissioners and deputy regional commissioner for Customs, Region II, New York City, N.Y., by Customs Delegation Orders No. 23 of May 10, 1966 (T.D. 66–100, 31 F.R. 7150), and No. 24 of May 26, 1966 (T.D. 66–113, 31 F.R. 7842), respectively, and, to be exercised in limited areas, to port directors by Customs Delegation Order No. 28 of December 7, 1966 (T.D. 67–7, 31 F.R. 16581).

Bureau of Customs Circular MAN–9–CC of October 26, 1965 (30 F.R. 13790), as changed by Bureau of Customs Notices of December 30, 1965 (31 F.R. 981), and July 6, 1966 (31 F.R. 9529), indicates the field offices and particular officers therein with whom customs business formerly transacted with collectors of customs and appraisers of merchandise, shall be transacted.

Pending the completion of the revision of the Customs Regulations, except as expressly provided by amendment of individual sections thereof, action required therein to be taken by collectors of customs or appraisers of merchandise will be taken by district directors of customs, regional commissioners of customs (at Region II, New York City, N.Y., by the deputy and assistant regional commissioners of customs), and port directors under the authority delegated to those officers which was formerly vested in collectors and appraisers of merchandise. That action will be taken in accordance with the distribution of functions announced in Bureau of Customs Circular MAN–9–CC of October 26, 1965 (30 F.R. 13790), as amended.

In order to adapt the provisions of this chapter to the transfer of authority, and for other purposes, the Customs Regulations are amended as follows:

1. A new paragraph (d) is added to § 1.1 to read:

§ 1.1 Customs collection districts and ports.

* * * * *

(d) Unless otherwise indicated, "district director of customs," "collector of customs," "appraiser of merchandise" and variations of those terms, such as "district director," "collector of the district," "collector," "deputy collector," or "appraiser" as used in this chapter shall mean the district director of customs at a headquarters port (other than the port of New York, N.Y.); the re-

gional commissioner of customs, the deputy and assistant regional commissioners of customs for Customs Region II at the port of New York, N.Y.; and the port director at a port not designated as a headquarters port. Ordinarily each port director will exercise the authority delegated herein only where statute, regulation, or instruction contemplates action at the port over which he has supervision.

2. The Directors, Field Audit, are successors to the Comptrollers of Customs, whose offices were abolished by Reorganization Plan No. 1 of 1965 (3 CFR, 1965 Supp.). To include a description of the assignments of customs regions to the Field Audit staff a new section, 1.4a, is added to read:

§ 1.4a Assignment of customs regions to Directors, Field Audit.

The regions in § 1.1, together with their respective districts, are assigned to the offices of Directors, Field Audit, as follows:

Audit office	Address	Customs regions
New York	U.S. Customhouse, New York, N.Y. 10004	I, II, and III.
Branch	U.S. Customhouse, Boston, Mass. 02109	I.
Branch	U.S. Customhouse, Baltimore, Md. 21202	III.
Miami	160 Northeast Fourth St., Miami, Fla. 33132	IV and V.
Branch	U.S. Customhouse, New Orleans, La. 70130	V.
Houston	515 Rusk St., Houston, Tex. 77002	VI.
San Francisco	U.S. Customhouse, San Francisco, Calif. 94111	VII and VIII.
Branch	300 North Los Angeles St., Los Angeles, Calif. 90012	VII.
Chicago	U.S. Customhouse, Chicago, Ill. 60607	IX.

§ 1.5 [Amended]

3. To make it clear that the jurisdiction of the Customs Agency Service regions is described in terms of customs districts, the heading for the third column of the table in § 1.5 is amended by substituting "Area of jurisdiction (Customs districts and foreign countries)" for "Geographical jurisdiction" under "Customs agency service regions." As amended the heading will read:

Customs agency service regions			Customs agency service suboffices	
No.	Headquarters	Area of jurisdiction (Customs districts and foreign countries).	Headquarters	Geographical jurisdiction.

4. To reflect the current organization of the Customs Agency Service the table in § 1.5 is further amended as follows:

In region 3: Under "Customs agency service suboffices" in the column headed "Headquarters" delete the words "Customs Agent in Charge, Port Arthur."

In the column headed "Geographical jurisdiction" make the following changes: Amend the description of the jurisdiction of the Customs Agent in Charge, Laredo, by adding the words "in the State of Texas."

Delete the following description of the geographical jurisdiction of the Customs Agent in Charge, Port Arthur, reading: "Cameron and Calcasieu Parishes in the State of Louisiana and that part of the State of Texas lying east of Galveston Bay, the Trinity River and 96° west longitude."

Substitute for the present geographical jurisdiction of the Customs Agent in Charge, Houston, the following: "All the State of Oklahoma east of 100° west longitude; Cameron and Calcasieu Counties in the State of Louisiana; and that part of the State of Texas lying east of a line formed by 97° west longitude, including Tarrant County but not including Refugio County."

In region 4: Under "Customs agency service suboffices" in the column headed "Headquarters" substitute for the words "Resident Customs Agent, Pembina" the words "Customs Agent in Charge, Pembina."

In the column headed "Geographical jurisdiction" correct the description of the jurisdiction of the Customs Agent in Charge, Duluth, to read:

Route U.S. 71 from International Falls, Minn., south to the junction of U.S. 71 and U.S. 212 (near Olivia, Minn.); east on U.S. 212 to U.S. 10 including Minneapolis-St. Paul, and continuing east on U.S. 10 to Manitowoc, Wis.; that part of the State of Michigan lying west of Route U.S. 41 extending from Escanaba to Marquette.

(R.S. 161, as amended, 251, 77A Stat. 14, sec. 624, 46 Stat. 759, 79 Stat. 1317; 5 U.S.C. 22, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624. Reorganization Plan No. 1 of 1965; 3 CFR, 1965 Supp.)

Because the purpose of this Treasury decision is to conform the regulations to Treasury Department Order No. 165–17, or to effect organizational changes, it is hereby found that it is unnecessary to issue these amendments with notice under 5 U.S.C. 553 or subject to the effective date limitations of that section.

These amendments shall become effective upon publication in the FEDERAL REGISTER.

[SEAL] LESTER D. JOHNSON,
Commissioner of Customs.

Approved: December 16, 1966.

TRUE DAVIS,
Assistant Secretary of the Treasury.

[F.R. Doc. 66–13831; Filed, Dec. 27, 1966; 8:46 a.m.]

Title 21—FOOD AND DRUGS

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

PART 2—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

PART 191—HAZARDOUS SUBSTANCES; DEFINITIONS AND PROCEDURAL AND INTERPRETATIVE REGULATIONS

Change in Name of Act

Section 5 of the Child Protection Act of 1966 (Public Law 89–756; 80 Stat. 1305) changes the name of the Federal Hazardous Substances Labeling Act by deleting "Labeling." Accordingly, Chapter I of Title 21 is amended in the following respects:

1. Part 2 is amended by deleting "Labeling" from "Federal Hazardous Substances Labeling Act" in §§ 2.48, 2.52(i), 2.65(b), 2.66, 2.68(a), 2.120 (a) and (c), and 2.121 (b)(1) and (2)(i) and (c)(1).

2. Part 191 is amended by deleting "Labeling" from "Federal Hazardous Substances Labeling Act" in §§ 191.1(a), 191.109 (introduction), 191.212(b) (1) and (2), and 191.213(c).

Effective date. This order is effective upon publication in the FEDERAL REGISTER.

(Sec. 5, Public Law 89–756; 80 Stat. 1305)

Dated: December 19, 1966.

WINTON B. RANKIN,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 66–13866; Filed, Dec. 27, 1966; 8:48 a.m.]

PART 17—BAKERY PRODUCTS

Bread, Identity Standard; Confirmation of Effective Date of Orders Listing Dried Inactive Torula Yeast and Lactylic Stearate as Optional Ingredients

In the matters of amending the standard of identity for bread (21 CFR 17.1) by listing inactive dried torula yeast (*Candida utilis*) and lactylic stearate as optional ingredients:

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371), and under the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (21 CFR 2.120; 31 F.R. 3008), notice is given that no objections were filed to the orders in the above-

identified matters published in the FEDERAL REGISTER of October 27, 1966 (31 F.R. 13792, 13793). Accordingly, the amendments promulgated by those orders will become effective December 26, 1966.

(Secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371)

Dated: December 19, 1966.

WINTON B. RANKIN,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 66-13867; Filed, Dec. 27, 1966; 8:48 a.m.]

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Diuron

A petition (PP 6F0495) was filed with the Food and Drug Administration by E. I. du Pont de Nemours & Co., Wilmington, Del. 19898, proposing the establishment of a tolerance of 1 part per million for residues of the herbicide diuron on bananas. The petitioner later reduced the requested tolerance level to 0.2 part per million.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purpose for which the tolerance is being established.

After consideration of the data submitted in the petition, and other relevant material, it is concluded that the tolerance established by this order will protect the public health. Therefore, by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and delegated by him to the Commissioner of Food and Drugs (21 CFR 2.120; 31 F.R. 3008), § 120.106 is amended by adding to the end thereof a new tolerance, as follows:

§ 120.106 Diuron; tolerances for residues.

* * * * *

0.2 part per million in or on bananas.

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

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

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: December 19, 1966.

WINTON B. RANKIN,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 66-13868; Filed, Dec. 27, 1966; 8:48 a.m.]

PART 191—HAZARDOUS SUBSTANCES: DEFINITIONS AND PROCEDURAL AND INTERPRETATIVE REGULATIONS

Exemption of Painting and Other Coating Materials From Labeling Requirements

No adverse comments were received in response to the notice published in the FEDERAL REGISTER of October 6, 1966 (31 F.R. 13006), proposing that the regulation (21 CFR 191.63(a)(25)) that exempts, conditionally, cleaning and spot removing kits from requirements of the Federal Hazardous Substances Act be revised to include various painting and finishing kits. It is concluded that the proposal should be adopted with a change to clarify that the carton of such kits need bear the names of only those chemical components that make any article in the kit a hazardous substance.

Therefore, pursuant to the provisions of the act (sec. 3(c), 74 Stat. 375; 15 U.S.C. 1262) and under the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (21 CFR 2.120; 31 F.R. 3008), and based on Commissioner's conclusion that full compliance with the labeling requirements of section 2(p)(1) of the act with regard to the subject kits is unnecessary for the adequate protection of the public health, § 191.63(a)(25) is revised to read as follows:

§ 191.63 Exemptions for small packages, minor hazards, and special circumstances.

* * * * *

(a) * * *

(25) Cleaning and spot removing kits intended for use in cleaning carpets, furniture, and other household objects, and kits intended for use in coating, painting, antiquing, and similarly processing various surface, furniture, furnishings, equipment, sidings, etc., are exempt from the requirements of section 2(p)(1) of the act; *Provided*, That:

(i) The immediate container of each hazardous substance in the kit is fully labeled and in conformance with the requirements of the act and regulations issued thereunder; and

(ii) The carton of the kit bears on the main display panel (or panels) within a borderline, and in the type size specified in § 191.101, the following caution statement: "(Insert proper signal word as specified in subdivision (iii) of this subparagraph.) This kit contains the following chemicals that may be harmful if misused: (List hazardous chemical components by name.) Read cautions on individual containers carefully. Keep out of the reach of children."

(iii) If either the word "POISON" or "DANGER" is required on the container of any component of the kit, the same word shall be required to appear as part of the caution statement on the kit carton. If both "POISON" and "DANGER" are required in the labeling of any component or components in the kit, the word "POISON" shall be used. In all other cases the word "WARNING" or "CAUTION" shall be used.

* * * * *

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

(Sec. 3(c), 74 Stat. 375; 15 U.S.C. 1262)

Dated: December 19, 1966.

WINTON B. RANKIN,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 66-13869; Filed, Dec. 27, 1966; 8:48 a.m.]

Title 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

SUBCHAPTER F—ENROLLMENT

PART 41—PREPARATION OF ROLLS OF INDIANS

Requirements for Enrollment and Deadlines for Filing Applications

The following amendments are made to Title 25—Indians, Part 41, incident to the preparation of rolls of persons entitled to share in funds appropriated to pay judgments in favor of the following Indian tribes as authorized by the Acts cited:

Miami Indians of Oklahoma and Indiana, Act of October 14, 1966 (80 Stat. 909).
Nooksack Tribe of Indians, Act of October 14, 1966 (80 Stat. 906).
Duwamish Tribe of Indians, Act of October 14, 1966 (80 Stat. 910).
Omaha Tribe of Nebraska, Act of November 2, 1966 (80 Stat. 1114).
Quileute Tribe of Indians, including the Hoh Tribe, Act of October 14, 1966 (80 Stat. 905).

Section 41.3 is amended by adding new paragraphs designated as (c), (d), (e), (f), (g), and (h) for the purpose of including requirements for enrollment and establishing deadlines for filing applications. With the addition of the new paragraphs, § 41.3 reads as follows:

§ 41.3 Qualifications for enrollment and the deadline for filing applications.

(a) Qualifications which must be met to establish eligibility for enrollment and the deadline for filing enrollment applications will be included in this Part 41 by appropriate amendments to this section.

(b) Tlingit and Haida Tribes in Alaska: All persons of Tlingit or Haida Indian blood residing in the various local communities or areas in the United States or Canada on August 19, 1965, shall be eligible for enrollment provided they were legal residents of the Territory of Alaska on June 19, 1935, or prior thereto, or they are descendants of persons of Tlingit or Haida Indian blood who were legal residents of the Territory of Alaska on June 19, 1935, or prior thereto. Applications for enrollment must be postmarked no later than June 30, 1967.

(c) Miami Indians of Oklahoma and Indiana. (1) All persons of Miami Indian ancestry born on or prior to and living on October 14, 1966, whose names or the name of an ancestor through whom they claim eligibility appears on one of the following rolls, shall be entitled to be enrolled to share in the distribution of judgment funds awarded the Miami Indians of Indiana in Indian Claims Commission Docket 124–A, except persons whose names appear on the current tribal roll of the Miami Tribe of Oklahoma:

Roll of Miami Indians of Indiana of June 12, 1895.

Roll of "Miami Indians of Indiana, now living in Kansas, Quapaw Agency, I.T., and Oklahoma Territory."

Roll of Eel River Miami Tribe of Indians of May 27, 1889, prepared and completed pursuant to the Act of June 29, 1888 (25 Stat. 223).

(2) (i) All persons of Miami Indian ancestry born on or prior to and living on October 14, 1966, whose names or the name of an ancestor through whom they claim eligibility appears on any of the rolls listed in § 41.3(c)(1) or on the roll of the Western Miami Tribe of Indians of June 12, 1891, prepared and completed pursuant to the Act of March 3, 1891 (26 Stat. 1000), shall be entitled to be enrolled to share in the distribution of the judgment funds awarded the Miami Indians in Indian Claims Commission Dockets 67 and 124.

(ii) Persons who file applications for enrollment on the roll to be prepared under § 41.3(c)(1) need not file another application to be considered for enrollment on the roll to be prepared under § 41.3(c)(2).

(iii) Applications must be filed with the Area Director, Bureau of Indian Affairs, Federal Building, Muskogee, Okla. 74401, and must be postmarked no later than July 31, 1967.

(d)(1) Nooksack Tribe of Indians. All persons born on or prior to and living on October 14, 1966, who establish that they are descendents of members of the Nooksack Tribe as it existed in 1855 shall be entitled to be enrolled to share in the distribution of the judgment funds awarded the Nooksack Tribe.

(2) Applications for enrollment must be filed with the Area Director, Bureau of Indian Affairs, Box 3785, Portland, Oreg. 97208, and must be postmarked no later than September 1, 1967.

(e) Duwamish Tribe of Indians. (1) All persons born on or prior to and living on October 14, 1966, who establish that they are descendents of members of the Duwamish Tribe as it existed in 1855 shall be entitled to be enrolled to share in the distribution of the judgment funds awarded the Duwamish Tribe of Indians.

(2) Applications for enrollment must be filed with the Area Director, Bureau of Indian Affairs, Box 3785, Portland, Oreg. 97208, and must be postmarked no later than September 1, 1967.

(f) Omaha Tribe of Nebraska. (1) The membership roll of the Omaha Tribe prepared pursuant to the Act of September 14, 1961 (75 Stat. 508), shall be brought up to date by adding the names of children born after September 14, 1961, but on or prior to and living on November 2, 1966, who possess at least one-fourth degree aboriginal Omaha Indian blood. Children who are enrolled with any other tribes shall not be entitled to have their names added to the roll.

(2) Applications for enrollment must be filed with the Area Director, Bureau of Indian Affairs, 820 South Main Street, Aberdeen, S. Dak. 57401, and must be postmarked no later than April 1, 1967.

(g) Quileute Tribe of Indians. (1) Applicants for enrollment on the base roll of the Quileute Tribe to be prepared by the Secretary with the assistance of the tribal governing body must establish that they were born on or prior to and living on December 31, 1940. Upon approval of the base roll by the Secretary and the tribal governing body it shall become the basic membership roll of the tribe for all purposes, notwithstanding the provisions of Article II, section 1(a) of the tribal constitution and bylaws.

(2) Applicants for enrollment on the current tribal roll must establish that they were born on or prior to and living on October 14, 1966, and that they meet one of the following requirements for enrollment specified in Article II, section 1(b) of the tribal constitution:

(i) They were born to any member of the tribe who resided on the reservation at the time of the applicant's birth;

(ii) They possess one-half or more degree Indian blood and were born to a non-resident member of the tribe; or

(iii) They possess any degree of Indian blood and were born to parents who were both members of the tribe.

(3) Applications for enrollment must be filed with the Superintendent, Bureau of Indian Affairs, Western Washington Agency, 3006 Colby Avenue, Everett, Wash. 98201, and must be postmarked no later than April 1, 1967.

(4) No person who is enrolled with any other tribe shall be eligible to have his name placed on the Quileute tribal roll unless such person files with the Director a formal statement relinquishing his membership in the other tribe, including all right, title, and interest he may have in the undistributed assets of the other tribe.

(h) Hoh Tribe. (1) To be included on the base roll of the Hoh Tribe an applicant must establish that (i) he was born on or prior to and was living on October 14, 1966, (ii) his name or the name of a lineal ancestor is listed on the Census of the Hoh Indians of Neah Bay Agency, Washington, June 30, 1894, and (iii) he is not enrolled with any other tribe.

(2) Applications for enrollment must be filed with the Superintendent, Bureau of Indian Affairs, Western Washington Agency, 3006 Colby Avenue, Everett, Wash. 98201, and must be postmarked no later than April 1, 1967.

(3) No person who is enrolled with any other tribe shall be eligible to have his name placed on the Hoh base roll unless such person files with the Director a formal statement relinquishing his membership in the other tribe, including all right, title, and interest he may have in the undistributed assets of the other tribe.

No further changes are made in the text of Part 41.

Notice of proposed rule making would cause undue delay in the preparation of the rolls and would be contrary to the public interest. Therefore, notice and public procedure imposed by section 4 of the Administrative Procedure Act of June 11, 1946 (60 Stat. 238, 5 U.S.C. 1003), are dispensed with under the exceptions provided in that section. Accordingly, the foregoing amendments shall become effective on the date of publication in the FEDERAL REGISTER.

STEWART L. UDALL,
Secretary of the Interior.

DECEMBER 20, 1966.

[F.R. Doc. 66–13861; Filed, Dec. 27, 1966; 8:47 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 66–1196]

PART 0—COMMISSION ORGANIZATION

Delegation of Authority to Chief, Broadcast Bureau

At a session of the Commission held at its offices in Washington, D.C., the 21st day of December 1966;

1. The Commission has today acted on certain requests by FM broadcast stations for short further exemptions from the provisions of § 73.242(a) of the Commission's rules, the "AM–FM nonduplication" rule, beyond the date of December 31, 1966, when it was previously scheduled to become effective as to them. It appears that other such requests may be filed, and also that emergency situations may develop.

2. Good cause was shown in the requests for extension, such as delays in equipment delivery, problems in enlarging studios or securing new quarters, etc. It appears that it is not necessary for the full Commission to pass on the merits of each such factual situation as it may be presented, and that the efficient dispatch of the Commission's business would be

promoted by delegating to the Chief, Broadcast Bureau, authority to act on such requests and grant them, if good cause is shown, for periods up to 3 months.

3. Since this matter is procedural, the notice and effective-date requirements of the Administrative Procedure Act do not apply. Authority for adoption of this rule is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended. *Accordingly, it is ordered*, That, effective December 27, 1966, new paragraph (cc) is added to § 0.281 of the Commission's rules, as follows:

§ 0.281 **Authority delegated.**

* * * * *

(cc) To act on requests for temporary exemption from the provisions of § 73.242 (a) of the Commission's rules and regulations, and if good cause is shown to grant temporary exemption for a period of no more than 3 months.

(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: December 23, 1966.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 66-13883; Filed, Dec. 27, 1966; 8:49 a.m.]

PART 0—COMMISSION ORGANIZATION

PART 97—AMATEUR RADIO SERVICE

Radio Operator Examination Points

The Commission has under consideration a modification of its commercial and amateur radio operator examination points.

An increased demand for operator examinations in western Montana indicates that the public interest would be served by conducting examinations annually in Butte, Mont., and that the Commission's rules should be amended to provide for such examinations.

Because the amendments ordered herein are procedural in nature and not substantive compliance with the public rulemaking procedures prescribed by sections 4 (a) and (b) of the Administrative Procedure Act is not required.

Accordingly it is ordered, This 21st day of December 1966 pursuant to authority of § 0.261 of the Commission's rules and to authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amnded, and purusant to section 3(a) of the Administrative Procedure Act, that § 0.445(c) and Appendix 1, Part 97 of the Commission's rules be amended as set forth below, effcctive December 30, 1966.

[1] Commissioner Bartley absent.

(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: December 22, 1966.

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

1. Section 0.445(c) of the Commission's rules is amended by adding Butte, Montana as an annual examination point.

2. Appendix 1, Part 97 of the Commission's rules is amended by adding Butte, Mont., as an annual examination point.

[F.R. Doc. 66-13884; Filed, Dec. 27, 1966; 8:49 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

SUBCHAPTER B—CARRIERS BY MOTOR VEHICLES

PART 177b—STANDARDS FOR REGISTRATION OF CERTIFICATES AND PERMITS WITH STATES

Motor carrier standards—evidencing lawfulness of interstate operation:

At a session of the Interstate Commerce Commission held at its office in Washington, D.C., on the 14th day of December 1966.

Pursuant to section 202(b) of the Interstate Commerce Act (49 U.S.C. 302 (b)), the National Association of Railroad and Utility Commissioners certified to the Commission standards for registering with the various States certificates of public convenience and necessity or permits issued by the Commission. The standards and the resolution certifying them are set out below.

The Commission promulgates these standards in compliance with the requirements of section 202(b) of the Interstate Commerce Act and issues them as Part 177b of Title 49 of the Code of Federal Regulations.

RESOLUTION DETERMINING MOTOR CARRIER STANDARDS AND DIRECTING CERTIFICATION THEREOF TO ICC

Whereas the Congress of the United States has amended subsection (b) of section 202 of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)) so as to authorize the "national organization of the State commissions" to determine and officially certify standards to the Interstate Commerce Commission evidencing the lawfulness of interstate operations of motor carriers, and to require the Interstate Commerce Commission to promulgate such standards into law; and

Whereas the National Association of Railroad and Utilities Commissioners, hereinafter sometimes referred to as the "NARUC", constitutes the "national organization of the State commissions" within the meaning of the Interstate Commerce Act, as amended; and

Whereas the NARUC has prepared standards for the purpose of evidencing the lawfulness of interstate operations of motor carriers within the meaning of subsection (b) of section 202 of the Interstate Commerce Act, as amended; and

Whereas such standards are attached hereto, incorporated into and made a part of this resolution as though they were set forth herein in full; and

Whereas the NARUC in the preparation of such standards has held extensive consultations with the Interstate Commerce Commission and with representatives of motor carriers subject to State registration requirements; and

Whereas such standards were prepared for the purpose of fully and completely implementing the provisions of subsection (b) of section 202 of the Interstate Commerce Act, as amended; therefore, be it

Resolved that the National Association of Railroad and Utilities Commissioners, at its 78th annual convention assembled in the city of Las Vegas, Nev., does hereby determine that the standards incorporated herein shall constitute the standards for evidencing the lawfulness of interstate operations of motor carriers within the meaning of subsection (b) of section 202 of the Interstate Commerce Act, as amended; and be it further

Resolved that the officers of the NARUC and the chairman of the NARUC Committee to Promote Uniformity in the Regulation of Motor Carriers are hereby directed to officially certify, for and on behalf and in the name of the NARUC, a copy of this resolution and of the standards incorporated herein to the Interstate Commerce Commission within the next 10 days.

It is ordered, That Chapter I of Title 49 of the Code of Federal Regulations be amended by adding a new Part 177b, reading as follows:

Subpart A—Definitions

Sec.
177b.1 Definition.
177b.2 Operations within borders of State.

Subpart B—Registration of ICC Operating Authority

177b.11 When registration required.
177b.12 Form and execution of application.
177b.13 Filing of application.
177b.14 Prior registration.

Subpart C—Designation of Process Agent

177b.21 When designation required.
177b.22 Filing of designation.
177b.23 Qualifications of agent.

Subpart D—Registration and Identification of Vehicles and Driveaway Operations

177b.31 When registration and identification required.
177b.32 Registration and identification.
177b.33 Form and execution of application for identification stamps or number.
177b.34 Form and execution of application for cab card.
177b.35 Form of identification stamp or number.
177b.36 Form of cab card.
177b.37 Use of cab cards in connection with vehicles not used in driveaway operations.
177b.38 Use of cab cards in driveaway operations.
177b.39 Inspection of the cab card.
177b.40 Destruction of cab cards.
177b.41 Alteration of cab card; replacement.
177b.42 Identification.

Subpart E—Evidence of Liability Security

177b.51 When liability insurance certificate or surety bond required.
177b.52 Form and execution of liability insurance certificate.
177b.53 Form and execution of liability insurance endorsement.

Sec.
177b.54 Form and execution of liability surety bond.
177b.55 Qualifications of insurer or surety.

Subpart F—Evidence of Cargo Security

177b.61 When cargo insurance certificate or surety bond required.
177b.62 Form and execution of cargo insurance certificate.
177b.63 Form and execution of cargo insurance endorsement.
177b.64 Form and execution of cargo surety bond.
177b.65 Qualifications of insurer or surety.

Subpart G—Notice of Security Cancellation

177b.71 Notice of insurance cancellation.
177b.72 Notice of bond cancellation.

Subpart H—Evidence of Self-Insurance

177b.81 Evidence of self-insurance.

Subpart I—Interim Operations

177b.91 Interim operations.

Subpart J—Miscellaneous

177b.101 Reproduction of forms.
177b.102 Completion of forms.
177b.103 Violations declared unlawful; criminal penalties, civil remedies.
177b.104 State taxes and fees.
Appendix.

AUTHORITY: The provisions of this Part 177b issued under sec. 1, 49 Stat. 546, as amended; 49 U.S.C. 304. Interpret or apply sec. 1, 49 Stat. 543, as amended; 49 U.S.C. 302.

Subpart A—Definitions

§ 177b.1 Definitions.

The following letters and words, when used in these Standards, shall have the following meanings, unless otherwise clearly apparent from the context:

(a) The words "driveaway operation" shall mean an operation in which any vehicle or vehicles, operated singly or in lawful combinations, new or used, not owned by the transporting motor carrier, constitute the commodity being transported;

(b) The letters "ICC" shall mean the Interstate Commerce Commission;

(c) The word "law" shall include constitutional and statutory provisions and rules and regulations adopted by a Commission;

(d) The words "motor carrier" shall mean a motor carrier of passengers or property holding operating authority issued by the Interstate Commerce Commission;

(e) The letters "NARUC" shall mean the National Association of Railroad and Utilities Commissioners;

(f) The word "State" shall mean any of the several States or the District of Columbia, as the case may be;

(g) The words "State commission" or "commission" shall mean the commission, board or official which, under the laws of any State, possesses the jurisdiction to issue or deny certificates of public convenience and necessity or permits to motor carriers, or otherwise to regulate the business of transportation by motor vehicles in intrastate commerce over the highways of such State; and

(h) The word "vehicle" shall mean a self-propelled or motor-driven vehicle operated by a motor carrier under authority issued by the Interstate Commerce Commission.

§ 177b.2 Operations within borders of State.

Whenever these Standards refer to operations "within the borders" of a State, such operations shall be deemed to include interstate operations to, from, within or traversing such State.

Subpart B—Registration of ICC Operating Authority

§ 177b.11 When registration required.

Whenever a State requires a motor carrier to file and maintain a current record of its authority issued by the Interstate Commerce Commission permitting operation within the borders of such State, such motor carrier shall not exercise such authority within the borders of such State unless and until there shall have been filed with and approved by the commission of such State an application for the registration of such authority as prescribed by the provisions of this subpart, and there shall have been a compliance with all other requirements of this subpart: *Provided, however,* That a motor carrier shall only be required to file with such State commission that portion of its authority permitting operation within the borders of such State; *And provided further,* That a motor carrier shall not be required to file with such State commission an emergency or temporary operating authority having a duration of 30 consecutive days or less if such carrier has: (a) Registered its other authority and identified its vehicles or driveaway operation under the provisions of these standards; and (b) furnished to the State commission a telegram or other written communication describing such emergency or temporary operating authority and stating that operation thereunder shall be in full accord with the requirements of these standards.

§ 177b.12 Form and execution of application.

The application for the registration of such operating authority shall be in the form set forth in Form A appended to this part and made a part of this section. The application shall be printed on a rectangular card or sheet of paper 11 inches in height and 8½ inches in width. The application shall be duly completed and executed by an official of the motor carrier.

§ 177b.13 Filing of application.

The application for the registration of such operating authority shall be filed in duplicate with the commission of such State. The original, to which the copy of the ICC operating authority shall be attached, shall be retained by the State commission. The other copy of the application or an acknowledgment shall be transmitted to the motor carrier when the application is approved by the State commission. The application shall be accompanied by the fee, if any, prescribed by the law of such State.

§ 177b.14 Prior registration.

A motor carrier need not register under the provisions of this subpart any authority issued by the ICC permitting operation within the borders of a State, when the same was properly registered with the commission of such State at the time these standards became effective.

Subpart C—Designation of Process Agent

§ 177b.21 When designation required.

Whenever a State requires a motor carrier to file a designation of a local agent for service of process, such motor carrier shall not engage in interstate or foreign commerce within the borders of such State unless and until there shall have been filed with and accepted by the commission of such State a currently effective designation of such a local agent.

§ 177b.22 Filing of designation.

The motor carrier shall file such designation of a local agent for service of process with the commission of such State by showing the name and address of such agent on the uniform application for registration of interstate operating authority, as set forth in Form A appended to this part, or by furnishing such commission with a true copy of the designation of such agent filed with the Interstate Commerce Commission.

§ 177b.23 Qualifications of agent.

The provisions of this subpart shall not be construed in any way to affect the qualifications of a local agent for service of process as prescribed by State law.

Subpart D—Registration and Identification of Vehicles and Driveaway Operations

§ 177b.31 When registration and identification required.

Whenever a State requires a motor carrier to register and identify any vehicle (other than one used in driveaway operations) as operating under its authority issued by the Interstate Commerce Commission permitting operation within the borders of such State, or whenever a State requires a motor carrier, engaged in driveaway operations, to register and identify such operations as being conducted under its authority issued by the Interstate Commerce Commission permitting the conduct of same within the borders of such State, such motor carrier shall not operate such vehicle or engage in such driveaway operations under such authority within the borders of such State unless and until the vehicle or driveaway operations shall have been registered with the commission of such State in accordance with the provisions of this subpart, and there shall have been a compliance with all other requirements of this subpart.

§ 177b.32 Registration and identification.

(a) On or before the 31st day of January of each calendar year, but not earlier than the preceding 1st day of November, such motor carrier shall apply

to the Commission of such State for the issuance of an identification stamp or stamps, or for the assignment of an identification number (as elected by the laws of such State), for the registration and identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of such State during the ensuing year. If a State elects to require the use of identification stamps under the provisions of this subpart, the motor carrier may apply for such number of stamps as is sufficient to cover its vehicles or driveaway operations which it anticipates will be placed in operation or conducted during the period for which the stamps are effective. The motor carrier may thereafter file one or more supplemental applications for additional stamps if the need therefor arises or is anticipated.

(b) If the State commission determines that the motor carrier has complied with all applicable provisions of these standards, the commission shall issue to the motor carrier the number of identification stamps requested or shall assign it an identification number, as the case may be.

(c) An identification stamp or number issued or assigned under the provisions of this subpart shall be used for the purpose of registering and identifying a vehicle or driveaway operations as being operated or conducted by a motor carrier under authority issued by the Interstate Commerce Commission, and shall not be used for the purpose of distinguishing between the vehicles operated by the same motor carrier. A motor carrier receiving an identification stamp or identification number under the provisions of this subpart shall not knowingly permit the use of same by any other person or organization.

(d) The State commission may require the motor carrier to accompany such application with a list identifying each vehicle (other than one to be used in driveaway operations) which it intends to operate within the borders of such State during the ensuing year. The State commission may further require the motor carrier to keep such list current by filing with it an identification of each vehicle acquired for operation within the borders of such State and each vehicle whose operation is discontinued therein after the filing of such list. The filing of an identification of such newly acquired or discontinued vehicle shall be made with the State commission on or before the 15th day after the motor carrier initiates or discontinues operation of the vehicle within the borders of such State.

(e) On or before the 31st day of January of each calendar year, but not earlier than the preceding 1st day of November, such motor carrier shall apply to the National Association of Railroad and Utilities Commissioners, or to the Commission of any State in which it is permitted to operate pursuant to authority issued by the Interstate Commerce Commission, for the issuance of a sufficient supply of uniform identification cab cards for use in connection with the registration and identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of such State during the ensuing year.

(f) The NARUC of the State commission, as the case may be, shall issue to the motor carrier the number of cab cards requested. A motor carrier receiving a cab card under the provisions of this chapter shall not knowingly permit the use of same by any other person or organization. Prior to operating a vehicle, or conducting a driveaway operation, within the borders of such State during the ensuing year, the motor carrier shall place one of such identification stamps or such identification number on the back of a cab card in the square bearing the name of such State in such a manner that the same cannot be removed without defacing it. The motor carrier shall thereupon duly complete and execute the form of certificate printed on the front of the cab card so as to identify itself and such vehicle or driveaway operation.

(g) The registration and identification of a vehicle or driveaway operations under the provisions of this subpart and the identification stamp or number evidencing same and the cab card prepared therefor shall become void on the 1st day of February in the succeeding calendar year, unless such registration is terminated prior thereto.

§ 177b.33 Form and execution of application for identification stamps or number.

The application for the issuance of such identification stamps or number shall be in the form set forth in Form B appended to this part and made a part of this section. The application shall be printed on a rectangular card or sheet of paper 11 inches in height and 8½ inches in width. The application shall be duly completed and executed by an official of the motor carrier, and shall be accompanied by the fee, if any, prescribed by the law of such State.

§ 177b.34 Form and execution of application for cab card.

The application for the issuance of such cab cards shall be in the form set forth in Form C appended to this part and made a part of this section. The application shall be printed on the reverse side of the uniform application for registration and identification of vehicles or driveaway operations operated or conducted under authority issued by the ICC as set forth in Form B appended to this part. The application shall be duly completed and executed by an official of the motor carrier, and shall be accompanied by the fee, if any, prescribed by the law of such State.

§ 177b.35 Form of identification stamp or number.

Any identification stamp issued under the provisions of this subpart by a State commission shall bear its name or symbol and such other distinctive markings or information, if any, as the Commission deems appropriate. The stamp shall be in the shape of a square and shall not exceed 1 inch in diameter. Any identification number issued by a State commission under the provisions of this subpart shall not exceed the dimensions of a square 1 inch in diameter.

§ 177b.36 Form of cab card.

The cab card referred to above shall be in the form set forth in Form D appended to this part and made a part of this section. The cab card shall be printed on a rectangular card 11 inches in height and 8½ inches in width.

§ 177b.37 Use of cab cards in connection with vehicles not used in driveaway operations.

In the case of a vehicle not used in a driveaway operation, the cab card shall be maintained in the cab of such vehicle for which prepared whenever the vehicle is operated under the authority of the carrier identified in the cab card. Such cab card shall not be used for any vehicle except the vehicle for which it was originally prepared. A motor carrier shall not prepare two or more cab cards which are effective for the same vehicle at the same time.

§ 177b.38 Use of cab cards in driveaway operations.

In the case of a driveaway operation, the cab card shall be maintained in the cab of the vehicle furnishing the motive power for the driveaway operation whenever such an operation is conducted under the authority of the carrier identified in the cab card.

§ 177b.39 Inspection of the cab card.

A cab card shall, upon demand, be presented by the driver to any authorized Government personnel for inspection.

§ 177b.40 Destruction of cab cards.

(a) Each motor carrier shall destroy a cab card immediately upon its expiration.

(b) If a motor carrier permanently discontinues the use of a vehicle for which a cab card has been prepared, it shall nullify the cab card at the time of such discontinuance.

§ 177b.41 Alteration of cab card; replacement.

(a) Any erasure, improper alteration, or unauthorized use of a cab card shall render it void.

(b) If a cab card is lost, destroyed, mutilated, or becomes illegible, a new cab card may be prepared and new identification stamps or numbers may be issued therefor upon application by the motor carrier and upon payment of the same fee prescribed for the original issuance thereof, if any.

§ 177b.42 Identification.

No State shall require a motor carrier to display external identification upon a vehicle other than such identification as is required by regulations of the Interstate Commerce Commission. Nothing in these standards shall be construed to affect State requirements as to the ex-

ternal identification of vehicles to indicate the payment of a State tax or fee imposed for revenue purposes or for any other purpose not within the purview of subsection (b) of section 202 of the Interstate Commerce Act 49 U.S.C., sec. 302 (b)(2).

Subpart E—Evidence of Liability Security

§ 177b.51 When liability insurance certificate or surety bond required.

Whenever a State requires a motor carrier to file and maintain evidence of currently effective bodily injury and property damage liability security, such motor carrier shall not engage in interstate or foreign commerce within the borders of such State unless and until there shall have been filed with and accepted by the commission of such State a currently effective certificate of insurance or surety bond as prescribed by the provisions of this subpart, and there shall have been a compliance with all other requirements of this subpart.

§ 177b.52 Form and execution of liability insurance certificate.

The certificate of insurance referred to in the preceding section shall state that the insurer has issued to such motor carrier a policy of insurance which by endorsement provides automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the law of such State. The certificate shall be in the form set forth in Form E appended to this part and made a part of this section. The certificate shall be printed on a rectangular card 5 inches in height and 8 inches in width. The certificate shall be duly completed and executed by such insurer.

§ 177b.53 Form and execution of liability insurance endorsement.

The endorsement referred to in the preceding section shall be attached to such insurance policy and shall form a part of it. The endorsement shall be in the form set forth in Form F appened to this part and made a part of this section. The endorsement shall be printed on a rectangular card or sheet of paper 5 inches in height and 8 inches in width. The endorsement shall be duly completed and executed by the insurer.

§ 177b.54 Form and execution of liability surety bond.

The surety bond referred to in § 177b.51 shall be in the form set forth in Form G appended to this part and made a part of this section. The bond shall be printed on a rectangular card 5 inches in height and 8 inches in width. The bond shall be duly completed and executed by the surety and principal.

§ 177b.55 Qualifications of insurer or surety.

The provisions of this subpart shall not be construed in anyway to affect the qualifications of an insurer or surety as prescribed by State law.

Subpart F—Evidence of Cargo Security

§ 177b.61 When cargo insurance certificate or surety bond required.

Whenever a State requires a motor carrier to file and maintain evidence of currently effective cargo security, such motor carrier shall not engage in interstate or foreign commerce within the borders of such State unless and until there shall have been filed with and accepted by the commission of such State a currently effective certificate of insurance or surety bond as prescribed by the provisions of this subpart, and there shall have been a compliance with all other requirements of this subpart.

§ 177b.62 Form and execution of cargo insurance certificate.

The certificate of insurance referred to in the preceding section shall state that the insurer has issued to such motor carrier a policy of insurance which by endorsement provides cargo insurance covering the obligations imposed upon such motor carrier by the provisions of the law of such State. The certificate shall be in the form set forth in Form H appended to this part and made a part of this section. The certificate shall be printed on a rectangular card 5 inches in height and 8 inches in width. The certificate shall be duly completed and executed by such insurer.

§ 177b.63 Form and execution of cargo insurance endorsement.

The endorsement referred to in the preceding section shall be attached to such insurance policy and shall form a part of it. The endorsement shall be in the form set forth in Form I appended to this part and made a part of this section. The endorsement shall be printed on a rectangular card or sheet of paper 5 inches in height and 8 inches in width. The endorsement shall be duly completed and executed by the insurer.

§ 177b.64 Form and execution of cargo surety bond.

The surety bond referred to in § 177b.61 shall be in the form set forth in Form J appended to this part and made a part of this section. The bond shall be printed on a rectangular card 5 inches in height and 8 inches in width. The bond shall be duly completed and executed by the surety and principal.

§ 177b.65 Qualifications of insurer or surety.

The provisions of this subpart shall not be construed in any way to affect the qualifications of an insurer or surety as prescribed by State law.

Subpart G—Notice of Security Cancellation

§ 177b.71 Notice of insurance cancellation.

An insurer under the provisions of Subparts E and F of these standards shall give to the State commission notice of the cancellation of motor carrier bodily injury and property damage liability insurance or motor carrier cargo insurance, as the case may be, by filing with the commission the form of notice set forth in Form K appended to this part and made a part of this section. The notice shall be printed on a rectangular card 5 inches in height and 8 inches in width. The notice shall be duly completed and executed by the insurer.

§ 177b.72 Notice of bond cancellation.

A surety or motor carrier under the provisions of Subparts E and F of these standards shall give to the State commission notice of the cancellation of motor carrier bodily injury and property damage liability surety bond or motor carrier cargo surety bond, as the case may be, by filing with the commission the form of notice set forth in Form L appended to this part and made a part of this section. The notice shall be printed on a rectangular card 5 inches in height and 8 inches in width. The notice shall be duly completed and executed by the surety or motor carrier.

Subpart H—Evidence of Self-insurance

§ 177b.81 Evidence of self-insurance.

Whenever a State requires a motor carrier to file and maintain evidence of currently effective qualifications as a self-insurer under the rules and regulations of the Interstate Commerce Commission, such motor carrier shall not engage in interstate or foreign commerce within the borders of such State unless and until there shall have been filed with and accepted by the commission of such State a true and readily legible copy of the currently effective ICC order authorizing such motor carrier to self-insure under the provisions of the Interstate Commerce Act.

Subpart I—Interim Operations

§ 177b.91 Interim operations.

Whenever a State commission fails to act upon a filing made under Subparts B, C, D, E, and F of these standards within 30 days after receipt of same, the motor carrier for whose benefit such filing was made may begin operation within the borders of such State in such manner as would have been otherwise authorized if the filing had been acted upon favorable by the State commission within such period of 30 days. The motor carrier may continue such operation under the provisions of this section until such time as the State commission acts upon such filing.

Subpart J—Miscellaneous

§ 177b.101 Reproduction of forms.

(a) In order to achieve complete uniformity in the reproduction of the uniform application for registration of operating authority issued by ICC, the uniform application for registration and identification of vehicles or driveaway operations operated or conducted under

authority issued by ICC, the uniform application for identification cab card, and the uniform identification cab card, as set forth in Forms A to D appended to this part, respectively, the NARUC, shall reproduce such forms for use under the provisions of these standards, and any such forms reproduced by such an unauthorized person or organization are hereby declared to be void.

(b) The NARUC, upon request, shall supply such forms to the State commissions and motor carriers. The NARUC shall fix and charge a reasonable fee in connection with the reproduction and supply of such forms. Each State commission supplying such forms shall charge the fees fixed therefor by the NARUC.

§ 177b.102 Completion of forms.

A typewriter or indelible ink shall be used in entering information in the black spaces appearing on the forms prepared under the provisions of these standards.

§ 177b.103 Violations declared unlawful; criminal penalties, civil remedies.

Any violation of the provisions of these standards is hereby declared to be unlawful. Nothing in these standards shall be construed to prevent a State from imposing criminal penalties upon any person or organization violating any provision of these standards or from providing or applying civil remedies or sanctions in connection with such violations.

§ 177b.104 State taxes and fees.

Nothing in these standards shall be construed to affect the collection or method of collection of taxes or fees by a State from motor carriers for the operation of vehicles within the borders of such State.

It is further ordered, That this amendment shall become effective 5 years from the date of this order.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy hereof in the Office of the Secretary of the Commission, Washington, D.C., and by filing a copy with the Director, Office of the Federal Register. Notice shall also be served upon the Governors and chairmen of the public utility commissions of the several States.

By the Commission.

[SEAL] H. NEIL GARSON,
Secretary.

Appendix

FORM A

UNIFORM APPLICATION FOR REGISTRATION OF OPERATING AUTHORITY ISSUED BY ICC

To: _____ Date _____
(Name of State commission)
Applicant _____
Street _____
City _____ State _____
ICC Operating Authority No. MC _____
Type of route: ☐ Certificate ☐ Permit ☐ TA ____ ☐ Regular ☐ Irregular
Type of carrier: ☐ Property ☐ Passenger ☐ Common ☐ Contract
Give principal office address, if different than above: Street _____ City _____ State _____
If individual, give name and address:
_____ _____
If corporation, give State in which incorporated: _____
Name of president _____ Name of secretary _____
If partnership, give names and addresses of partners:
_____ _____
_____ _____
Process agent for State (This part may be omitted if the applicant has previously filed with the State commission, or attaches hereto, a current copy of its designation filed with ICC):
Name _____ Street _____
City _____ State _____
I, the undersigned, under penalty for false statement, do hereby certify that the above information is true and correct and that I am authorized to execute and file this document on behalf of the above applicant. (Federal penalties, maximum of $10,000 or imprisonment for 5 years, or both, 18 U.S.C. 1001; State penalties as prescribed by law.)

_____
(Signature)

_____
(Title)

Instructions: File this application in duplicate with ICC operating authority attached to original. When application is approved, the copy will be returned to the applicant.

This form determned by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

FORM B

UNIFORM APPLICATION FOR REGISTRATION AND IDENTIFICATION OF VEHICLES OR DRIVEAWAY OPERATIONS OPERATED OR CONDUCTED UNDER AUTHORITY ISSUED BY ICC

To: _____ Date _____
(Name of State commission)
Applicant _____
Street _____
City _____ State _____
ICC Operating Authority Number MC _____
The above described applicant hereby applies for the issuance of _____
(Number)
identification stamp(s), or for the assignment of an identification number (as elected by the laws of such State), for the registration and identification of the vehicle or vehicles which the applicant intends to operate, or driveaway operations which it intends to conduct, within the borders of such State during the period for which such identification stamp(s) or number is effective. The operation of such vehicle or vehicles, or the conduct of such driveaway operations, shall be pursuant to authority issued to the applicant by the Interstate Commerce Commission.

The applicant shall not knowingly permit any other person or organization to use the identification stamp(s) or number issued or assigned pursuant to this application.

I, the undersigned, under penalty for false statement, do hereby certify that the above information is true and correct and that I am authorized to execute and file this document on behalf of the above applicant. (Federal penalties, maximum of $10,000 or imprisonment for 5 years, or both, 18 U.S.C. 1001; State penalties as prescribed by law.)

_____
(Signature)

_____
(Title)

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., Sec. 302(b)(2)).

FORM C

UNIFORM APPLICATION FOR IDENTIFICATION CAB CARD

To: _____ Date _____
(Name of State commission or NARUC)
Applicant _____
Street _____
City _____ State _____
ICC Operating Authority Number MC _____
The above described applicant hereby applies for the issuance of _____
(Number)
uniform identification cab card(s) for use in connection with the registration and identification of the vehicle or vehicles which the applicant intends to operate, or driveaway operations which it intends to conduct, within the borders of such State during the period for which such cab card(s) is effective. The operation of such vehicle or vehicles, or the conduct of such driveaway operations, shall be pursuant to authority issued to the applicant by the Interstate Commerce Commission.

The applicant shall not knowingly permit any other person or organization to use the cab card(s) issued pursuant to this application.

I, the undersigned, under penalty for false statement, do hereby certify that the above information is true and correct and that I am authorized to execute and file this document on behalf of the above applicant. (Federal penalties, maximum of $10,000 or imprisonment for 5 years, or both, 18 U.S.C. 1001; State penalties as prescribed by law.)

_____
(Signature)

_____
(Title)

Important Note: A motor carrier should not obtain a cab card from each State Commission from which it obtains an identification stamp or number. Only one cab card is required for each vehicle or driveway movement irrespective of the number of identification stamps or numbers which may be required for its operation. Consequently, a motor carrier should obtain its supply of cab cards from the National Association of Railroad and Utilities Commissioners, Post Office Box 684, Washington, D.C. 20044, or from the Commission of any State in which it is permitted to operate pursuant to authority issued by the ICC.

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C. sec. 302(b)(2)).

FORM D

UNIFORM IDENTIFICATION CAB CARD OPERATING MOTOR CARRIER

ICC Operating Authority Number MC _____
Name of carrier _____
Street _____
City _____ State _____

Vehicle

Type_____ Make*_____
(Tractor-truck-bus-driveaway)
Year*_____ Serial No.*_____
State of vehicle registration**_____
Name of owner of vehicle*_____

The above described vehicle or driveaway operation is being operated or conducted under authority granted by the Interstate Commerce Commission to the above described motor carrier. Where required by State law, such vehicle or driveaway operation has been registered with each State whose current identification stamp or number is placed on the reverse side of this card and there has been filed with each such State (to the extent required by such State) the information authorized by section 202(b)(2) of the Interstate Commerce Act (49 U.S.C. sec. 302 (b)(2)) and the rules and regulations promulgated thereunder.

The above described vehicle or driveaway operation has been identified in conformity with the rules and regulations of the Interstate Commerce Commission.

I, the undersigned, under penalty for false statement, do hereby certify that the above information is true and correct and that I am authorized to execute this document on behalf of the above carrier. (Federal penalties, maximum of $10,000 or imprisonment for 5 years, or both, 18 U.S.C. 1001; State penalties as prescribed by law.)

Signature _____
Title _____
Date executed_____

This card expires at 12:01 a.m., February 1, 19__ or _____, ____ 19__, whichever is earlier.

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C. sec. 302 (b)(2)).

*Not applicable to driveaway operations.
**If the State of vehicle registration changes during the period this cab card is effective, the motor carrier shall immediately indicate the change above by marking out the name of the State listed and inserting the name of the new State of vehicle registration in lieu thereof. This change shall be initialed by an official of the motor carrier.

(REVERSE SIDE OF CAB CARD)

Alabama	Alaska	Arkansas	Arizona	California	Colorado
Connecticut	Delaware	District of Columbia	Florida	Georgia	Hawaii
Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky
Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota
Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire
New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio
Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota
Tennessee	Texas	Utah	Vermont	Virginia	Washington
West Virginia	Wisconsin	Wyoming			

FORM E

UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY CERTIFICATE OF INSURANCE

(Executed in triplicate)

Filed with _____ (herein-
(Name of commission)
after called commission)
This is to certify, that the _____
(Name of company)
(hereinafter called Company) of _____
(Home office
_____ has issued to
address of company)
_____ of _____
(Name of motor carrier) (Address of
_____ a policy or policies of insur-
motor carrier)
ance effective from _____ 12:01 a.m. standard time at the address of the insured stated in said policy or policies and continuing until canceled as provided herein, which, by attachment of the uniform motor carrier bodily injury and property damage liability insurance endorsement, has or have been amended to provide automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the commission has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the company agrees to furnish the commission a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State commission, such thirty (30) days' notice to commence to run from the date notice is actually received in the office of the commission.

Countersigned at _____
_____
(Street address)
_____
(City) (State) (Zip code)
this _____ day of _____ 19__
_____
(Authorized company representative)
Insurance company file No. _____
(Policy No.)

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302 (b)(2)).

FORM F

UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE ENDORSEMENT

It is agreed that:

1. The certification of the policy, as proof of financial responsibility under the provisions of any State motor carrier law or regulations promulgated by any State commission having jurisdiction with respect thereto, amends the policy to provide insurance for automobile bodily injury and property damage liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby; provided only that the insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except by reason of the obligation assumed in making such certification.

2. The uniform motor carrier bodily injury and property damage liability certificate of insurance has been filed with the State commissions indicated on the reverse side hereof.

3. This endorsement may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State commission with which such certificate has been filed, such thirty (30) days' notice to commence to run from the date the notice is actually received in the office of such commission.

Attached to and forming part of policy No. _____ issued by _____, herein called company, of _____ to _____ of _____
Dated at _____ this _____ day of _____ 19__
Countersigned by _____
(Authorized company representative)

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

(REVERSE SIDE OF UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE ENDORSEMENT)

√—Indicates State Commissions with whom uniform motor carrier bodily injury and property damage liability certificate of insurance has been filed

Alabama		Illinois		Montana		Rhode Island	
Alaska		Indiana		Nebraska		South Carolina	
Arizona		Iowa		Nevada		South Dakota	
Arkansas		Kansas		New Hampshire		Tennessee	
California		Kentucky		New Jersey		Texas	
Colorado		Louisiana		New Mexico		Utah	
Connecticut		Maine		New York		Vermont	
Delaware		Maryland		North Carolina		Virginia	
District of Columbia		Massachusetts		North Dakota		Washington	
Florida		Michigan		Ohio		West Virginia	
Georgia		Minnesota		Oklahoma		Wisconsin	
Hawaii		Mississippi		Oregon		Wyoming	
Idaho		Missouri		Pennsylvania			

FORM G

UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY SURETY BOND

(Executed in triplicate)

Know all men by these presents, that we, ---------- of ---------- (Name of motor carrier principal) (City) ----------, as principal (hereinafter called principal), and ---------- (State) (Name of surety) ----------, a corporation created and existing under the laws of the State of ----------, with principal office at ----------, ----------, as Surety (hereinafter called surety), are (City) (State) held and firmly bound unto the State of ---------- in the sum or sums hereinafter provided for which payment, well and truly to be made, the principal and surety hereby bind themselves, their successors and assigns, firmly by these presents.

The condition of this obligation is such that:

Whereas, the principal is or intends to become a motor carrier subject to the laws of such State and the rules and regulations of ---------- (Name of commission) (hereinafter called commission), relating to insurance or other security for the protection of the public, and has elected to file with the commission a surety bond conditioned as hereinafter set forth; and

Whereas, this bond is written to assure compliance by the principal as a motor carrier of passengers or property with the laws of such State and the rules and regulations of the commission relating to insurance or other security for the protection of the public, and shall inure to the benefit of any person or persons who shall recover a final judgment or judgments against the principal for any of the damages herein described.

Now, therefore, if every final judgment recovered against the principal for bodily injury to or the death of any person or loss of or damage to the property of others, sustained while this bond is in effect, and resulting from the negligent operation, maintenance, or use of motor vehicles in transportation (but excluding injury to or death of the principal's employees while engaged in the course of their employment, and loss of or damage to property of the principal and property transported by the principal designated as cargo), shall be paid, then this obligation shall be void, otherwise to remain in full force and effect.

Within the limits hereinafter provided, the liability of the surety extends to such losses, damages, injuries, or deaths regardless of whether such motor vehicles are specifically described herein and whether occurring on the route or in the territory authorized to be served by the principal or elsewhere.

This bond is effective from ---------- ---------- (12:01 a.m., standard time, at the address of the principal as stated herein) and shall continue in force until terminated as hereinafter provided. The principal or the surety may at any time terminate this bond by written notice to the commission, such termination to become effective not less than thirty (30) days after actual receipt of said notice by the commission. The surety shall not be liable hereunder for the payment of any judgment or judgments against the principal for bodily injury to or the death of any person or persons or loss of or damage to property resulting from accidents which occur after the termination of this bond as herein provided, but such termination shall not affect the liability of the surety hereunder for the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

The liability of the surety on each motor vehicle shall be the limits prescribed in the laws of such State and the rules and regulations of the commission governing the filing of surety bonds, which were in effect at the time this bond was executed, and will be a continuing one notwithstanding any recovery hereunder.

In witness whereof, the said principal and surety have executed this instrument on the ---------- day of ----------, 19--

---------- (Principal)

By ----------

[AFFIX CORPORATE SEAL]

---------- (Surety)

---------- ---------- (City) (State)

By ----------

Countersigned at ---------- this -------- day of ---------- 19--

Bond No. ------ ---------- (Registered resident agent)

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

FORM H

UNIFORM MOTOR CARRIER CARGO CERTIFICATE OF INSURANCE

(Executed in triplicate)

Filed with ---------- (hereinafter called commission) (Name of commission)

This is to certify, that the ---------- (Name of company) (hereinafter called company) of ---------- ---------- has issued (Home office address of company) to ---------- of (Name of motor carrier) ---------- a policy (Address of motor carrier) or policies of insurance effective from ---------- 12:01 a.m. standard time at the address of the insured stated in said policy or policies and continuing until canceled as provided herein, which, by attachment of the uniform motor carrier cargo insurance endorsement, has or have been amended to provide cargo insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the commission has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the company agrees to furnish the commission a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State commission, such thirty (30) days' notice to commence to run from the date notice is actually received in the office of the commission.

Countersigned at ---------- (Street address)

---------- (City) (State) (ZIP Code)

this -------- day of ---------- 19 --

---------- (Authorized company representative)

Insurance company file No. ---------- (Policy No.)

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

FORM I

UNIFORM MOTOR CARRIER CARGO INSURANCE ENDORSEMENT

It is agreed that:

1. The certification of the policy as proof of responsibility under the provisions of any State motor carrier law or regulations promulgated by any State commission having jurisdiction with respect thereto, amends the policy to provide insurance for motor carrier cargo liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby; provided only that the insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except by reason of the obligation assumed in making such certification.

2. The uniform motor carrier cargo certificate of insurance has been filed with the State commissions indicated on the reverse side hereof.

3. This endorsement may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State commission with which such certificate has been filed, such thirty (30) days' notice to commence to run from the date the notice is actually received in the office of such commission.

Attached to and forming part of policy No. _____ issued by _____, herein called company, of _____ to _____ of _____

Dated at _____ this _____ day of _____ 19__

Countersigned by _____

_____

(Authorized company representative)

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302 (b)(2)).

(REVERSE SIDE OF UNIFORM MOTOR CARRIER CARGO INSURANCE ENDORSEMENT)

√—Indicates State Commissions with whom uniform motor carrier cargo certificate of insurance has been filed

Alabama		Illinois		Montana		Rhode Island	
Alaska		Indiana		Nebraska		South Carolina	
Arizona		Iowa		Nevada		South Dakota	
Arkansas		Kansas		New Hampshire		Tennessee	
California		Kentucky		New Jersey		Texas	
Colorado		Louisiana		New Mexico		Utah	
Connecticut		Maine		New York		Vermont	
Delaware		Maryland		North Carolina		Virginia	
District of Columbia		Massachusetts		North Dakota		Washington	
Florida		Michigan		Ohio		West Virginia	
Georgia		Minnesota		Oklahoma		Wisconsin	
Hawaii		Mississippi		Oregon		Wyoming	
Idaho		Missouri		Pennsylvania			

FORM J

UNIFORM MOTOR CARRIER CARGO SURETY BOND

(Executed in triplicate)

Know all men by these presents, that we, _____

(Name of motor carrier principal)

of _____, _____, as

(City) (State)

principal (hereinafter called principal), and _____,

(Name of surety)

a corporation created and existing under the laws of the State of _____, with principal office at _____, _____,

(City) (State)

as surety (hereinafter called surety), are held and firmly bound unto the State of _____ in the sum or sums hereinafter provided for which payment, well and truly to be made, the principal and surety hereby bind themselves, their successors and assigns, firmly by these presents.

The condition of this obligation is such that:

Whereas, the principal is or intends to become a motor carrier subject to the laws of such State and the rules and regulations of the _____ (hereinafter called commission), relating to insurance or other security for the protection of shippers and consignees, and has elected to file with the Commission a bond conditioned as hereinafter set forth, and

(Name of commission)

Whereas, this bond is written to assure compliance by the principal as a motor carrier with the laws of such State and the rules and regulations of the commission relating to insurance or other security for the protection of shippers and consignees, and shall inure to the benefit of any and all shippers or consignees to whom the principal may be held liable for any of the damages herein described.

Now, therefore, if the principal shall make compensation to shippers and consignees for all losses of or damages to property belonging to them which shall, while this bond is in effect, come into the possession of the principal in connection with its transportation service, regardless of whether such losses or damages occur while said property is in a motor vehicle, terminal, warehouse or other place, for which losses or damages the principal may be held legally liable, then this obligation shall be void, otherwise it shall remain in full force and effect.

The liability of the surety for the limits hereinafter provided shall be a continuing one notwithstanding any recovery hereunder, and extends to such losses or damages regardless of whether the motor vehicles, terminals, warehouses, and other facilities used in connection with the transportation service of the principal are specifically described herein or not, and whether occurring on the route or in the territory authorized to be served by the principal or elsewhere.

The liability of the surety for any such loss or damage shall be the limits prescribed in the laws of such State and the rules and regulations of the commission governing the filing of surety bonds, which were in effect at the time this bond was executed, and will be a continuing one notwithstanding any recovery hereunder.

This bond is effective from _____ (12:01 a.m., standard time, at the address of the principal as stated herein) and shall continue in force until terminated as hereinafter provided. The principal or the surety may at any time terminate this bond by written notice to the commission, such termination to become effective not less than thirty (30) days after actual receipt of said notice by the commission.

The surety shall not be liable hereunder for the payment of any of the losses or damages hereinbefore described which arise on property coming into the possession of the principal in connection with its transportation service after the termination of this bond as herein provided, but such termination shall not affect the liability of the surety hereunder for the payment of any such losses or damages arising on property coming into the possession of the principal in connection with its transportation service prior to the date such termination becomes effective.

In witness whereof, the said principal and surety have executed this instrument on the ____ day of _____, 19____

_____

(Principal)

By _____

_____

(Surety)

[AFFIX CORPORATE SEAL]

_____ _____

(City) (State)

By _____

Countersigned at _____ this__ day of _____ 19__

Bond No. _____ _____

(Registered resident agent)

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

FORM K

UNIFORM NOTICE OF CANCELLATION OF MOTOR CARRIER INSURANCE POLICIES

(Executed in triplicate)

Check type canceled: BI and PD ☐ Cargo ☐

Filed with _____ (hereinafter called commission)

(Name of commission)

This is to advise that under the terms of a policy or policies issued to _____

_____

(Name of motor carrier)

of _____

(Address of motor carrier)

by _____

(Name of company)

of _____

(Address)

said policy or policies, including any and all endorsements forming a part thereof or certificates issued in connection therewith, is (are) hereby canceled effective as of the _____ day of _____, 19____, 12:01 a.m., standard time at the address of the Insured as stated in said policy or policies provided such date is not less than thirty (30) days after the actual receipt of this notice by the commission.

_____

(Signature of insurer)

Insurance Company File No. _____

(Policy No.)

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

FORM L

UNIFORM NOTICE OF CANCELLATION OF MOTOR CARRIER SURETY BONDS

(Executed in triplicate)

Check type canceled: BI and PD ☐ Cargo ☐
Filed with _____ (hereinafter
(Name of commission)
called commission)

This is to advise that, under the terms of surety bond(s) executed in behalf of

_____
(Name of principal)

of _____
(Address)

by _____
(Name of surety)

of _____
(Address)

said bond(s), including any and all riders or certificates attached thereto or issued in connection therewith, is (are) hereby canceled effective as of the _____ day of _____, 19____, 12:01 a.m., standard time at the address of the Principal as stated in said bond(s) provided such date is not less than thirty (30) days after the actual receipt of this notice by the commission.

_____
(Signature of principal or surety)

Insurance company File No. _____
(Policy No.)

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b)(2)).

[F.R. Doc. 66-13800; Filed, Dec. 27, 1966; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 1126]

[Docket No. AO 231—A28]

MILK IN NORTH TEXAS 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 North Texas 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 10th 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 proposed amendment to the tentative marketing agreement and to the order as amended, was conducted at Dallas, Tex., on November 10, 1966, pursuant to notice thereof which was issued November 2, 1966 (31 F.R. 14316).

The material issue on the record of the hearing related to reduction of the pooling requirements for cooperative association plants.

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

Reduction of the pooling requirements for cooperative association plants. The provisions of the order for pooling a plant operated by a cooperative association should not be revised.

Since July 1, 1966, the North Texas order has provided that a plant operated by a cooperative association may attain pool plant status during a month if at least 50 percent of the producer milk of members of such cooperative is received during the month at pool plants of other handlers or is transferred to such plants from the association's plant.

It was proposed that the 50 percent requirement would be reduced to 25 percent and out-of-market Class I sales would be assigned credit equal to receipts from cooperatives at pool plants of other handlers in determining compliance with this requirement. It was also proposed that plants eligible to qualify for pooling would be limited to those that had qualified in a 3-month period prior to October 1, 1966.

The proponent cooperative operates a Grade A milk manufacturing plant at Sulphur Springs, Tex. This plant serves as a source of milk for the fluid requirements of North Texas pool distributing plants and disposes of milk excess to such fluid requirements in manufactured dairy products. This cooperative also has sales of milk for fluid uses in unregulated areas.

From July through September 1966, the cooperative qualified its plant as a pool plant by meeting the 50 percent requirement for pool plant status under the order. In October only 27 percent of the producer milk of the cooperative members was received at pool distributing plants of other handlers. This was because sales accounts with two distributors were lost and were not replaced. However, under a suspension action (31 F.R. 13641) effective for the months of October 1966 through March 1967, the plant continued to be pooled in October by shipping producer milk to the plant of another cooperative association.

The performance standards for plants operated by cooperative associations should not be reduced. Such standards should provide that only a plant operated by a cooperative association whose major function is supplying milk to this market should be allowed to share in the market-wide pool. The present 50 percent requirement with respect to deliveries of member milk to pool distributing plants of other handlers is a reasonable standard of association with the fluid market. Reduction of the percentage requirement to 25 percent would not insure that milk from such plants would be made available to the market when needed for Class I purposes. A plant operated by a cooperative which delivers less than 50 percent of its member milk to pool distributing plants of other handlers under this order should not be considered to be primarily associated with this market.

Sales for fluid use to plants other than pool plants under the North Texas order should not be included in determining the pool status of a plant operated by a cooperative. The proponent cooperative has sales to the Houston market for use in fluid milk products. This outlet has been supplied by delivering milk directly from members' farms to the Houston market without first receiving the milk at the Sulphur Springs plant of the cooperative. At times when milk is not needed for fluid uses in the other market the excess milk has been delivered to the pool plant of the cooperative for use in manufactured products where it becomes producer milk under the order and receives the North Texas uniform price.

It is essential to the operation of this order that plant performance standards be maintained that will insure that an adequate supply of pure and wholesome milk is maintained for this market. The performance standards for plants operated by a cooperative association to qualify for pool plant status should reflect the function of supplying milk for fluid needs of this market. Including fluid sales made to nonpool plants associated with another market in qualifying a cooperative plant for pool plant status in this market would not serve the purpose of pool plant standards which is to guarantee that adequate supplies of milk will be available for the fluid needs of consumers in this market.

Pool status should not be limited to cooperative plants that qualified for pool status prior to October 1966. The proponent cooperative proposed this "grandfather" proviso to insure that a plant not formerly pooled under this order could not become pooled under the lower pool plant standards proposed and thereby possibly dissipate the pool returns.

There are at least three cooperative associations of which two operate pool plants in this market. The proposal would preclude the third cooperative from pooling a plant under these provisions at any future time if such cooperative wished to associate a plant with the market to supply it.

The proposed amendment should be denied. Any plant, regardless of location, should have equal opportunity to comply with the standards of regulation and have its producers share in the returns available from Class I sales. The performance standards for regulation should at any time be equal for all plants performing the same function.

The request for emergency amendatory action and elimination of a recommended decision is denied. The suspension action previously referred to provides an adjustment period in which the cooperative can realign its supplies and sales to pool distributing plants so that it can be pooled under this order by meeting the normal and reasonable pool plant standards. During this period deliveries to any pool plant, including other cooperative association plants, are qualifying shipments. This temporary departure from limiting qaulifying shipments to those to distributing pool plants will not adversely affect orderly marketing of milk in the market for this interim period. Therefore, there is no need for emergency action to reduce the percentage requirements for pooling of this plant.

Proponent filed a brief which maintains that the Department should adopt in whole the proponent's proposal because no opposition to it was presented at the hearing.

The proponent had the burden of proof to justify the proposed amendment to the order on the hearing record. The evidence showed that reduction of the percentage requirements for the cooperative association plant to 25 percent would permit such plant to qualify more easily for pooling. However, there is no evidence in the record to justify adoption of the proposed 25 percentage requirement instead of any other possible percentage pooling requirement, including the present 50 percent. Nor was any evidence presented that the proposed requirement would more effectively effectuate the purposes of the Act than would the present requirement in obtaining supplies sufficient for fluid milk needs and maintaining orderly marketing of milk in this area.

Witness for the proponent cooperative agreed that in principle the plant operated by the cooperative should be pooled, in the long run, on the basis of shipments to plants serving the Class I needs of the market. It expects to regain lost sales in the coming months so that the plant will again be pooled by meeting the 50 percent qualification standard.

The suspension action has alleviated the marketing situation created by a temporary shift in sales by the cooperative so that there are additional opportunities for it to remain pooled until April 1, 1967. The record does not indicate with certainty whether the plant of the cooperative will after this date regain pool status under the regular qualification standard. Nevertheless, if the plant does not and loses pool status, it is appropriate that it no longer be considered to be primarily associated with this fluid market and its producers should not be eligible to participate in the marketwide pooling of returns.

North Texas—Recommended Decision

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.

Signed at Washington, D.C., on December 22, 1966.

CLARENCE H. GIRARD,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 66-13897; Filed, Dec. 27, 1966; 8:50 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 27]

CANNED FIGS

Notice of Withdrawal of Petition and Termination of Proposed Rule Making Regarding Packing Medium

In the matter of amending the definition and standard of identity for canned figs (21 CFR 27.70) by changing the maximum Brix limit for the packing medium "extra heavy sirup" from 35° Brix to 55° Brix:

A notice of proposed rule making in the above-identified matter was published in the FEDERAL REGISTER of January 4, 1966 (31 F.R. 17), based on a petition filed by The J. Garth Co., Post Office Box 814, League City, Tex. 77573, J. R. May Co., Post Office Box 147, Friendswood, Tex. 77546, and The Bama Co., Post Office Box 15213, Houston, Tex. 77020.

Notice is given that the petitioners have withdrawn their petition and that the rule making procedure in this matter is terminated without prejudice.

This action is taken pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and under the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (21 CFR 2.120; 31 F.R. 3008).

Dated: December 20, 1966.

R. E. DUGGAN,
Acting Associate Commissioner
for Compliance.

[F.R. Doc. 66-13879; Filed, Dec. 27, 1966; 8:49 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 87]

[Docket No. 17069; FCC 66-1183]

AVIATION SERVICES

Aeronautical Multicom Service

1. Notice of proposed rule making in the above-entitled matter is hereby given.

2. The Commission, by report and order (Docket No. 14657) released July 27, 1962, established a new class of station operating on the frequency 122.9 Mc/s, called aeronautical multicom. The purpose of this class of station is to provide communications pertaining to agricultural, ranching, and conservation activities, forest firefighting, aerial application, aerial advertising, and parachute jumping. During the 4 years that this type of service has been available, the Commission has received numerous requests for waiver to allow communications pertaining to activities other than those set forth in the rules (§ 87.277). Waivers have been granted in those instances where the activity was basically concerned with the direction of aerial activities from the ground or directing ground activities from the air.

3. Based on the information gained from administering the service and requests for waivers received, the present scope of service for multicom stations appears too restrictive. The present proposal would eliminate the enumeration of particular activities to which the communications must pertain to and substitute a general statement regarding the use of the frequency. This would allow a certain degree of flexibility and should eliminate many of the requests for waiver that have been occasioned by the present rule.

4. In the report and order establishing this service, the Commission stated its objective "* * * was to provide for activities of a temporary, seasonal, or emergency nature and to exclude those activities which are of a continuing or permanent nature, particularly where provision is already made for communications under another part of the rules." This rule making is not intended to change this objective. The basic concept that the activity should be concerned with the direction of aerial activities from the ground or directing ground activities from the air is sound and will be retained. However, it is virtually impossible to specify all of the precise activities to which this basic concept of the service would apply. Accordingly, we propose to amend the rules to eliminate the enumeration of specific activities.

5. The proposed amendments to the rules, as set forth below, are issued pursuant to the authority contained in sections 4(i) and 303 (b), and (r) of the Communications Act of 1934, as amended.

6. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before February 1, 1967, and reply comments on or before February 15, 1967. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

7. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

Adopted: December 21, 1966.

Released: December 23, 1966.

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

1. Section 87.277 is amended to read as follows:

§ 87.277 Scope of service.

(a) Except as provided in paragraph (b) of this section, communications by an aeronautical multicom station shall pertain to activities of a temporary, seasonal or emergency nature which depend upon an aircraft in flight for the successful or safe conduct of the activity. Such communications shall be limited to the directing of ground activities from the air, the directing of aerial activities from the ground, and air-to-air communications where such communications are otherwise not provided for in this part.

(b) Where advisory service is not authorized at a landing area and an applicant is unable to meet the special requirements for an aeronautical advisory station under § 87.251, the Commission, upon a proper showing by the applicant, and until such time as an aeronautical advisory service is established at the landing area on 122.8 or 123.0 Mc/s, may authorize service at such landing areas on the frequency 122.9 Mc/s in accordance with the following provisions:

(1) Shall not be used for air traffic control purposes;

(2) Shall be limited to the necessities of safe and expeditious operation of private aircraft, pertaining to the conditions of runways, types of fuel available, wind conditions, weather information, dispatching, or other necessary information: *Provided, however*, That on a secondary basis, communications may be transmitted which pertain to the efficient portal-to-portal transit of which the flight is a portion, such as requests for ground transportation and food or lodging required during transit.

[F.R. Doc. 66-13891; Filed, Dec. 27, 1966; 8:50 a.m.]

Notices

DEPARTMENT OF COMMERCE

Office of the Secretary

PRODUCERS OF WATCHES AND WATCH MOVEMENTS LOCATED IN THE VIRGIN ISLANDS, GUAM, AND AMERICAN SAMOA

Joint Notice By the Secretaries of Commerce and the Interior Relating to the Allocation of Quotas and the Establishment of Temporary Procedures

The Secretaries of Commerce and the Interior are now in the process of establishing regulations to carry out their responsibilities pursuant to P.L. 89–805, enacted November 10, 1966, which amended the headnotes of Schedule 7, part 2, subpart E of the Tariff Schedules of the United States and provided in part that the Secretaries "acting jointly, shall allocate on a fair and equitable basis among producers of watches and watch movements located in the Virgin Islands, Guam, and American Samoa the quotas for each calendar year provided by paragraph (b) (of P.L. 89–805) for articles which are the product of the Virgin Islands, Guam, and American Samoa."

The Senate Finance Committee in Senate Report No. 1679, 89th Cong., 2d Sess. (1966), estimated the following quotas for the calendar year 1967 based upon the best available estimates as to the level of watch consumption in the United States for 1966:

Virgin Islands	4,083,334 units.
Guam	388,891 units.
American Samoa	194,442 units.

As a guide to some of the factors that will be taken into consideration in formulating the 1967 quota allocations, the Secretaries direct the attention of all applicants for a quota allocation to the legislative history of P.L. 89–805 and specifically to Senate Report No. 1679. Also, those parties interested in applying for a quota allocation for American Samoa should note the statement appended hereto.

In order to assist the Secretaries in allocating the 1967 quotas among the producers of watches and watch movements located in the Virgin Islands, Guam, and American Samoa, all applicants for a quota allocation are required to complete an application form (BDSAF–764) which has been prepared jointly by the Departments of Commerce and the Interior. Those firms that have indicated an interest to either department in obtaining a quota allocation are being sent copies of the application. Other interested parties may obtain copies by writing to:

Business and Defense Services Administration, U.S. Department of Commerce, Washington, D.C. 20230, Attention: Scientific, Photographic, and Business Equipment Division.

The application form must be completed and returned to the above address by January 16, 1967. A public hearing for the purpose of gathering views and comments from interested parties that will assist the Secretaries in establishing the 1967 quota allocations will be held sometime in January 1967. The time and place of such hearing will be published in the FEDERAL REGISTER in the near future. Written comments and suggestions will be invited on, but not limited to the following questions:

1. Giving due regard to the intent of Congress as reflected in the legislative history, what would be a fair and equitable formula for allocating quotas in 1967 among producers of watches and watch movements located in the insular possessions?

2. With regard to those firms not manufacturing or assembling watches or watch movements in the Virgin Islands or Guam on November 10, 1966, why should any quota allocation be given to such firms in view of the foreseen cutback from 1966 production levels?

3. With regard to the factors that should be taken into consideration in establishing the quota allocations, including those factors suggested in Senate Report No. 1679, what relative weight should be given to:

a. Payroll.

b. The extent of the assembly process.

4. Should a firm's taxpaying status be considered a relevant factor and to what extent?

The date for submission and the number of copies required of these comments and views will be designated in the Notice of Public Hearing.

After December 31, 1966, no shipments of watches and watch movements into the United States Customs Territory from the insular possessions of the United States shall be entered duty free under general headnote 3(a) of the Tariff Schedules of the United States (19 U.S.C. 1202) except pursuant to a license issued by the Secretaries of Commerce and the Interior, in addition to all other requirements of law.

In view of the limited time available to establish the 1967 quota allocations and in order to give the Secretaries an opportunity to evaluate the information and views that will be submitted by interested parties, the Secretaries find that the following temporary procedures for shipments under general headnote 3(a) are necessary under P.L. 89–805, and further find that notice and public participation with respect to such temporary procedures would be impracticable.

For the period commencing January 1, 1967, through February 28, 1967, individual licenses will be issued to ship watches and watch movements into the customs territory of the United States under general headnote 3(a) as follows:

(1) 25,000 units per producer located in the Virgin Islands or the number of units actually assembled in the Virgin Islands during 1966 by the applicant, whichever is less.

(2) 10,000 units per producer located in Guam or the number of units actually assembled in Guam during 1966 by the applicant, whichever is less.

Upon receipt by the Secretaries of a completed application (BDSAF–764), these licenses to ship shall be issued to those firms which, on the basis of the information supplied therein were actually engaged in the assembly of watches and watch movements as of November 10, 1966.

The quantities shipped under these temporary procedures will be subtracted from the final allocation to be made to each producer in each of the insular possessions. However, issuance of a license pursuant to this temporary procedure shall not be deemed to establish any pattern for the final allocation among companies nor shall it be construed to assure producers of further duty-free shipments of watches or watch movements under P.L. 89–805.

Dated at Washington, D.C., December 23, 1966.

JAMES F. COLLINS,
Deputy Assistant Secretary, Domestic Business Policy, Department of Commerce.

ROBERT E. VAUGHAN,
Deputy Assistant Secretary, Public Land Management, Department of Interior.

APPENDIX

The Governor of American Samoa has asked the Secretary of the Interior that the following information be brought to the attention of firms applying for all or part of the quota foreseen for that territory:

Present territorial customs duties do not apply to machinery, parts, or supplies for watch assembly. No exemption from existing territorial taxes will be granted watch assembly firms, however, including no exemption from the income tax levy, which corporate rate is identical to the Federal levy. The Governor intends to urge the Secretaries of Commerce and the Interior to award the Samoan quota to one, or at the most two firms, since in his view it is necessary to keep to a minimum the employment in Samoa of nonindigenous technical and managerial personnel, and avoid enterprises of but marginal economic vitality. The Governor will also urge that great weight be given to proposals which will maximize local employment opportunities through extensive assembly, or increase local governmental revenues through royalty payments, or both.

[F.R. Doc. 66–13919; Filed, Dec. 27, 1966; 8:50 a.m.]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

PRODUCERS OF WATCHES AND WATCH MOVEMENTS LOCATED IN THE VIRGIN ISLANDS, GUAM, AND AMERICAN SAMOA

Joint Notice by the Secretaries of Commerce and the Interior Relating to the Allocation of Quotas and the Establishment of Temporary Procedures

CROSS REFERENCE: See Federal Register Document 66–13919, *supra*.

[Order No. 2896]

BUREAU OF MINES RESEARCH CONTRACTS

Temporary Delegation of Authority

DECEMBER 20, 1966.

Pending issuance of a delegation in the Departmental Manual, the Director of the Bureau of Mines may enter into research contracts involving $25,000 or less pursuant to Public Law 89–672 and, with respect to such contracts, may make the determinations specified in paragraph (11), subsection (c), of section 302 of the Federal Property and Administrative Services Act of 1949. The Director may redelegate this authority to the Assistant Director, Administration. Proposed contracts in excess of $25,000 shall be submitted to the Secretary for approval and transmittal to the Congress in accordance with subsection (d) of section 1 of Public Law 89–672.

STEWART L. UDALL,
Secretary of the Interior.

[F.R. Doc. 66–13852; Filed, Dec. 27, 1966; 8:47 a.m.]

Bureau of Indian Affairs

[Order 2, Amdt. 1]

AREA FIELD REPRESENTATIVES

Redelegation of Authority With Respect to Indian Lands and Minerals

Order 2 (26 F.R. 2161) is amended by the addition thereto of Part 3, Authority of Area Field Representatives, with the heading "Functions Relating to Lands and Minerals" and § 3.12, Leases and Permits, thereunder. The new part reads as follows:

PART 3—AUTHORITY OF AREA FIELD REPRESENTATIVES

Subject to the provisions of Part 1 of this order, Area Field Representatives may exercise the authority of the Area Director with respect to the following:

FUNCTIONS, RELATING TO LANDS AND MINERALS

SEC. 3.12 *Leases and permits.* All those matters set forth in 25 CFR Part 131 except: (1) The approval of leases which provide for a duration in excess of 10 years, inclusive of any provisions for extensions or renewals thereof at the option of the lessee; (2) modification of any forms approved by the Secretary of the Interior, the Commissioner of Indian Affairs or the Area Director; (3) the waiver or modification of bond requirements as set forth in 25 CFR 131.5 (c); (4) the approval of leases containing provisions for payment of rent in advance of the beginning of the annual use period for which such rent is paid, as set forth in 25 CFR 131.5(e), when such prepayment to any one owner exceeds $100; and (5) the exercise of authority under 25 CFR 131.6(c) to negotiate certain leases.

S. W. SMITH,
Acting Area Director.

Approved: December 16, 1966.

THEODORE W. TAYLOR,
Deputy Commissioner.

[F.R. Doc. 66–13815; Filed, Dec. 27, 1966; 8:45 a.m.]

Bureau of Land Management

[Wyoming 2928]

WYOMING

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 20, 1966.

The Bureau of Reclamation, U.S. Department of the Interior, has filed an application, Serial Number Wyoming 2928, for the withdrawal of lands described below, from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws, subject to valid existing rights.

The applicant desires the lands for reclamation purposes in connection with the Shoshone Extensions Unit, Bighorn Basin Division, Missouri River Basin Project, Wyo. They will be developed for irrigation and will contain canals, laterals, drain, and other irrigation facilities.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 2120 Capitol Avenue, Cheyenne, Wyo. 82001.

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 land 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 involed in the application are:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 56 N., R. 98 W.,
Sec. 18, lot 6.
T. 57 N., R. 98 W.,
Sec. 4, SE¼SW¼;
Sec. 18, lots 3 and 4.
T. 58 N., R 98 W.,
Sec. 28, NW¼, S½;
Sec. 34, N½.
T. 56 N., R. 99 W.,
Sec. 5, lots 2 to 7, inclusive, and SW¼SE¼;
Sec. 6, lots 1 to 6, inclusive, lots 11 to 14, inclusive, and E½SW¼.
T. 57 N., R. 99 W.,
Sec. 10, SE¼SW¼, NE¼SE¼, and S½SE¼;
Sec. 14, W½;
Sec. 25, SW¼;
Sec. 26, SW¼SW¼;
Sec. 27, S½N½ and S½;
Sec. 28, S½;
Sec. 29, SE¼SW¼ and S½SE¼;
Sec. 30, SE¼;
Sec. 31;
Sec. 32;
Sec. 33, E½;
Sec. 34, NE¼ and N½SE¼;
Sec. 35, NE¼, W½NW¼, SE¼NW¼, and S½.
T. 56 N., R. 100 W.,
Sec. 1;
Sec. 2, lots 1 to 4, inclusive, lots 7 to 10, inclusive, and SE¼;
Sec. 3, lots 1, 2, 7, 8, 9, 10, 11, NE¼SW¼, and SE¼;
Sec. 13, E½SE¼;
Sec. 22, NW¼NE¼, S½NE¼, SE¼NW¼, and E½SW¼;
Sec. 27, NW¼;
Sec. 28, SE¼;
Sec. 33, SE¼NE¼ and S½;
Sec. 34;
Sec. 35, lots 1 to 5, inclusive.

The areas described aggregate 9,347.35 acres.

ED PIERSON,
State Director.

[F.R. Doc. 66–13880; Filed, Dec. 27, 1966; 8:49 a.m.]

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T.D. 67–1]

WEEKLY TREASURY DECISIONS

Notice of Change in Name of Publication

Notice is hereby given that effective January 4, 1967, the name of the publication "Treasury Decisions," generally known as the "weekly Treasury Decisions," will be changed to "Customs Bulletin." The new title will, it is believed,

more accurately describe the contents of the publication.

Issue No. 1, Volume 1, of the Customs Bulletin to be issued as of January 4, 1967, will continue the unbroken series of Treasury Decisions. The same types of information which currently appear in the Treasury Decisions will be published in the Customs Bulletin. The anticipated change is a change in name only and the publication, Customs Bulletin, will serve the same purposes as, and in all respects will be, the Treasury Decisions. Thus, where statute, regulation, or other precept (such as 19 U.S.C. 1315 (d)) requires the publication of notice in the weekly Treasury Decisions, publication of notice in the Customs Bulletin will be considered to fulfill that requirement.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: December 20, 1966.

TRUE DAVIS,
Assistant Secretary of the Treasury.

[F.R. Doc. 66-13830; Filed, Dec. 27, 1966; 8:46 a.m.]

[T.D. 67-7; Order 28]

PORT DIRECTORS

Delegation of Functions, Rights, Privileges, Powers, and Duties

DECEMBER 7, 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 and deputy regional commissioner for Customs Region II, New York City, N.Y., by Customs Delegation Orders No. 23 (T.D. 66-100, 31 F.R. 7150) and No. 24 (T.D. 66-113, 31 F.R. 7842), respectively, are hereby delegated also to port directors.

Ordinarily each Port Director will exercise the authority delegated herein only where statute, regulation, or instruction contemplates that the Port Director should take action at the port over which he has supervision.

This delegation is effective as of the date of the creation of the several regions in which the ports are located.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

[F.R. Doc. 66-13832; Filed, Dec. 27, 1966; 8:46 a.m.]

CUSTOMHOUSE BROKERS

Continuance of Licensing on District Basis

On March 17, 1966, a notice was published in the FEDERAL REGISTER (31 F.R. 4527) stating that the Bureau of Customs was considering the advisability of licensing customhouse brokers on a regional basis instead of on the present district basis. Interested parties were invited to submit written data, views, or arguments pertaining to this matter.

After full consideration of the comments and suggestions received, the Bureau has concluded that the licensing of customhouse brokers shall continue to be on a district basis and should not be changed to a regional basis.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: December 19, 1966.

TRUE DAVIS,
Assistant Secretary of the Treasury.

[F.R. Doc. 66-13860; Filed, Dec. 27, 1966; 8:47 a.m.]

Office of Foreign Assets Control

WITHDRAWAL OF CERTAIN AVAILABLE CERTIFICATIONS BY GOVERNMENT OF JAPAN

Red Beans and Soy Beans

Notice is hereby given that certificates of origin under procedures agreed upon between the Government of Japan and the Office of Foreign Assets Control are no longer being issued with respect to the importation into the United States from Japan of the following commodities:

Red beans. Soy beans.

The above commodities have been deleted from the list of commodities for which certificates of origin acceptable for Foreign Assets Control purposes are available since there are no Foreign Assets Control restrictions on their importation, unless they are of Communist Chinese, North Korean, or North Viet Namese origin.

[SEAL] MARGARET W. SCHWARTZ,
Director,
Office of Foreign Assets Control.

[F.R. Doc. 66-13859; Filed, Dec. 27, 1966; 8:47 a.m.]

Comptroller of the Currency

STATEMENT OF POLICY ON ADVERTISING FOR FUNDS BY NATIONAL BANKS

The following statement of policy on advertising for funds by national banks is adopted:

In recent years, competition among financial institutions for funds has become intense. An outgrowth of such competition has been the development and use by a few institutions of advertising practices that could be detrimental to the public's attitude toward the nation's financial system. In some respects, certain of the advertising practices are considered misleading.

Under the circumstances, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the Board of Governors of the Federal Reserve System, and this Office have concluded that it would be helpful, both to the financial institutions that we supervise and to the public, to outline certain principles that such institutions should follow in their advertisements directed toward attracting funds.

The supervisory agencies regard the following as minimum principles that financial institutions should follow in advertising for funds:

(1) Interest or dividend rates should be stated in terms of annual rates of simple interest, and the advertisement should state whether such earnings are compounded and, if so, the basis of compounding. Neither the total percentage return if held to final maturity nor the average annual rate achieved by compounding should be stated unless the annual rate of simple interest is presented with equal prominence.

(2) No reference should be made to "profit" to the investor for use of his funds over a period of time.

(3) If an advertised rate is payable only on investments or deposits that meet fixed time or amount requirements, such requirements should be stated.

(4) No statement should be made implying that more than $15,000 of Federal insurance is provided for each depositor in a bank or each member in a savings and loan association.

The Securities and Exchange Commission has expressed the opinion that deposit and share accounts are subject to the antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 and that advertisements by financial institutions that are contrary to such principles may violate those antifraud provisions.

NOTE: For similar statements of policy issued by the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the Federal Reserve System, see F.R. Docs. 66-13882, 66-13847, and 66-13789, in this issue of the FEDERAL REGISTER.

[SEAL] WILLIAM B. CAMP,
Acting Comptroller of the Currency.

[F.R. Doc. 66-13900; Filed, Dec. 27, 1966; 8:51 a.m.]

FEDERAL DEPOSIT INSURANCE CORPORATION

STATEMENT OF POLICY ON ADVERTISING FOR FUNDS BY INSURED STATE NONMEMBER BANKS

Notice is hereby given that at a meeting of the Board of Directors of the Federal Deposit Insurance Corporation on December 14, 1966, the following statement of policy with respect to advertising by insured State nonmember banks was approved:

In recent years, competition among financial institutions for funds has become intense. An outgrowth of such competition has been the development and use by a few institutions of advertising practices that could be detrimental to the public's attitude toward the nation's financial system. In some respects, certain of the advertising practices are considered misleading.

Under the circumstances, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the Board of Governors of the Federal Reserve System have concluded that it would be helpful, both to the financial institutions that they supervise and to the public, to outline certain principles that such institutions should follow in their advertisements directed toward attracting funds.

The supervisory agencies regard the following as minimum principles that financial institutions should follow in advertising for funds:

(1) Interest or dividend rates should be stated in terms of annual rates of simple interest, and the advertisement should state whether such earnings are compounded and, if so, the basis of compounding. Neither the total percentage return if held to final maturity nor the average annual rate achieved by compounding should be stated unless the annual rate of simple interest is presented with equal prominence.

(2) No reference should be made to "profit" to the investor for use of his funds over a period of time.

(3) If an advertised rate is payable only on investments or deposits that meet fixed time or amount requirements, such requirements should be stated.

(4) No statement should be made implying that more than $15,000 of Federal insurance is provided for each depositor in a bank or each member in a savings and loan association.

The Securities and Exchange Commission has expressed the opinion that deposit and share accounts are subject to the antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 and that advertisements by financial institutions that are contrary to such principles may violate those antifraud provisions.

NOTE: For similar statements of policy issued by the Comptroller of the Currency, the Federal Home Loan Bank Board, and the Federal Reserve System, see F.R. Docs. 66-13900, 66-13847, and 66-13789, in this issue of the FEDERAL REGISTER.

FEDERAL DEPOSIT INSURANCE CORPORATION,
[SEAL] E. F. DOWNEY,
Secretary.

[F.R. Doc. 66-13882; Filed, Dec. 27, 1966; 8:51 a.m.]

FEDERAL HOME LOAN BANK BOARD

[No. 20,344]

STATEMENT OF POLICY ON ADVERTISING FOR FUNDS BY FINANCIAL INSTITUTIONS

Resolved that the Federal Home Loan Bank Board, upon consideration by it of the advisability of joining with the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System in adopting a statement of policy concerning advertising for funds by financial institutions, hereby adopts the following statement and directs the Secretary to the Board to submit the statement approved by the Board to the Office of the Federal Register for publication.

In recent years, competition among financial institutions for funds has become intense. An outgrowth of such competition has been the development and use by a few institutions of advertising practices that could be detrimental to the public's attitude toward the nation's financial system. In some respects, certain of the advertising practices are considered misleading.

Under the circumstances, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the Board of Governors of the Federal Reserve System have concluded that it would be helpful, both to the financial institutions that they supervise and to the public, to outline certain principles that such institutions should follow in their advertisements directed toward attracting funds.

The supervisory agencies regard the following as minimum principles that financial institutions should follow in advertising for funds:

(1) Interest or dividend rates should be stated in terms of annual rates of simple interest, and the advertisement should state whether such earnings are compounded and, if so, the basis of compounding. Neither the total percentage return if held to final maturity nor the average annual rate achieved by compounding should be stated unless the annual rate of simple interest is presented with equal prominence.

(2) No reference should be made to "profit" to the investor for use of his funds over a period of time.

(3) If an advertised rate is payable only on investments or deposits that meet fixed time or amount requirements, such requirements should be stated.

(4) No statement should be made implying that more than $15,000 of Federal insurance is provided for each depositor in a bank or each member in a savings and loan association.

The Securities and Exchange Commission has expressed the opinion that deposit and share accounts are subject to the antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 and that advertisements by financial institutions that are contrary to such principles may violate those antifraud provisions.

NOTE: For similar statements of policy issued by the Comptroller of the Treasury, the Federal Deposit Insurance Corporation, and the Federal Reserve System, see F.R. Docs. 66-13900, 66-13882, and 66-13789, in this issue of the FEDERAL REGISTER.

By the Federal Home Loan Bank Board.

[SEAL] GRENVILLE L. MILLARD, Jr.,
Assistant Secretary.

DECEMBER 14, 1966.

[F.R. Doc. 66-13847; Filed, Dec. 27, 1966; 8:51 a.m.]

FEDERAL RESERVE SYSTEM

STATEMENT OF POLICY ON ADVERTISING FOR FUNDS BY MEMBER STATE BANKS

At its meeting on December 15, 1966, the Board of Governors of the Federal Reserve System adopted the following statement of policy on advertising for funds by member State banks:

In recent years, competition among financial institutions for funds has become intense. An outgrowth of such competition has been the development and use by a few institutions of advertising practices that could be detrimental to the public's attitude toward the Nation's financial system. In some respects, certain of the advertising practices are considered misleading.

Under the circumstances, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the Board of Governors of the Federal Reserve System have concluded that it would be helpful, both to the financial institutions that they supervise and to the public, to outline certain principles that such institutions should follow in their advertisements directed toward attracting funds.

The supervisory agencies regard the following as minimum principles that financial institutions should follow in advertising for funds:

(1) Interest or dividend rates should be stated in terms of annual rates of simple interest, and the advertisement should state whether such earnings are compounded and, if so, the basis of compounding. Neither the total percentage return if held to final maturity nor the average annual rate achieved by compounding should be stated unless the annual rate of simple interest is presented with equal prominence.

(2) No reference should be made to "profit" to the investor for use of his funds over a period of time.

(3) If an advertised rate is payable only on investments or deposits that meet fixed time or amount requirements, such requirements should be stated.

(4) No statement should be made implying that more than $15,000 of Federal insurance is provided for each depositor in a bank or each member in a savings and loan association.

The Securities and Exchange Commission has expressed the opinion that deposit and share accounts are subject to the antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 and that advertisements by financial institutions that are contrary to such principles may violate those antifraud provisions.

NOTE: For similar statements of policy issued by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, see F.R. Docs. 66-13900, 66-13882, and 66-13847, in this issue of the FEDERAL REGISTER.

Dated at Washington, D.C., this 16th day of December 1966.

By order of the Board of Governors.

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 66-13769; Filed, Dec. 27, 1966; 8:51 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

AMDAL CO.

Notice of Filing of Petition for Food Additive Erythromycin

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition has been filed by Amdal Co., Agricultural Division, Abbott Laboratories, 1400 Sheridan Road, North Chicago, Ill. 60626, proposing the amendment of § 121.249 *Food additives for use in milk-producing animals* to provide for the safe use of erythromycin for the treatment of bovine mastitis by intramammary infusion.

Dated: December 19, 1966.

REO E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 66-13870; Filed, Dec. 27, 1966; 8:48 a.m.]

CHEMICAL DIVISION OF CHAS. PFIZER & CO., INC.

Notice of Filing of Petition for Food Additive Sodium Stearyl Fumarate

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 7A2129) has been filed by the Chemical Division of Chas. Pfizer & Co., Inc., 235 East 42d Street, New York, N.Y. 10017, proposing an amendment to § 121.1183 *Sodium stearyl fumarate* to provide for the safe use of sodium stearyl fumarate as (1) a stabilizing agent in non-yeast-leavened bakery products in an amount not to exceed 1.0 percent by weight of the flour used, and (2) a conditioning agent in breakfast cereals for cooking in an amount not to exceed 1.0 percent by weight of the dry cereal, except when standards of identity preclude such use.

Dated: December 20, 1966.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 66-13871; Filed, Dec. 27, 1966; 8:48 a.m.]

E. I. DU PONT DE NEMOURS & CO.

Notice of Filing of Petition for Terbacil

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 7F0549) has been filed by E. I. du Pont de Nemours & Co., Wilmington, Del. 19898, proposing the establishment of a tolerance of 0.1 part per million for residues of the herbicide terbacil (3-*tert*-butyl-5-chloro-6-methyluracil) in or on mint hay (peppermint and spearmint).

The analytical method proposed in the petition for determining residues of the herbicide is that of H. L. Pease, Journal of Agricultural and Food Chemistry, volume 14 (1966), pages 94–96.

Dated: December 19, 1966.

REO E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 66-13879; Filed, Dec. 27, 1966; 8:48 a.m.]

ELANCO PRODUCTS CO.

Notice of Filing of Petition Regarding Gibberellic Acid

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 7F0544) has been filed by Elanco Products Co., 740 South Alabama Street, Indianapolis, Ind. 46206, on behalf of themselves, Amdal Co., North Chicago, Ill., Merck & Co., Rahway, N.J., Imperial Chemical Industries, Ltd., Manchester, England, and Chas. Pfizer & Co., Inc., New York, N.Y., proposing the establishment of either an exemption from the requirement of a tolerance or a tolerance of 0.05 part per million for residues of the plant regulator gibberellic acid in or on grapes.

The analytical methods proposed in the petition for determining residues of gibberellic acid consist of solvent extraction, followed by thin layer chromatography which separates gibberellin A3 from other extractable interfering impurities. The gibberellin A3 is then reacted with concentrated sulfuric acid to develop fluoroescence. By comparison with a known standard, the amount of gibberellic acid present in the crop is determined.

Dated: December 20, 1966.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 66-13873; Filed, Dec. 27, 1966; 8:48 a.m.]

PENNSYLVANIA INDUSTRIAL CHEMICAL CORP.

Notice of Filing of Petition for Food Additives

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 7B2131) has been filed by Pennsylvania Industrial Chemical Corp., 120 State Street, Clairton, Pa. 15025, proposing an amendment to § 121.2569 *Resinous and polymeric coatings for polyolefin films* to provide for the safe use of α-methylstyrene-vinyltoluene copolymer resins as components of food-contact coatings for polyolefin films.

Dated: December 20, 1966.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 66-13874; Filed, Dec. 27, 1966; 8:48 a.m.]

QUAKER CHEMICAL CORP.

Notice of Withdrawal of Petition for Food Additives

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), Quaker Chemical Corp., Lime and Elm Streets, Conshohocken, Pa. 19486, has withdrawn its petition (FAP 7B2059), notice of which was published in the FEDERAL REGISTER of August 20, 1966 (31 F.R. 11113), proposing an amendment to § 121.2536 *Filters, resin-bonded* to provide for the safe use of certain vinyl acetate-acrylamide resins as components of resin-bonded filters.

The withdrawal of this petition is without prejudice to a future filing.

Dated: December 20, 1966.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 66-13875; Filed, Dec. 27, 1966; 8:49 a.m.]

UNION CARBIDE CORP.

Notice of Withdrawal of Petition for Food Additive *N,N*-Dimethyl ethanolamine

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), Union Carbide Corp., Post Office Box 65, Tarrytown, N.Y. 10591, has withdrawn its petition (FAP 7A2058), notice of which was published in the FEDERAL REGISTER of August 11, 1966 (31 F.R. 10703), proposing an amendment to paragraph (d) of § 121.1088 *Boiler water additives* to provide for the safe use of *N,N*-dimethylethanolamine as a boiler water additive in the preparation of steam that will contact food, subject to specified limitations.

The withdrawal of this petition is without prejudice to a future filing.

Dated: December 20, 1966.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 66-13876; Filed, Dec. 27, 1966; 8:49 a.m.]

WYANDOTTE CHEMICALS CORP.

Notice of Filing of Petition for Food Additives

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 7B2132) has been filed by Wyandotte Chemicals Corp., 1609 Biddle Avenue, Wyandotte, Mich. 48192, proposing an amendment to § 121.2541 *Emulsifiers and/or surface-active agents* to provide for the safe use of polyoxypropylene-polyoxyethylene condensate (minimum molecular weight 10,000) as an emulsifier and/or surface-active agent in the manufacture of articles or components of articles intended for use in contact with food.

Dated: December 20, 1966.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 66-13877; Filed, Dec. 27, 1966; 8:49 a.m.]

WYANDOTTE CHEMICALS CORP. AND STEPAN CHEMICAL CO.

Notice of Withdrawal of Petition for Food Additives

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), Wyandotte Chemicals Corp., 1609 Biddle Avenue, Wyandotte, Mich. 48192, and Stepan Chemical Co., Edens and Winetka, Northfield, Ill. 60093, have withdrawn their petition (FAP 6A1860), notice of which was published in the FEDERAL REGISTER of August 5, 1966 (31 F.R. 10549), proposing the issuance of a regulation to provide for the safe use of polyoxypropylene-polyoxyethylene condensate (mol. wt. 2,400–4,150) as a processing aid and wetting agent in fumaric acid intended for use in food, and as a processing aid and wetting agent in combination with dioctyl sodium sulfosuccinate in fumaric acid-acidulated dry beverage base and in fumaric acid-acidulated fruit juice drinks.

The withdrawal of this petition is without prejudice to a future filing.

Dated: December 20, 1966.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 66-13878; Filed, Dec. 27, 1966; 8:49 a.m.]

ATOMIC ENERGY COMMISSION

URANIUM HEXAFLUORIDE

Charges and Specifications

The U.S. Atomic Energy Commission (AEC) hereby announces revisions to the notice entitled "Special Nuclear Materials: Base Charges, Special Charges, Specifications and Packaging" as published in the FEDERAL REGISTER on May 30, 1961 (26 F.R. 4765), and as amended in 27 F.R. 5006 of May 29, 1962; 27 F.R. 5155 of June 1, 1962; 29 F.R. 5098 of April 14, 1964; 30 F.R. 14821 of November 30, 1965; 30 F.R. 14938 of December 2, 1965; and 31 F.R. 5385 of April 5, 1966 (referred to herein as the notice).

1. Table 4 of the notice is revised to read as follows:

TABLE 4—SPECIFICATIONS FOR UF_6 DELIVERED TO AEC

Item [1]	Numerical value
Maximum vapor pressure of filled container at 200° F. in pounds per square inch, absolute	75
Minimum weight percent of UF_6 in material	99.5
Maximum mol percent of hydrocarbons, chlorocarbons, and partially substituted halohydrocarbons	0.01
Maximum number of parts of elements indicated per million parts of total uranium:	
Antimony	1
Bromine	5
Chlorine	100
Niobium	1
Phosphorus	50
Ruthenium	1
Silicon	100
Tantalum	1
Titanium	1
Total of elements forming nonvolatile fluorides (having a vapor pressure of one atmosphere or less at 300° C.), e.g., aluminum, barium, bismuth, cadmium, calcium, chromium, copper, iron, lead, lithium, magnesium, manganese, nickel, potassium, silver, sodium, strontium, thorium, tin, zinc, and zirconium	300
Maximum number of parts of elements or isotopes indicated per million parts of U-235:	
Chromium	1,500
Molybdenum	200
Tungsten	200
Vanadium	200
Uranium-233	500
Uranium-232	0.110
Maximum thermal neutron absorption of total impurity elements as equivalent parts of boron per million parts of total uranium	8
Maximum total of gamma activity due to fission products and uranium-237 as percent of gamma activity of aged natural uranium and as measured in a high-pressure ionization chamber (Drawing D-AWM-8796 of Nuclear Division, Union Carbide Corp.)	20
Maximum beta activity due to fission products as percent of beta activity of aged natural uranium	10
Maximum number of parts of plutonium per billion parts of total uranium	1
Maximum alpha activity from all transuranic elements in disintegrations per minute per gram of total uranium	1,500

[1] All specification analyses on UF_6 shall be performed on samples removed in the liquid state from each cylinder while its contents are liquid and homogeneous.

Effective date. This notice shall become effective as of July 1, 1967.

Dated at Germantown, Md., this 20th day of December 1966.

For the Atomic Energy Commission.

R. E. HOLLINGSWORTH,
General Manager.

DECEMBER 20, 1966.

[F.R. Doc. 66-13858; Filed, Dec. 27, 1966; 8:47 a.m.]

CIVIL AERONAUTICS BOARD

LAKE CENTRAL AIRLINES, INC.

Notice of Postponement of Prehearing Conference

[Docket No. 14868 etc.]

Reopened Lake Central Airlines, Inc., "Use it or lose it" and route realignment investigation (service to Marion, Ind. case).

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the prehearing conference in the above-entitled proceeding now assigned to be held January 12, 1967, is hereby postponed to January 23, 1967, at 10 a.m., e.s.t., in Room 726, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before the undersigned examiner.

Dated at Washington, D.C., December 21, 1966.

[SEAL] EDWARD T. STODOLA,
Hearing Examiner.

[F.R. Doc. 66-13881; Filed, Dec. 27, 1966; 8:49 a.m.]

FEDERAL AVIATION AGENCY

[OE Docket No. 65-SO-9]

SCRIPPS-HOWARD BROADCASTING CO. AND TELEVISION STATION WPTV

Notice of Hearing

Notice is hereby given that, on January 9, 1967, the public hearing in the above subject matter will be reconvened at 10 a.m., in Conference Room 510A, Federal Aviation Agency, Headquarters Building, 800 Independence Avenue SW., Washington, D.C., for the purpose of obtaining rebuttal testimony in the matter.

Issued in Washington, D.C., on December 19, 1966.

GEORGE R. BORSARI,
Presiding Officer.

[F.R. Doc. 66-13846; Filed, Dec. 27, 1966; 8:46 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 16737, 16738; FCC 66R-507]

ADIRONDACK TELEVISION CORP. AND NORTHEAST TV CABLEVISION CORP.

Memorandum Opinion and Order Enlarging Issues

In re applications of Adirondack Television Corp., Albany, N.Y., Docket No. 16737, File No. BPCT-3511; Northeast TV Cablevision Corp., Albany, N.Y., Docket No. 16738, File No. BPCT-3635; for construction permits for new television broadcast station.

1. The above-captioned mutually exclusive applications for a new television station in Albany, N.Y., were designated for hearing by order, FCC 66-578, released July 5, 1966. The hearing exhibits in the case were exchanged October 3, 1966, and offered in evidence at a hearing session October 20, 1966. At that time counsel for Adirondack Television Corp. (Adirondack) observed that there were a number of inconsistencies between Northeast TV Cablevision Corp.'s (Northeast) application and its hearing exhibits. These inconsistencies were noted on the

record, and counsel for Northeast stated that Northeast would amend its application to remove the inconsistencies.[1] On October 25, 1966, Adirondack petitioned to clarify or enlarge the issues.[2] Adirondack requests that the issues be clarified to make certain that the Examiner is authorized to consider the inaccuracies and inconsistencies which it noted as a basis for a comparative demerit to Northeast, or in the alternative that the issues be enlarged as follows:

To determine whether there have been repeated omissions, inaccuracies, nondisclosures of material facts, and/or inadvertencies in the application of Northeast Cablevision Corp., amendments, and exhibits relating thereto, and if so, whether they reflect such negligences, carelessness, ineptness, or disregard of the Commission's processes that a comparative demerit must be assessed against the applicant.

2. In its petition, Adirondack notes that in its preparation for the October 20 hearing, it discovered some forty inconsistencies between the Northeast application, as amended, and Northeast's hearing exhibits. In its replay pleading, Adirondack notes additional information that was omitted from exhibits which Northeast revised during the hearing. Adirondack argues that Northeast is obliged to submit complete, candid, and accurate information in its application and exhibits; and that, Northeast having failed to do so, either the Examiner should take account of these errors and inconsistencies for the purpose of assessing a demerit against Northeast, or the Board should enlarge the issues in accordance with Adirondack's request. Adirondack further urges that the Board on its own motion, in the case of Beamon Advertising, Inc., 1 RR 2d 285 (1963), added issues concerning the incompetence and inability of an applicant to properly prepare and present its application.

3. The Northeast opposition takes the position that the inconsistencies noted are for the most part inadvertent errors and omissions as to matters which have no bearing upon the outcome of the case. Moreover, Northeast points out that the errors and discrepancies in the instant case are not comparable to those in the Beamon case. Northeast argues that in view of the Commission's Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393, 5 RR 2d 1901, such matters cannot be considered under the standard comparative issue. Furthermore, Northeast contends, in view of the policy statement, the matters raised do not warrant the inclusion of the issue requested.

[1] The motion for leave to amend was filed Nov. 18, 1966. As of Dec. 6, the Hearing Examiner had not acted on that motion.

[2] The Board also has before it an opposition to petition to clarify or enlarge issues, filed Nov. 17, 1966, by Northeast TV Cablevision Corp.; reply to opposition to petition to clarify or enlarge issues, filed Nov. 29, 1966, by Adirondack Television Corp.; and Broadcast Bureau's response to petition to clarify or enlarge issues, filed Nov. 30, 1966.

4. Adirondack's reliance upon Beamon Advertising, Inc., supra, is not well taken. In that case the errors and inconsistencies concerned relevant matters of major significance in the applicant's proposal. For example, in Beamon there were questions as to title to the transmitter site, funds relied upon by the applicant, and various other fundamental matters with respect to the ability of the applicant to proceed with the construction and operation of the proposed station. It does not appear that the omissions noted by Adirondack would have a comparable bearing on the qualifications of Northeast to be a licensee of the Commission. Moreover, we agree with Northeast and the Bureau that the Commission in its policy statement, supra, made it clear that one of its fundamental objectives was to prevent unduly prolonging the hearing process, and to avoid situations where an applicant converts the hearing into a search for his opponent's minor blemishes. However, in this case the pertinent material is already before the Examiner, and several of the noted omissions, for example, the interest of Northeast stockholders in a bank financing the application (Tr. 33–36); that Northeast has a subsidiary corporation known as Champlain Cablevision, Inc., which operates its CATV system at Ticonderoga, N.Y. (Tr. 30, 87–96); and an interest in CATV activities at Whitehall, N.Y. (Tr. 98–100), might have a bearing upon the outcome of the case. In these circumstances, the problem can best be resolved by adding an issue which will permit the Examiner to further consider the impact of those discrepancies and omissions which he believes to be of decisional significance and to determine what bearing the applicant's failure to include such data in its application and subsequent amendments has upon the comparative qualifications of Northeast TV Cablevision Corp. to be a licensee of this Commission.

Accordingly, it is ordered, This 19th day of December 1966, that the petition to clarify or enlarge issues, filed on October 25, 1966, by Adirondack Television Corp., is granted to the extent that the issues in this proceeding are enlarged by the addition of the following issue:

To determine whether Northeast TV Cablevision Corp. submitted complete and accurate information in response to the inquiries in the Commission's application form, FCC 301, and has continued to keep the Commission advised of "substantial and significant changes" as required by § 1.65 of the Commission's rules, and the extent to which the facts so adduced bear upon the comparative qualifications of Northeast TV Cablevision Corp. to be a licensee of this Commission.

Released: December 20, 1966.

FEDERAL COMMUNICATIONS COMMISSION,[3]
BEN F. WAPLE,
Secretary.

[F.R. Doc. 66–13885; Filed, Dec. 27, 1966; 8:49 a.m.]

[3] Board Member Nelson absent.

[Docket Nos. 17041, 17042; FCC 66M–1723]

ALBERT I. AND VIRGINIA C. CHANCE AND JOSEPH GAMBLE STATIONS, INC.

Order Scheduling Hearing

In re applications of Albert I. Chance and Virginia C. Chance, Joint Tenants, Stockton, Calif., Docket No. 17041, File No. BPH–5426; Joseph Gamble Stations, Inc., Stockton, Calif., Docket No. 17042, File No. BPH–5471; for construction permits.

It is ordered, This 21st day of December 1966, that Basil P. Cooper shall serve as Presiding Officer in the above-entitled proceeding; that the hearings therein shall be convened on January 24, 1967, at 10 a.m.; and that a prehearing conference shall be held on January 13, 1967, commencing at 9 a.m.: *And, it is further ordered*, That all proceedings shall be held in the offices of the Commission, Washington, D.C.

Released: December 21, 1966.

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

[F.R. Doc. 66–13886; Filed, Dec. 27, 1966; 8:49 a.m.]

[Docket No. 16769; FCC 66M–1727]

ALLEN C. BIGHAM, JR.

Order Continuing Hearing

In re application of Allen C. Bigham, Jr., Docket No. 16769, File No. BR–4293; for renewal of license of station KCTY, Salinas, Calif.

It is ordered, This 21st day of December 1966, that, pending action by the Commission with regard to applicant's petition for reconsideration and grant of application in the above-entitled proceeding, the hearing herein is continued to a date to be later specified.

Released: December 21, 1966.

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

[F.R. Doc. 66–13887; Filed, Dec. 27, 1966; 8:49 a.m.]

[Docket Nos. 16861, 16863; FCC 66M–1726]

BBPS BROADCASTING CORP. AND SCOTT BROADCASTING CO. OF PENNSYLVANIA, INC.

Order Scheduling Further Prehearing Conference

In re applications of BBPS Broadcasting Corp., Ellwood City, Pa., Docket No. 16861, File No. BPH–5006; Scott Broadcasting Co. of Pennsylvania, Inc., Ellwood City, Pa., Docket No. 16863, File No. BPH–5232; for construction permits.

The Hearing Examiner having under consideration (1) memorandum opinion and order of the Review Board in the above-styled proceeding (FCC 66R–495) released December 14, 1966; and (2)

motion to set aside date for submission of proposed findings and conclusions and for prehearing conference, filed on December 15, 1966, by counsel for Scott Broadcasting Co. of Pennsylvania, Inc.; and

It appearing, that in the memorandum opinion and order, supra, the Review Board added four new issues relative to the application of BBPS Broadcasting Corp. which must be resolved in this proceeding and such action requires that the record in this proceeding, which was closed on November 8, 1966, be reopened in order that evidence with respect to the newly added issues may be adduced; and

It further appearing, that under these circumstances, no useful purpose would now be served by the filing of proposed findings and conclusions on the present record; and

It further appearing, that a further prehearing conference is necessary to establish procedures and fix dates for the further hearing in this proceeding; and

It further appearing, that other counsel in the proceeding have informally advised that no reply will be filed to the subject motion of BBPS Broadcasting and that the date to be hereinafter fixed for the prehearing conference does not conflict with their calendar;

It is therefore ordered, This 19th day of December 1966, that (1) the record in this proceeding be and the same is hereby reopened; (2) the dates heretofore fixed for the filing of proposed findings and conclusions and replies thereto are set aside; and (3) a further prehearing conference will be held at 10 a.m., on January 6, 1967, in the offices of the Commission in Washington, D.C.

Released: December 21, 1966.

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

[F.R. Doc. 66-13888; Filed, Dec. 27, 1966; 8:50 a.m.]

[Docket Nos. 16110 etc.; FCC 66R-501]

CIRCLE L, INC. ET AL.

Memorandum Opinion and Order Enlarging Issues

In re applications of Circle L, Inc., Reno, Nev., Docket No. 16110, File No. BP-15413; Southwestern Broadcasting Co. (KORK), Las Vegas, Nev., Docket No. 16111, File No. BP-15441; The Benay Corp. (KTEE), Idaho Falls, Idaho, Docket No. 16112, File No. BP-16216; 780, Inc., Las Vegas, Nev., Docket No. 16113, File No. BP-16273; Albert John Williams and Jack M. Reeder, doing business as Radio Nevada, Las Vegas, Nev., Docket No. 16115, File No. BP-16524; for construction permits.

1. The above captioned applications were designated for hearing by Commission order FCC 65-630 released July 21, 1965. On August 9, 1965, WGN Continental Broadcasting Co., the licensee of Class I-A Clear Channel standard broadcast station WGN, Chicago, Ill., filed a motion to enlarge issues in this proceeding. WGN requested that the issues in the proceeding be modified in a number of respects. It is of particular concern to the matter now before us that WGN requested the Board to add an issue concerning the financial qualifications of Albert John Williams and Jack M. Reeder, doing business as Radio Nevada. Upon consideration of that petition, the Board found in its memorandum opinion and order, FCC 66R-20, 2 FCC 2d 338 (1966), that Radio Nevada had established its financial qualifications and the WGN petition to add a financial qualifications issue was denied. It is noted, however, that in order to find Radio Nevada qualified it was necessary to take into account potential revenue for the proposed station in the amount of $25,600.

2. On September 28, 1966, WGN again filed a motion to enlarge the issues in this proceeding by adding a financial qualifications issue as to Radio Nevada.[1] In its motion WGN observes that on August 25, 1966, Radio Nevada filed a petition for leave to amend its application to reflect the filing of an application by Tel-America Corp. (a wholly owned subsidiary of Trans-America Broadcasting Corp., which company is wholly owned by Albert John Williams, one of the partners in Radio Nevada) for assignment of license and construction permit of UHF television broadcast station KAIL-TV, Fresno, Calif., from B. L. Golden and L. W. Fawns to Tel-America Corp. WGN argues that in view of the close question as to the financial qualifications of Radio Nevada and the new undertaking proposed by Williams through Tel-America's contract to acquire and modify UHF television station KAIL in Fresno, a financial qualifications issue as to Radio Nevada must be added in this proceeding. To emphasize its point, WGN contends that the proposed KAIL transaction will be financed by funds from essentially the same sources as those which will provide the funds for Radio Nevada's proposed station at Las Vegas. WGN reasons that since both the Las Vegas AM proposal and the Fresno UHF proposal involve essentially the same parties (Williams and Reeder), in order to establish the financial qualifications of Radio Nevada the principals must demonstrate that they have funds available to accomplish both proposals. WGN then concludes that since virtually all of Williams' assets would be required to effectuate his Las Vegas proposal, it would be impossible for him to meet his commitments to the Fresno proposal. In these circumstances, WGN argues, the financial qualifications issue must be added.

3. The Broadcast Bureau in its comments takes the position that the WGN motion must be dismissed pursuant to the requirements of § 1.29 of the Commission's rules since WGN has not made the "good cause" showing required to justify the untimely filing of its pleading. The Bureau nevertheless takes the position that the motion raises a question of sufficient importance to require consideration on the Board's own motion. Moreover, the Bureau urges that the facts before the Board warrant inclusion of the proposed financial qualifications issue.

4. Radio Nevada opposes the motion arguing that subsequent to the Board's consideration of its financial qualifications in January of 1966, the financial position of Williams has substantially improved, and that as of October 25, 1966, Radio Nevada submitted an amendment to its application which revised the anticipated cost of construction and first year operation, clarified its financial proposal, and submitted as an exhibit a copy of an amendment to its KAIL transfer proposal which revised the proposed financing for that undertaking.[2]

5. With respect to the Bureau's contention that WGN has not succeeded in showing good cause to justify its late filed motion, we note that WGN could not have known of Williams' and Reeder's commitments to the KAIL proposal prior to August 16, 1966. In view of the involved nature of the interrelationships between the KAIL proposal and the Radio Nevada proposal, it cannot be said that WGN did not proceed with due diligence after learning of the changed circumstances. The Bureau's suggestion that a 15-day standard (since that is the time permitted after the publication of issues for filing motions to enlarge without a showing of good cause) must also be applied in situations where there is a question of whether good cause exists for the late filing of the motion is not appropriate in these circumstances. The 15-day period established by the rule is designed to accomplish the expeditious disposition of Commission business and presupposes that the application under attack has been on file for an indefinite time prior to its designation for hearing. In circumstances present here we cannot say that the 6 weeks expended by WGN after it first learned of the KAIL proposal establishes a lack of due diligence on WGN's part; in view of all the circumstances, the Board believes that WGN has made the necessary showing of good cause for consideration of the motion to enlarge issues on its merits.

6. Since the principals involved in the Radio Nevada proposal and those involved in the KAIL UHF-TV proposal are the same, we must consider the funds required for both and test the ability of the applicants to meet this requirement (Nelson Broadcasting Co., FCC 64R-405, 4 RR 2d 87 (1964)). Moreover, since Trans-America Broadcasting Corp. is a company wholly owned by Albert J. Wil-

[1] Also before the Board are the Broadcast Bureau's Comments on motion to enlarge issues, filed Oct. 18, 1966; Radio Nevada's opposition to WGN motion to enlarge issues, filed Oct. 25, 1966; and reply to opposition, filed Nov. 14, 1966, by WGN Continental Broadcasting Co.

[2] This amendment plus a supplement filed Nov. 2, 1966, were approved by the Examiner's Order FCC 66M-1499 released Nov. 8, 1966.

liams[3] and Williams has committed all of his personal assets to these enterprises, we will for the purpose of determining funds available, consider the assets of Trans-America Corp. together with the personal assets of Williams and the assets committed to the projects by Reeder.

7. In our earlier memorandum opinion and order we found that Radio Nevada would require a cash outlay of $283,500 for construction and the first year of operation. However, in its most recent amendment Radio Nevada submits a cash requirement figure of $258,375 for construction and the first year of operation for its proposed Las Vegas operation.[4] These figures are documented by adequate exhibits and will be accepted by the Board. The KAIL UHF–TV proposal will require a cash outlay of $284,281.[5] Thus to accomplish both projects the principals will require a total of $542,656. To meet this cash requirement, Jack M. Reeder has committed $58,106,[6] and Albert John Williams will make available up to $279,047.[7] Thus the two principals have established their ability to make available a total of $337,153. In addition they have established that two loans available to them from the United California Bank will respectively net first year cash of $33,500 and $75,833, for a total of $109,333. This added to the capital contribution of the principals equals $446,486 available to meet anticipated first year cash requirements of $542,656, $96,170 short of the anticipated first year's expenditures. The amended applications indicate that Williams is relying upon $100,000 in anticipated revenues from station KAIL during its first year of operation,[8] as well as income from the Las Vegas proposal.

8. In the foregoing connection we note that in the Ultravision case (Ultravision Broadcasting Co., 5 RR 2d 343 (1965)), the Commission held that if the applicant proposes to rely upon station income to finance part of the construction and first year operating cost, he must support his estimate of anticipated revenues by "* * * a convincing evidentiary showing that the available committed funds will be supplemented by sufficient advertising or other revenue to enable the applicant to discharge its financial obligation during the first year." Neither a calculation of 5 percent of the gross annual billings of three Fresno stations nor the estimate of the Broadcast Bureau constitutes such a "convincing evidentiary showing." It is therefore necessary for the applicant to introduce evidence that station KAIL will produce the revenue upon which it relies. However, in our earlier memorandum opinion and order, *supra*, we found that as a minimum Radio Nevada could anticipate $25,600 from its Las Vegas operation. Thus the cash deficit can be reduced to $70,570.

9. In its opposition, Radio Nevada indicates that it is not relying upon current income of station KTYM, Inglewood, Calif., to meet its obligations either in Fresno or Las Vegas, but it noted that this station is currently generating new capital at the rate of $60,000 per year and that, if necessary, this source of funds should be considered by the Board. However, no evidence was submitted to support this figure nor was there a specific indication that it would be available for these two projects. This being so, we cannot rely upon that source of funds. Radio Nevada will therefore be given an opportunity to show whether the two proposals advanced by its principals can reasonably be expected to produce revenue of at least $70,610 over the $25,600 already credited the Las Vegas proposal, or if not whether its principals have available for these projects the necessary funds from other sources.

Accordingly, it is ordered, This 15th day of December 1966, That the motion to enlarge issues, filed by WGN Continental Broadcasting Co., September 28, 1966, is granted to the extent that the issues are enlarged as follows:

To determine in connection with the financing proposed by Radio Nevada in the instant proceeding and by Tel-America Corp. in BAPLCT–82 whether such two applicants may reasonably expect combined first year operating revenues of at least $96,170 and, if not, whether Radio Nevada has other funds available to it to make up the deficiency.

To determine, in light of the evidence adduced with respect to the foregoing issue, whether Radio Nevada is financially qualified.

Released: December 22, 1966.

FEDERAL COMMUNICATIONS COMMISSION,[9]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 66–13889; Filed, Dec. 27, 1966; 8:50 a.m.]

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[3] It appears that Reeder intends to acquire 20 percent of the stock in Trans-America Broadcasting Corp. after a new issue by that company is approved by the California Corporations Commissioner. However, it is not alleged that Tel-America is dependent upon funds from this source, or even that Reeder has committed himself in the foregoing respect.

[4] WGN has questioned this figure in view of the necessity for the partners to perform duties at Las Vegas, Nev., Inglewood, Calif., and Fresno, Calif., since the communities involved are some distance apart. However, the matters raised are entirely speculative and for the most part minor details in implementing the overall proposal. Thus, they do not materially detract from the validity of the Radio Nevada figures.

[5] The Bureau in its comments had used the figure $333,448 as a cash outlay figure for the Fresno UHF proposal and both Radio Nevada and WGN accept it as valid. However, this figure includes a sum of $49,167 which will be paid during the first year as principal and interest to the United California Bank on a $125,000 loan. In order to be consistent with the procedure used with respect to the Las Vegas proposal, we have subtracted the $49,167 payment figure to arrive at an expenditure sum of $284,281. In calculating funds available, we will reduce the $125,000 loan by $49,167.

[6] Reeder has submitted current financial data. As of July 6, 1966, his assets consisted of cash, $18,346.60; listed securities, $12,262.50; and funds to be made available through refinancing his home in Pasadena, Calif., in the amount of $27,498. This latter figure is based upon an appraisal by Mr. Einar C. Matson (an Inglewood, Calif., real estate loan broker) that the home has a market value of $38,500 and a conservative loan value of $30,800, from which must be subtracted the amount due as of July 6, 1966, on an existing mortgage. The situation is distinguishable from the situation in Nelson Broadcasting Co., supra. There the partners relied upon funds from the sale of their homes; here it is only a matter of refinancing. While it would have been better practice for Reeder to dispel all doubts by providing a firm loan commitment, no one has challenged the expertise of the appraiser and the sum appears reasonable. Accordingly, we will assume that Reeder can produce $27,498 by refinancing his home.

[7] The assets upon which Williams relies consist of cash and listed securities held in the name of John Albert Williams or Trans-America Broadcasting Corp., a company which is wholly owned by Williams, $248,669; accounts due and receivable to Trans-America, $17,000 (the book value of accounts receivable to Trans-America was as of June 30, 1966, $23,300); cash from refinancing home, $19,948 (Einar C. Matson, an Inglewood realestate loan broker appraised William's Los Angeles home as having a conservative market value of $44,500 and a conservative loan value of $35,600. No one has questioned his expertise. See note 6, supra. We will therefore assume that Williams can obtain $19,948 in cash by refinancing his home); and $33,200 in net proceeds from a loan from his mother, Mrs. Albert Williams (the Board found that this sum would be available in its prior memorandum opinion and order, supra). The foregoing assets total $318,817: the subtraction of current liabilities of $39,770 produces a figure for net cash available of $279,047.

[8] Williams originally estimated that KAIL would produce $150,000 in revenue during its first year of operation. This was based upon 5 percent of the gross billing of three existing Fresno VHF stations. However, the Bureau was of the view that $100,000 was a more reasonable figure, and in its opposition to the motion to enlarge issues, Radio Nevada accepted the $100,000 figure.

[9] Board Member Slone's dissenting statement filed as part of the original document and Board Member Berkemeyer absent.

[Docket Nos. 16388, 16389, FCC 66M–1720]

D. H. OVERMYER COMMUNICATIONS CO. AND MAXWELL ELECTRONICS CORP.

Order Scheduling Further Hearing Conference

In re applications of D. H. Overmyer Communications Co., Dallas, Tex., Docket No. 16388, File No. BPCT–3463; Maxwell Electronics Corp., Dallas, Tex., Docket No. 16389, File No. BPCT–3489; for construction permits.

Upon verbal request by counsel for Maxwell Electronics Corp.: *It is ordered,* This 20th day of December 1966, that there will be a further hearing conference in this proceeding on December 28,

1966, 9 a.m., in the Commission's offices, Washington, D.C.

Released: December 21, 1966.

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

[F.R. Doc. 66-13890; Filed, Dec. 27, 1966; 8:50 a.m.]

FEDERAL MARITIME COMMISSION

ALBERT FAHNER ET AL.

Independent Ocean Freight Forwarder Licenses and Applications Therefor

Notice is hereby given of the cancellation of the following independent ocean freight forwarder licenses.

Albert Fahner, 17 Cottage Avenue, Staten Island, N.Y. 10308; License No. 21, cancelled December 12, 1966.

W. C. Sullivan & Co., 327 South La Salle Street, Chicago, Ill. 60604; License No. 401, cancelled December 19, 1966.

Notice is hereby given of changes in the following applications for independent ocean freight forwarder licenses filed pursuant to Section 44, Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(b)).

GRANDFATHER APPLICANTS

Amsi George Alden, 1805 Wilshire Boulevard, Los Angeles, Calif. 90057; Application No. 519, withdrawn November 18, 1966.

Foreign Freight Forwarder, Inc., Post Office Box 1154, Church Street Station, New York, N.Y. 10008; Application No. 175, withdrawn November 28, 1966.

Abko Forwarding Co., 390 Plandome Road, Manhasset, N.Y.; Application No. 175 withdrawn November 28, 1966.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission, applications for licenses as independent ocean freight forwarders, pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(b)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Domestic Regulation, Federal Maritime Commission, Washington, D.C. 20573.

Frank Figuerola, 89-33 Whitney Avenue, Elmhurst, N.Y. 11373; Frank Figuerola, owner.

Watson Transfer & Storage Co., Inc., 7019 Katy Road, Houston, Tex. 77024; Bennett B. Watson, president.

McCandless, Inc., 535 Gravier Street, New Orleans, La.; Wm. H. McCandless, Jr., president; Noel A. Lacassin, vice president; Eleanor G. McCandless, secretary; Joyce D. Lacassin, treasurer.

Hy Turret, 121-48 236th Street, Rosedale, N.Y. 11422; Hy Turret, owner.

Continental Island Freight Forwarders, Inc., 340 Biscayne Boulevard, Biscayne Terrace Hotel, Suite 208, Miami, Fla.; Barney J. Gregory, president-treasurer; Molly S. Schreiber, secretary.

Notice is hereby given of changes in the following independent ocean freight forwarder licenses.

ADDRESS CHANGES

Leading Forwarders of Rochester, Inc., 1680 University Avenue, Rochester, N.Y. 14610; License No. 1026.

Trans Global Forwarding (Branch), 138-140 Delancy Street, Newark, N.J.; License No. 1058.

Mohegan International Corp. of Louisiana, 442 Canal Street, 203 Sanlin Building, New Orleans, La. 70130; License No. 538.

Felix L. Matos, 400 Comercio Street, San Juan, P.R.; License No. 1084.

CHANGE OF OFFICERS

Robert E. Landweer & Co., Inc., 83 Marion Street Viaduct, Seattle, Wash. 98104; License No. 690; Austin D. Hemion, president-director; John M. Molsberry, vice president-director; Micheal G. Duncan, secretary-treasurer-director.

R. F. Downing & Co., Inc., 26 Beaver Street, New York, N.Y. 10004; License No. 146; Enoch G. Van Hoesen, president; Walter H. Van Hoesen, chairman of board of directors; Arthur W. McGrath, executive vice president; Harold W. Heiner, vice president; Bernard J. McDonald, secretary.

Mohegan International Corp., 442 Canal Street, 203 Sanlin Building, New Orleans, La. 70130; License No. 538; Robert Servo, vice president.

GRANDFATHER LICENSED

December 1966

Judson Sheldon International Corp., 1417 Clay Street, Oakland, Calif. 94604; License No. 525; issued December 20, 1966.

Dated: December 21, 1966.

THOMAS LISI,
Secretary.

[F.R. Doc. 66-13823; Filed, Dec. 27, 1966; 8:46 a.m.]

FEDERAL POWER COMMISSION

[Docket No. CP67-164]

COLUMBIA GULF TRANSMISSION CO.

Notice of Application

DECEMBER 16, 1966.

Take notice that on December 13, 1966, Columbia Gulf Transmission Co. (Applicant), Post Office Box 683, Houston, Tex. 77001, filed in Docket No. CP67-164 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks authorization to undertake the following:

(1) Installation of 161.6 miles of 36-inch O.D. x 0.388-inch wall grade 5 LX-65 pipe as main-line loops.

(2) Installation of engine-compressor units totaling 42,500 horsepower.

(3) Relocation of engine-compressor units totaling 21,000 horsepower.

(4) Construction of a delivery point for year-round deliveries for the account of United Fuel Gas Co. (United Fuel) to Kentucky Gas Transmission Corp. (Kentucky Gas) in Madison County, Ky., replacing an existing connection between Applicant's mainline and facilities of Kentucky Gas.

Applicant states that such facilities, which will increase the daily design capacity of its system to 1,277,500 Mcf per day, are needed in order to transport substantial volumes of gas to meet the estimated increased requirements of United Fuel for the 12-month period beginning November 1, 1967.

The total estimated cost of the proposed construction is $36,692,000, which cost will be financed through the purchase by the Columbia Gas System, Inc., of common stock and notes of Applicant and through the use by Applicant of current working funds.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (157.10) on or before January 16, 1967.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-13808; Filed, Dec. 27, 1966; 8:45 a.m.]

[Docket No. RP67-11]

EASTERN SHORE NATURAL GAS CO.

Notice of Proposed Change in Rates and Charges

DECEMBER 16, 1966.

Take notice that on December 13, 1966, Eastern Shore Natural Gas Co. (Eastern Shore) tendered a proposal to reduce, effective as of July 1, 1966, the rates and charges in its presently effective tariff to reflect the impact of the reduction in the rates of its supplier, Transcontinental Gas Pipe Line Corp., effective as of that date. The proposed reduction in rates set out in Eastern Shore's Rate Schedules CD-1 and G-1 results in an annual revenue reduction of approximately $23,400 based on estimated sales

for the 12 months period ending June 30, 1967.

Copies of the proposal have been served by Eastern Shore on its customers and interested State Commissions. Comments thereon may be served on the Commission on or before January 5, 1967.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-13809; Filed, Dec. 27, 1966; 8:45 a.m.]

[Docket No. CP67-163]

LAKE SHORE PIPE LINE CO.

Notice of Application

DECEMBER 15, 1966.

Take notice that on December 12, 1966, Lake Shore Pipe Line Co. (Applicant), 1717 East Ninth Street, Cleveland, Ohio 44114, filed in Docket No. CP67-163 a "budget-type" application pursuant to section 7(c) of the Natural Gas Act and § 157.7(b) of the regulations under the Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1967 or for 1 year after the granting of the certificate and operation of certain gas gathering facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks to construct and operate the necessary lateral and gathering lines and other field facilities to enable it to take natural gas from independent producers which are coextensive with Applicant's system.

The cost of any one facility will not exceed $20,000, and the total estimated cost of the proposed facilities is $150,000, which cost will be financed out of current working funds or by short term bank loans.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (157.10) on or before January 16, 1967.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-13810; Filed, Dec. 27, 1966; 8:45 a.m.]

[Docket No. CP67-169]

MANTACHIE NATURAL GAS DISTRICT, MISS., AND TEXAS EASTERN TRANSMISSION CORP.

Notice of Application

DECEMBER 16, 1966.

Take notice that on December 14, 1966, the Mantachie Natural Gas District, Mississippi (Applicant), Mantachie, Miss., filed in Docket No. CP67-169 an application pursuant to section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Eastern Transmission Corp. (Respondent) to establish physical connection of its facilities with the facilities to be built by Applicant and to sell and deliver volumes of natural gas to Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant requests that Respondent be ordered to make physical connection of its transmission facilities with the distribution system to be constructed by Applicant and to sell and deliver volumes of natural gas for resale through Applicant's system to Mantachie, Mooresville, Dorsey, Kirkville, and Evergreen, Miss., and parts of Itawamba and Lee Counties, Miss.

The estimated third year peak-day and annual requirements of Applicant's system are 1,762 Mcf and 138,012 Mcf, respectively.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 16, 1967.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-13811; Filed, Dec. 27, 1966; 8:45 a.m.]

[Project No. 2619]

NANTAHALA POWER & LIGHT CO.

Notice of Application for License for Constructed Project

DECEMBER 16, 1966.

Public notice is hereby given that application for license has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Nantahala Power & Light Co. (correspondence to: John M. Archer, Jr., president, Nantahala Power & Light Co., Post Office Box 260, Franklin, N.C. 28734) for constructed Project No. 2619, known as the Mission Project, located on the Hiwassee River, in Clay County, N.C., near the town of Murphy.

The existing Mission Project consists of: (1) A concrete Ambursen dam with top height of 47.5 feet above stream bed consisting of the following sections: (a) A 126-foot long spillway section with crest at elevation 1658.40 feet (U.S.G.S. datum) with seven tainter gates; (b) a 54-foot long intake section; (c) a nonoverflow section 72 feet long; (d) and two abutments which bring the total length to about 397 feet; (2) a 1.4-mile long, 90-acre reservoir with normal elevation at 1,658.40 feet and a normal drawdown of 1 foot; (3) a powerhouse integral with the dam housing two 930 hp turbines and one 1,040 hp turbine, each connected to a 600 kw generator; and (4) appurtenant facilities.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is February 8, 1967. The application is on file with the Commission for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-13812; Filed, Dec. 27, 1966; 8:45 a.m.]

[Docket No. CP67-162]

NORTHERN NATURAL GAS CO.

Notice of Application

DECEMBER 15, 1966.

Take notice that on December 12, 1966, Northern Natural Gas Co. (Applicant), 2223 Dodge Street, Omaha, Nebr. 68102, filed in Docket No. CP67-162 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to construct and operate 9.7 miles of 3-inch mainline loop of Mullinville, Kans. Such construction, Applicant states, will increase its system's capacity by 6,000 Mcf per day and supply contract requirements for its Peoples Division. The additional contract demand is required by Peoples Division to meet the additional firm requirements of Farmland Industries, Inc., and the Nitrogen Division of Allied Chemical Corp. for use in their fertilizer plants located near Fort Dodge, Iowa, and at La Platte, Nebr., respectively.

The total estimated cost of the proposed construction is $1,566,200, which will be financed from internal sources such as reserve accruals, retained earnings, and cash on hand.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (157.10) on or before January 6, 1967.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that

a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-13813; Filed, Dec. 27, 1966; 8:45 a.m.]

[Docket No. CP67-165]

SALTILLO-GUNTOWN NATURAL GAS DISTRICT, MISS., AND TENNESSEE GAS TRANSMISSION CO.

Notice of Application

DECEMBER 16, 1966.

Take notice that on December 13, 1966, Saltillo-Guntown Natural Gas District, Mississippi (Applicant), Guntown, Miss., and Saltillo, Miss., filed in Docket No. CP67-165 an application pursuant to section 7(a) of the Natural Gas Act for an order of the Commission directing Tennessee Gas Transmission Co. (Respondent) to establish physical connection of its facilities with the facilities to be built by Applicant and to sell and deliver volumes of natural gas to Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks to have the Commission order Respondent to make physical connection of its transmission facilities with the distribution facilities to be constructed by Applicant and to sell and deliver volumes of natural gas to Applicant for resale and distribution in the towns of Guntown and Saltillo, Miss., and environs.

The estimated third year annual and peak-day requirements of Applicant's proposed system are 137,808 Mcf and 1,615 Mcf, respectively.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 16, 1967.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 66-13814; Filed, Dec. 27, 1966; 8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 0-592]

PAKCO CO., INC.

Order Suspending Trading

DECEMBER 20, 1966.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Pakco Co., Inc., and all other securities of Pakco Co., Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period December 20, 1966, through December 29, 1966, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 66-13817; Filed, Dec. 27, 1966; 8:45 a.m.]

[70-4436]

PENNSYLVANIA ELECTRIC CO.

Notice of Proposed Acquisition From, and Guarantee of, Notes To Be Issued by Nonaffiliated Companies

DECEMBER 19, 1966.

Notice is hereby given that Pennsylvania Electric Co. ("Penelec"), 1001 Broad Street, Johnstown, Pa. 15907, an electric utility subsidiary company of General Public Utilities Corp. ("GPU"), a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), regarding certain proposed steps to assist two nonaffiliated coal companies to develop mines to supply the coal requirements of a generating station owned in part by Penelec. Penelec has designated sections 6(a), 7, 9, and 10 of the Act and Rule 50(a)(2) and (5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Penelec and New York State Electric & Gas Corp. ("NYSE&G") (a nonaffiliated company), each own, as tenants in common, a 50-percent interest in an electric generating station, known as the Homer City station, now under construction near Johnstown, Pa. Each owner will have an equal interest in the proposed plant which will have an effective capacity of 1,280 MW and in its energy output. The Homer City station is adjacent to undeveloped coal deposits held by two nonaffiliated corporations, namely, Helvetia Coal Co. ("Helvetia"), a wholly owned subsidiary company of Rochester & Pittsburgh Coal Co. ("R&P"), and Helen Mining Co. ("Helen"), a wholly owned subsidiary company of the North American Coal Co. ("Nacco").

Penelec and NYSE&G have negotiated long term agreements with Helvetia and Helen which provide, among other things, for the financing of the development of the mines and the supply of substantially all of the Homer City station coal requirements. Under the agreements the financing of Helvetia and Helen is to be effected, to the extent practicable, by borrowed funds and without appreciable investment or guarantees by R&P or Nacco, respectively. Helvetia estimates that it will require up to $3,500,000 and Helen up to $1 million during 1967 for preliminary development work, and that the total cost of development of their mines will be approximately $12 million and $11 million, respectively. They have advised Penelec and NYSE&G that they are unable to obtain interim financing on acceptable terms on the basis of the coal supply agreements alone, and that the banks will require guarantees by Penelec and NYSE&G for such loans. In addition, Helvetia has advised Penelec and NYSE&G that it is able to borrow from banks only $1,750,000 of the $3,500,000 which it will require through December 1967.

Penelec proposes to acquire promissory notes to be issued by Helvetia, from time to time during 1967, in the maximum aggregate amount of $875,000 and to guarantee a similar maximum aggregate amount of Helvetia's notes evidencing borrowings from Manufacturers Hanover Trust Co. ("Manufacturers") and such other banks as may participate in the loans. Penelec also proposes to guarantee up to $500,000 of Helen's notes evidencing borrowings to be made, from time to time during 1967, from the Union Commerce Bank of Cleveland ("Union"). NYSE&G will provide Helvetia with a similar loan and guarantee and similarly guarantee Helen's borrowings.

Helvetia's notes to be issued to Manufacturers will bear interest at an annual rate of one-fourth of 1 percent above Manufacturers' prime rate for commercial borrowings in effect from time to time, and its notes to be issued to Penelec and NYSE&G will bear interest at an annual rate of 1 percent above Manufacturers' prime rate. All of Helvetia's notes will mature on June 30, 1968, and will be secured by a first mortgage on its assets. Helen's notes to be issued to Union will bear interest at an annual rate equal to Union's prime rate in effect from time to time and will mature on December 1, 1967. The notes will be unsecured, but the guarantees by Penelec and NYSE&G will be secured by a first mortgage on Helen's assets.

Penelec estimates its fees and expenses relating to the proposed loans and guarantees to be $10,000 including $9,500 of legal fees. It is stated that the Pennsylvania Public Utility Commission has jurisdiction over the proposed guarantee by Penelec and that no other State and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than January 9, 1967, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be

addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed contemporaneously with the request. Any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

For the Commission (pursuant to delegated authority).

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

[F.R. Doc. 66-13818; Filed, Dec. 27, 1966; 8:45 a.m.]

[70-4438]

COLUMBIA GAS SYSTEM, INC., AND INLAND GAS CO., INC.

Notice of Proposed Issue and Sale of Installment Note by Subsidiary Company to Holding Company in Exchange for Shares of Subsidiary's Common Stock

DECEMBER 21, 1966.

Notice is hereby given that the Columbia Gas System, Inc. ("Columbia") 120 East 41st Street, New York, N.Y. 10017, a registered holding company, and its gas utility subsidiary company, the Inland Gas Co., Inc. ("Inland") 340 17th Street, Ashland, Ky. 41101, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6, 7, 9, 10, and 12(f) of the Act and Rule 43 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Inland, whose outstanding securities consist entirely of common stock owned by Columbia, proposes to issue and Columbia proposes to acquire, an unsecured, installment promissory note in the principal amount of $2,200,000. In exchange for the note Columbia will surrender to Inland 220,000 shares of Inland's common stock (par value $10 per share) for cancellation.

The note will be due in 20 equal annual installments on January 15 of each of the years 1968–87. The note will bear interest at the rate of 6.3 percent per annum payable on the unpaid principal semiannually. The interest rate is equal to the approximate cost of money to Columbia on its last sale of debentures. The note may be prepaid at any time, in whole or in part, without premium, and a partial prepayment will be applied pro rata to the reduction of the then unpaid annual installments.

The filing states that consummation of the proposed transactions, together with a contemplated payment by Inland of a special dividend of $600,000, will bring Inland's resultant capitalization ratios of 55 percent debt and 45 percent equity in line with other companies comprising the Columbia holding-company system and will enable Inland to decrease its current disproportionate share of the system's consolidated Federal Income Tax by approximately $66,500 at current tax rates.

It is stated that the fees and expenses relating to the proposed transactions will be $300 including $250 for services of Columbia Gas System Service Corp., the system service company, at cost. It is also stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than January 12, 1967, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed contemporaneously with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

For the Commission (pursuant to delegated authority).

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

[F.R. Doc. 66-13853; Filed, Dec. 27, 1966; 8:47 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

CERTIFICATES AUTHORIZING EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM RATES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), and Administrative Order No. 955 (31 F.R. 12981) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations; such conditions in certificates not issued under the supplemental industry regulations are as indicated.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.20 to 522.25, as amended).

The following normal labor turnover certificates authorize 10 percent of the total number of factory production workers except as otherwise indicated.

Alabama Textile Products Corp., Andalusia, Ala.; 12–1–66 to 11–30–67 (men's shirts and work pants).

Andala Co., Andalusia, Ala.; 12–1–66 to 11–30–67 (men's work shirts and work pants).

Anthracite Shirt Co., 1 South Franklin Street, Shamokin, Pa.; 12–1–66 to 11–30–67 (men's and boys' shirts).

Bestform Foundations of Windber, Inc., Stockholm Avenue, Windber, Pa.; 12–9–66 to 12–8–67 (brassieres and girdles).

Blue Bell, Inc., 450 East Barnes Street, Bushnell, Ill.; 12–9–66 to 12–8–67; 10 learners (army pants).

Blue Bell, Inc., Shenandoah, Va.; 11–29–66 to 11–28–67; 10 learners (ladies', girls' and boys' dungarees).

Bonacci Sportswear Co., 312 Penn Avenue, Scranton, Pa.; 11–18–66 to 11–17–67; 5 learners (ladies', girls', and boys' car coats).

Byrds Manufacturing Corp., Byrdstown, Tenn.; 11–29–66 to 11–28–67 (men's, boys', and ladies' shirts).

Collinwood Manufacturing Co., Collinwood, Tenn.; 11–14–66 to 11–13–67 (men's and women's uniforms).

Cowden-Lancaster Co., Cowden-Garrard Co., 112 Hamilton Avenue, Lancaster, Ky.; 11–28–66 to 11–27–67 (men's overalls, trousers).

Dixie Manufacturing Co., Inc., 14th and Bailey Streets, Columbia, Tenn.; 11–12–66 to 11–11–67 (ladies' and girls' sportswear, shorts and slacks).

Edmonton Manufacturing Co., Industrial Park Road; Greensburg, Ky.; 11–28–66 to 11–27–67; 10 learners (men's work shirts and work pants).

E & W of Canton, Inc., Canton, Miss.; 11–20–66 to 11–19–67 (men's shirts).

The Eastern Isles Manufacturing Corp., Richlands, Va.; 11–10–66 to 11–9–67 (ladies' woven pajamas, night gowns).

Edison Textiles, Inc., Edison, Ga.; 11–17–66 to 11–16–67 (infants', girls' and toddlers underwear and outerwear).

Florence Manufacturing Co., Inc., 1104 Chase Avenue, Florence, S.C.; 11–29–66 to 11–28–67 (ladies' dresses).

Four's Co., Inc., Rural Delivery No. 1, Box 377, Blairsville, Pa.; 11–16–66 to 11–15–67 (children's dresses).

Frisco Sportswear Co., Inc., 301 Live Oak Street, Frisco City, Ala.; 12–4–66 to 12–3–67 (ladies' woven slacks).

The Hercules Trouser Co., Hillsboro, Ohio; 12–1–66 to 11–30–67 (men's and boys' pants).

The Hercules Trouser Co., Manchester, Ohio; 12–1–66 to 11–30–67 (men's and boys' pants).

Hicks-Ponder Co., 1795 Maple Avenue, Yuma, Ariz.; 11–21–66 to 11–20–67 (men's trousers).

The H. W. Gossard Co., 105 North Franklin Street, Bicknell, Ind.; 11–16–66 to 11–15–67 (women's foundation garments).

Guntown Slacks, Inc., Guntown, Miss.; 11–12–66 to 11–11–67 (men's and boys' slacks).

Hartsville Manufacturing Co., Inc., South Fifth Street, Hartsville, S.C.; 11–26–66 to 11–25–67 (ladies' dresses).

Imperial Reading Corp., Marshall, Tex.; 11–14–66 to 11–13–67 (denim jeans).

Jacket King, Inc., 202 Garrison Avenue, Fort Smith, Ark.; 12–1–66 to 11–30–67; 10 learners (children's outerwear jackets).

Junction City Manufacturing Corp., Junction City, La.; 11–17–66 to 11–16–67 (ladies' and girls' pajamas).

Lamar Manufacturing Co., Millport, Ala.; 11–23–66 to 11–22–67 (men's and boys' trousers).

Lee County Manufacturing Co., Inc., Leesburg, Ga.; 11–25–66 to 11–24–67 (washable service apparel).

Linden Apparel Corp., Plant No. 1, Factory Street, Plant No. 2, Averett Street, Linden, Tenn.; 11–13–66 to 11–12–67 (men's and boys' dungarees and pants).

Lismore Manufacturing Corp., 460 Glove Street, Fall River, Mass.; 12–1–66 to 11–30–67 (women's and children's woven underwear).

Loris Manufacturing Co., No. 1, Post Office Box 745, Loris, S.C.; 11–30–66 to 11–29–67 (ladies' blouses, dresses and pants).

Martin Manufacturing Co., Inc., Ramer, Tenn.; 11–15–66 to 11–14–67 (men's shirts).

Mayflower Manufacturing Co., Inc., 460–506 North Main Avenue, Scranton, Pa.; 12–12–66 to 12–11–67 (boys' trousers).

Mercer Clothing Manufacturers, Inc., Route 2, Mercersburg, Pa.; 11–30–66 to 11–29–67; 10 learners (ladies' and girls' blouses).

Charles Meyers & Co., First and Harrison Streets, Belleville, Ill.; 11–28–66 to 11–27–67 (men's trousers).

Meyers & Son Manufacturing Co., Inc., New Castle, Ky.; 12–1–66 to 11–30–67; 10 learners (men's work clothing).

Penola, Inc., of Batesville, Highway 6 West, Batesville, Miss.; 11–21–66 to 11–20–67 (women's foundation garments).

Phillips-Van Heusen Corp.,Van Heusen Co., Section, Ala.; 12–1–66 to 11–30–67 (men's shirts).

Pittston Apparel Co., East and Tompkins Streets, Pittston, Pa.; 12–8–66 to 12–7–67 (girdles and brassieres).

Salant & Salant, Inc., Route 2, Box 2, Trumann, Ark.; 12–8–66 to 12–7–67 (men's and boys' pants and slacks).

Salant & Salant, Inc., Henderson, Tenn.; 12–13–66 to 12–12–67 (men's shirts).

Scott Co., Inc., Route No. 6, Anderson, S.C.; 11–26–66 to 11–25–67 (men's shirts).

Seminole Manufacturing Co., Aberdeen, Miss.; 11–23–66 to 11–22–67 (men's and boys' trousers).

Seminole Manufacturing Co., Post Office Box 391, Columbus, Miss.; 11–23–66 to 11–22–67 (men's and boys' trousers).

Shane Manufacturing Co., Inc., Boy's Wear Division, 1500 West Franklin Street, Evansville, Ind.; 12–9–66 to 12–8–67 (children's outerwear).

Smith & Co., 102 West Kaskaskia, Paola, Kans.; 11–29–66 to 11–28–67 (ladies' loungewear).

Spring City Manufacturing Co., Spring City, Tenn.; 11–20–66 to 11–19–67 (men's and boys' pajamas).

Stadium Manufacturing Co., Inc., Post Office Box 97, Winfield, Ala.; 11–28–66 to 11–27–67 (men's and boys' slacks).

States Nitewear Manufacturing Co., Inc., Healy and Bates Streets, New Bedford, Mass.; 12–1–66 to 11–30–67 (ladies' night gowns and pajamas).

Levi Strauss & Co., Roswell, N. Mex.; 11–19–66 to 11–18–67 (men's and boys' jeans).

Susan Garment, Inc., South Center Street, Fredericksburg, Pa.; 11–28–66 to 11–27–67; 5 learners (ladies' blouses and dresses).

Waldon Manufacturing Co., Box 915, Walnut, Miss.; 12–9–66 to 12–8–67 (men's and boys' outerwear jackets).

Warner Slimwear-Lingerie, Barbourville, Ky.; 11–21–66 to 11–20–67 (corsets and brassieres).

Warsaw Manufacturing Co., Warsaw Road, Kingstree, S.C.; 11–29–66 to 11–28–67 (ladies' slacks, pedal pushers and jamaicas).

Whiteville Manufacturing Co., Wilmington Road, Whiteville, N.C.; 11–15–66 to 11–14–67 (children's dungarees).

Wilgree Manufacturing Co., Inc., North Harney Street, Camilla, Ga.; 12–1–66 to 11–30–67 (men's shirts).

The following plant expansion certificates were issued authorizing the number of learners indicated.

Collinwood Manufacturing Co., Collinwood, Tenn.; 11–17–66 to 5–16–67; 35 learners (men's and women's washable uniforms).

Panola, Inc., of Batesville, Highway 6 West, Batesville, Miss.; 11–29–66 to 5–28–67; 70 learners (women's foundation garments).

Quanah Manufacturing Co., Inc., 201 Green Street, Quanah, Tex.; 11–28–66 to 5–27–67; 70 learners (ladies' and girls' shifts and children's pajamas).

Salant & Salant, Inc., Lawrenceburg, Tenn.; Loretto, Tenn.; 12–1–66 to 5–31–67; 50 learners (men's work shirts and men's and boys' outerwear jackets).

Sevier Industries, Inc., Sevierville, Tenn.; 11–8–66 to 5–7–67; 25 learners (men's and boys' work pants).

Levi Strauss & Co., Roswell, N. Mex.; 11–19–66 to 5–18–67; 80 learners (men's and boys' jeans).

Warner Slimwear-Lingerie, London, Ky.; 11–23–66 to 5–22–67; 40 learners (women's corsets and brassieres).

Glove Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended and 29 CFR 522.60 to 522.65, as amended).

Lambert Manufacturing Co., 1123 North Osteopathy Street, Kirksville, Mo.; 11–7–66 to 11–6–67; 10 learners for normal labor turnover purposes (work gloves).

Morris Manufacturing Co., Main Street, Newbern, Tenn.; 11–17–66 to 11–16–67; 10 learners for normal labor turnover purposes (work gloves).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.40 to 522.43, as amended).

Magnet Mills, Inc., Cullom Street, Clinton, Tenn.; 11–29–66 to 11–28–67; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.30 to 522.35, as amended).

Van Raalte Co., Inc., Main Street, Bristol, Vt.; 12–1–66 to 11–30–67; 5 percent of the total number of factory production workers for normal labor turnover purposes (women's nylon and tricot underwear).

Van Raalte Co., Inc., High Rock Avenue, Saratoga Springs, N.Y.; 11–25–66 to 11–24–67; 5 percent of the total number of factory production workers for normal labor turnover purposes (nylon and rayon tricot knit underwear).

The following student-worker certificate was issued pursuant to the regulations applicable to the employment of student-workers (29 CFR 527.1 to 527.9). The effective and expiration dates, occupations, wage rates, number of student-workers, and learning periods for the certificate issued under Part 527 are as indicated below:

Walla Walla College, Drawer 1, College Place, Wash.; 11–1–66 to 8–31–67; authorizing the employment of: (1) 10 student-workers in the printing industry in the occupations of compositor, pressman and related skilled and semiskilled occupations, for a learning period of 1,000 hours at the rates of $1.10 an hour for the first 500 hours and $1.15 an hour for the remaining 500 hours; and (2) 30 student-workers in the bookbinding industry in the occupations of bookbinding, bindery worker and related skilled and semiskilled occupations, for a learning period of 600 hours at the rates of $1.10 an hour for the first 300 hours and $1.15 an hour for the remaining 300 hours.

The student-worker certificate was issued upon the applicant's representations and supporting material fulfilling the statutory requirements for the issuance of such certificates, as interpreted and applied by Part 527.

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within 15 days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in 29 CFR Part 528.

Signed at Washington, D.C., this 9th day of December 1966.

ROBERT G. GRONEWALD,
Authorized Representative of the Administrator.

[F.R. Doc. 66–13828; Filed, Dec. 27, 1966; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 22, 1966.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA 40837—*Returned shipments of sugar from southern territory*—Filed by Traffic Executive Association-Eastern Railroads, agent (No. E.R. 2874), for interested carriers. Rates on sugar, beet or cane, in packages, in carloads, returned from original destination to original point of shipment, from points in southern territory to points in Massachusetts, New Jersey, New York, Rhode Island, also Baltimore, Md., and Philadelphia, Pa.

Grounds for relief—Carrier competition.

Tariff—Supplement 18 to Traffic Executive Association-Eastern Railroads, agent, tariff ICC C–433.

FSA 40838—*Sodium sesqui-carbonate to points in Louisiana*—Filed by Western Trunk Line Committee, agent (No. A–2481), for interested carriers. Rates on sodium sesqui-carbonate, in bulk, in covered hopper cars, in carloads, from Alchem, Stauffer, and Westvaco, Wyo., to specified points in Louisiana.

Grounds for relief—Market competition.

Tariff—Supplement 64 to Western Trunk Line Committee, agent tariff ICC A–4374.

FSA 40839—*Substituted service—CMSTP&P for International Transport, Inc.*—Filed by A. R. Fowler, agent (No. 17) for interested carriers. Rates on property loaded in highway trailers and transported on railroad flatcars between points in Idaho, Montana, and Washington, on the one hand, and points in Middle West territory, on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief—Motortruck competition.

Tariff—A. R. Fowler, agent, tariff MF–ICC 391.

By the Commission.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 66–13892; Filed, Dec. 27, 1966; 8:50 a.m.]

[Notice 1456]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 22, 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–69284. By order of December 21, 1966, the Transfer Board approved the transfer to Kingsway Lumber Carriers, Inc., New Rochelle, N.Y., of the certificate in No. MC–127406, issued February 11, 1966, to Alfred Blackburn, doing business as Kingsway Distributors, New Rochelle, N.Y., authorizing the transportation of: Lumber, from New Rochelle, N.Y., to points in Dutchess, Orange, Putnam, Rockland, and Westchester Counties, N.Y., and Fairfield County, Conn. Martin Werner, 2 West 45th Street, New York, N.Y. 10036, attorney for applicants.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 66–13893; Filed, Dec. 27, 1966; 8:50 a.m.]

CUMULATIVE LIST OF PARTS AFFECTED—DECEMBER

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 December.

3 CFR

Page

PROCLAMATIONS:
3755 ... 15227
3756 ... 15229
3757 ... 15231
3758 ... 15567

EXECUTIVE ORDERS:
8278 (revoked in part by PLO 4119) ... 16202
10214 (see EO 11317) ... 15305
10707 (amended by EO 11319) ... 15629
11317 ... 15305
11318 ... 15307
11319 ... 15629
11320 ... 15789
11321 ... 16301

5 CFR

213 ... 15133, 15646, 15727, 16303, 16347, 16348
550 ... 16187
870 ... 15233

6 CFR

... 16264
73 ... 15233

7 CFR

5 ... 15631
16 ... 15483, 15791
52 ... 16515
55 ... 16516
709 ... 15791
717 ... 16401
722 ... 15142, 15316, 15791
728 ... 15792
730 ... 15529
811 ... 15581, 16303
812 ... 16517
813 ... 15483
817 ... 16518
905 ... 15059, 15189, 15584, 16183
906 ... 15233, 16401, 16402
907 ... 15190, 15316, 15585, 15817, 16184, 16304, 16493.
910 ... 15190, 15585, 15631, 16185, 16225, 16493, 16520.
911 ... 15484
944 ... 15484
948 ... 15234
959 ... 15530
972 ... 15728
989 ... 15145, 16305
1002 ... 15585
1003 ... 15060
1005 ... 15061
1006 ... 15061
1008 ... 15061
1009 ... 15061
1011 ... 15061
1012 ... 15061
1013 ... 15062
1016 ... 15063
1031 ... 15061
1032 ... 15061, 15064, 15631, 15793, 16520
1033 ... 15061
1034 ... 15061
1035 ... 15061
1036 ... 15061
1038 ... 15061
1039 ... 15061

7 CFR—Continued

Page

1040 ... 15061
1041 ... 15061, 15074
1043 ... 15061
1044 ... 15061
1045 ... 15061, 16225
1046 ... 15061
1047 ... 15061
1049 ... 15061
1050 ... 15061, 15076, 15631
1051 ... 15061
1062 ... 15061
1063 ... 15061
1064 ... 15061, 16308
1065 ... 15061
1066 ... 15061
1068 ... 15061, 15086
1069 ... 15061
1070 ... 15061
1071 ... 15061
1073 ... 15061
1075 ... 15061
1076 ... 15061
1078 ... 15061
1079 ... 15061
1090 ... 15061
1094 ... 15061
1096 ... 15061
1097 ... 15061
1098 ... 15061
1101 ... 15061
1102 ... 15061
1103 ... 15061
1106 ... 15061
1108 ... 15061
1125 ... 15061
1126 ... 15061
1131 ... 15061
1132 ... 15061
1133 ... 15061
1136 ... 15061
1137 ... 15061, 15087
1138 ... 15061
1464 ... 15485
1468 ... 15234
1472 ... 15234
1865 ... 16225
Ch. XVII ... 16225

PROPOSED RULES:
Ch. IX ... 15594
52 ... 15149, 15151
718 ... 15810
812 ... 15323
817 ... 15147
907 ... 16470
910 ... 15544
971 ... 15153
980 ... 16159
987 ... 15746
992 ... 15153
1001 ... 15811
1002 ... 16273
1004 ... 15670. 16471
1015 ... 15811
1032 ... 15598
1034 ... 16204
1064 ... 15544
1101 ... 15154
1106 ... 15598, 16365
1126 ... 15598, 16365, 16576
1131 ... 16277

8 CFR

Page

204 ... 15322
235 ... 16125
245 ... 15235
249 ... 15235
252 ... 15322
264 ... 16125
299 ... 15235, 15322

9 CFR

74 ... 16347
78 ... 16308
131 ... 16185

PROPOSED RULES:
1 ... 16110
2 ... 16110
3 ... 16112
71 ... 15670

10 CFR

1 ... 16309
2 ... 16309
9 ... 15145
20 ... 15145
32 ... 15145
40 ... 15145
50 ... 15145
150 ... 15145

PROPOSED RULES:
30 ... 15747
32 ... 15747
40 ... 16367

12 CFR

204 ... 15793, 16310
217 ... 15793, 16311
327 ... 15794
329 ... 15794
526 ... 15728, 15729
546 ... 15235, 15569
569 ... 15729
Ch. VI ... 16227

PROPOSED RULES:
525 ... 15158

13 CFR

121 ... 15145, 15737

PROPOSED RULES:
107 ... 15603
121 ... 16209

14 CFR

39 ... 15191, 15317, 15634, 16125, 16126, 16264, 16265, 16311, 16347, 16406.
47 ... 15349
49 ... 15349
71 ... 15087, 15236, 15237, 15531, 15569, 15635, 15796–15799, 16127, 16200, 16407, 16494.
73 ... 15087, 15088, 15531, 15799, 16127, 16521
75 ... 15088, 15237, 15799, 16494
91 ... 15317
97 ... 15134, 15636, 16128, 16408
121 ... 15191
151 ... 15730, 16521
290 ... 16526

14 CFR—Continued

Page

PROPOSED RULES:

23 ... 16367
25 ... 16367
27 ... 16367
29 ... 16367
39 ... 15813, 16161, 16368, 16469
67 ... 15324
71 ... 15096, 15097, 15242, 15243, 15545, 15600, 15703, 15814, 15815, 16208, 16278, 16469, 16470, 16497.
73 ... 15815, 16209, 16470
75 ... 16161, 16278
101 ... 15490, 15750
208 ... 15811
214 ... 15811
295 ... 15811
399 ... 15747

15 CFR

204 ... 16186
230 ... 15309
700 ... 16265

16 CFR

13 ... 15192, 15800, 15801, 16348, 16349, 16351
15 ... 15238
142 ... 16266

17 CFR

PROPOSED RULES:

240 ... 15750, 16321
249 ... 16321

18 CFR

8 ... 16201
141 ... 16201, 16560
154 ... 15485
260 ... 15309, 16561, 16562

PROPOSED RULES:

154 ... 15325, 16279
260 ... 15325

19 CFR

1 ... 15193, 16312, 16563
2 ... 15349
4 ... 16142
8 ... 15644
16 ... 15644
25 ... 15644

PROPOSED RULES:

6 ... 15587
24 ... 15544

20 CFR

250 ... 15238
345 ... 15238, 16265
405 ... 16137
602 ... 16187

PROPOSED RULES:

404 ... 15198
602 ... 15490

21 CFR

1 ... 15730
2 ... 15088, 16564
3 ... 16266, 16403
5 ... 15730
17 ... 15088, 16564
53 ... 16266
80 ... 15730, 16312
120 ... 16565
121 ... 15089, 15090, 15193, 15239, 15309, 15349, 15570.

21 CFR—Continued

Page

125 ... 15730
191 ... 15091, 16564, 16565

PROPOSED RULES:

17 ... 15095
27 ... 16577
80 ... 15746
130 ... 15096

22 CFR

51 ... 16143
121 ... 15174
122 ... 15174
123 ... 15174
124 ... 15174
125 ... 15174
126 ... 15174
127 ... 15174
201 ... 15195
208 ... 15571

23 CFR

209 ... 16267
215 ... 15197

PROPOSED RULES:

245 ... 15212, 15600

24 CFR

200 ... 16495
201 ... 16268
203 ... 16187, 16268
207 ... 16187, 16268
213 ... 16268
220 ... 16187
221 ... 16269
234 ... 16269
1000 ... 16269
1600 ... 16515

25 CFR

41 ... 16565

26 CFR

1 ... 16527
31 ... 16269
301 ... 15736

PROPOSED RULES:

1 ... 15587
31 ... 15095, 15587
46 ... 16157
48 ... 16157
49 ... 16157

29 CFR

60 ... 16412

PROPOSED RULES:

4 ... 15702
60 ... 16466
522 ... 15200

30 CFR

Ch. I ... 15745

31 CFR

100 ... 16226

32 CFR

80 ... 16188
82 ... 16495
83 ... 16351
155 ... 16188
711 ... 16193
713 ... 15531
717 ... 15318
718 ... 15318
719 ... 16312

32 CFR—Continued

Page

730 ... 16404, 16405, 16528
731 ... 15801
733 ... 16193
735 ... 15801
817 ... 16143
824 ... 15318
825a ... 15318
836 ... 16143
861 ... 15540
870 ... 16555
871 ... 15318
902 ... 16352

32A CFR

BDSA (Ch. I):
M–11A, Schedule A ... 15319
M–11A, Dir. 1 ... 15320
M–11A, Dir. 2 ... 15321
OIA (Ch. X):
OI Reg. 1 ... 15803

33 CFR

2 ... 16198
23 ... 15239
202 ... 16144
203 ... 15310
207 ... 15310, 16560

PROPOSED RULES:

201 ... 15810

36 CFR

29 ... 15804
211 ... 16357

38 CFR

1 ... 15091, 15092
3 ... 15631
14 ... 16415
17 ... 16144, 16199
21 ... 16199

39 CFR

Ch. I ... 15350, 16270, 16271
125 ... 15745

41 CFR

Ch. 2 ... 16420
1–3 ... 15805
1–4 ... 16417
1–10 ... 15092
1–16 ... 15092
8–1 ... 15311, 16199
8–3 ... 16312
8–7 ... 15312
8–10 ... 16200
8–11 ... 16312
8–14 ... 15312
9–51 ... 16200
11–50 ... 15239
101–26 ... 15571
101–38 ... 15571
101–45 ... 15094
101–47 ... 15541

PROPOSED RULES:

50–202 ... 16160

42 CFR

73 ... 15092

43 CFR

1820 ... 15541
3130 ... 16272
3140 ... 16272
3150 ... 16272
3160 ... 16272
3180 ... 16272

43 CFR—Continued

Page

PUBLIC LAND ORDERS:

1182 (see PLO 4119)---16202
4119---16202

44 CFR

801---15312
802---15312
803---15312
804---15312

46 CFR

2---15266
3---15266
10---15266, 15669
11---15669
12---15669
25---15267
30---15267
31---15267
32---15267
33---15268
34---15268
35---15268
36---15269
38---15269
40---15276
43---15280
51---15280
52---15280
54---15280
70---15280
71---15281
72---15281

46 CFR—Continued

Page

73---15281
75---15281
76---15282
77---15283
78---15283
90---15284
91---15284
92---15284
94---15284
95---15285
96---15285
97---15286
98---15286
110---15288
111---15288
113---15296
146---15573
157---15296
160---15297
167---15298
176---15298
181---15298
182---15299
185---15300
187---15300
310---16203
531---16314

PROPOSED RULES:

540---15703, 16497

47 CFR

0---16315, 16566, 16567
2---16316
25---15737

47 CFR—Continued

Page

73---15312, 16316, 16317
74---15313, 15486, 16151
87---15315
89---15578, 15741, 16151
91---15579, 15741, 16151
93---15579, 15741, 15743, 16151
95---15580, 15744, 16151
97---15543, 16567

PROPOSED RULES:

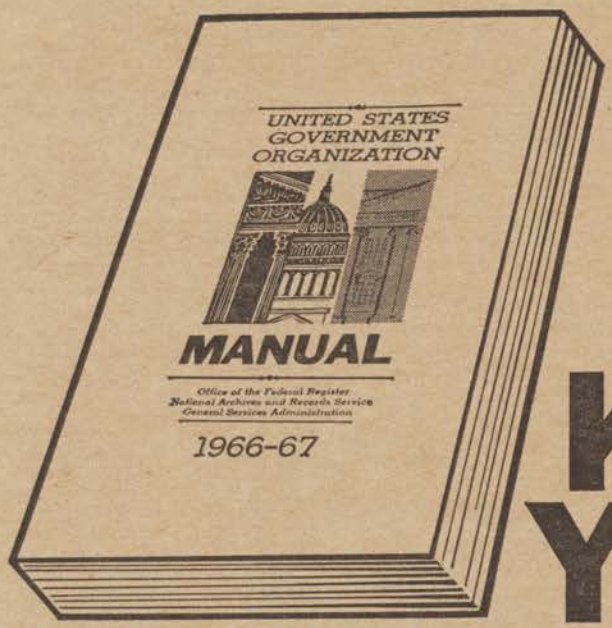
2---15491
18---15158
21---15600
73---15097, 16320, 16369
74---15491
87---16577

49 CFR

1---16318
57---16318
71–79---16495
95---15488, 15581, 16151, 16152, 16271, 16363
97---16271
177a---16402
177b---16567
190---16318, 16495

50 CFR---16002

28---15645, 16414, 16415
33---15133, 15197, 15241, 15489, 15581, 15645, 15809, 16153, 16271, 16319, 16415, 16560.
80---16153



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