# FEDERAL REGISTER

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Pages 11107–11197

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**Agencies in this issue—**

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Business and Defense Services Administration
Civil Aeronautics Board
Civil Service Commission
Comptroller of the Currency
Consumer and Marketing Service
Defense Department
Federal Aviation Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
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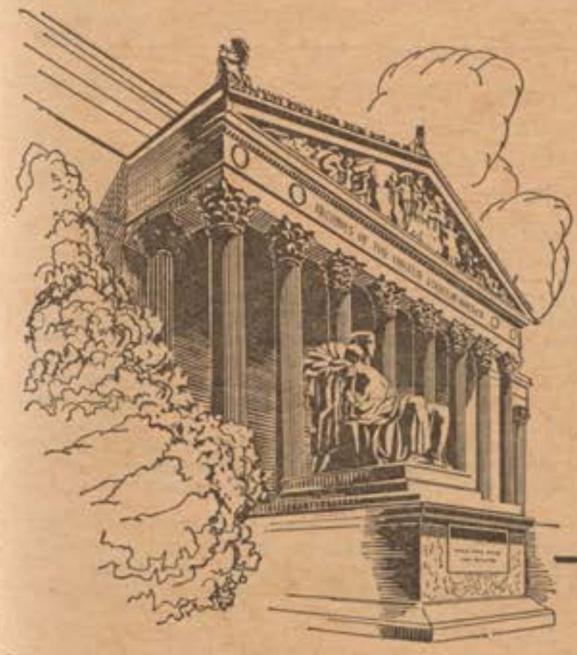

*Just Released*

# LIST OF CFR SECTIONS AFFECTED

January–June 1967

(Codification Guide)

The List of CFR Sections Affected is published monthly on a cumulative basis. It lists by number the titles, parts, and sections of the Code of Federal Regulations amended or otherwise affected by documents published in the FEDERAL REGISTER during 1967. Entries indicate the exact nature of all changes effected. This cumulative list of CFR sections affected is supplemented by the current lists of CFR parts affected which are carried in each daily FEDERAL REGISTER.

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# 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, 1967, and specifies how they are affected.

# Presidential Documents

## Title 3—THE PRESIDENT

### Executive Order 11365

### ESTABLISHING A NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. *Establishment of the Commission.* (a) There is hereby established a National Advisory Commission on Civil Disorders (hereinafter referred to as the "Commission").

(b) The Commission shall be composed of

The Honorable Otto Kerner, *Chairman*
The Honorable John V. Lindsay, *Vice Chairman*
Senator Fred R. Harris
Senator Edward W. Brooke
Congressman James C. Corman
Congressman William M. McCulloch
I. W. Abel
Charles B. Thornton
Roy Wilkins
The Honorable Katherine Graham Peden
Herbert Jenkins

The President from time to time may appoint additional members to the Commission.

SEC. 2. *Functions of the Commission.* (a) The Commission shall investigate and make recommendations with respect to:

(1) The origins of the recent major civil disorders in our cities, including the basic causes and factors leading to such disorders and the influence, if any, of organizations or individuals dedicated to the incitement or encouragement of violence.

(2) The development of methods and techniques for averting or controlling such disorders, including the improvement of communications between local authorities and community groups, the training of state and local law enforcement and National Guard personnel in dealing with potential or actual riot situations, and the coordination of efforts of the various law enforcement and governmental units which may become involved in such situations;

(3) The appropriate role of the local, state and Federal authorities in dealing with civil disorders; and

(4) Such other matters as the President may place before the Commission.

SEC. 3. *Cooperation by Executive Departments and Agencies.* The Commission is authorized to request, at the direction of the Chairman, from any executive department or agency any information and assistance deemed necessary to carry out its functions under this order. Each department or agency is authorized, to the extent permitted by law and within the limits of available funds, to furnish information and assistance to the Commission. The Federal Bureau of Investigation, in particular, shall provide investigative information and assistance.

SEC. 4. *Compensation, Personnel, and Finance.* (a) Members of the Commission who are Members of Congress shall receive no additional compensation by virtue of membership on the Commission, but, as permitted by law, may be reimbursed for travel, subsistence and other necessary expenses incurred by them in the performance of the duties vested in the Commission. Other members of the Commission shall receive $100 per day when engaged in the performance of duties pursuant to this order, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons intermittently employed.

(b) The Commission shall have an Executive Director who shall be designated by the President and shall receive such compensation as may hereafter be specified. The Commission is authorized to appoint and fix the compensation of such other personnel as may be necessary to enable it to carry out its functions, and is authorized to obtain services in accordance with the provisions of 5 U.S.C. 3109.

(c) All necessary expenses incurred in connection with the work of the Commission shall be paid from the "Emergency Fund for the President" or such other appropriated funds as may be available for the purposes of the Commission.

SEC. 5. *Administrative Services.* The General Services Administration shall provide administrative services for the Commission on a reimbursable basis.

SEC. 6. *Reports and Termination.* The Commission shall make an interim report as to its findings of fact not later than March 1, 1968, and shall present its final report and recommendations not later than one year from the date of this order. It shall terminate upon presenting its final report and recommendations.

THE WHITE HOUSE,
Cabinet Room, 12:20 p.m.,
*July 29, 1967.*

[F.R. Doc. 67-9036; Filed, July 31, 1967; 10:40 a.m.]

# Rules and Regulations

## Title 1—GENERAL PROVISIONS

### Chapter I—Administrative Committee of the Federal Register

### CFR CECKLIST

### 1967 Issuances

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the issuance date and price of revised volumes and supplements of the Code of Federal Regulations issued to date during 1967. New units issued during the month are announced on the inside cover of the daily FEDERAL REGISTER as they become available.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

| CFR Unit (as of Jan. 1, 1967): | Price |
|---|---|
| 3 1966 Compilation | $1.00 |
| 4 (Rev.) | .40 |
| 5 (Supp.) | 1.00 |
| 6 [Vacated; Reserved] | |
| 7 Parts: | |
| 0–45 (Rev.) | 1.75 |
| 46–51 (Rev.) | 1.00 |
| 52 (Rev.) | 2.00 |
| 53–209 (Rev.) | 2.00 |
| 210–699 (Rev.) | 1.50 |
| 700–749 (Rev.) | 1.75 |
| 750–899 (Rev.) | 1.50 |
| 900–944 (Rev.) | 1.00 |
| 945–980 (Rev.) | .65 |
| 981–999 (Rev.) | .65 |
| 1000–1029 (Rev.) | 1.00 |
| 1030–1059 (Rev.) | 1.00 |
| 1060–1089 (Rev.) | .75 |
| 1090–1119 (Rev.) | .70 |
| 1120–1199 (Rev.) | 1.00 |
| 1200–1499 (Rev.) | 2.00 |
| 1500–end (Rev.) | 1.00 |
| 8 (Rev.) | .60 |
| 9 (Rev.) | 1.25 |
| 10 (Rev.) | 1.00 |
| 11 [Reserved] | |
| 12 Parts: | |
| 1–399 (Rev.) | 1.50 |
| 400–end (Rev.) | 1.00 |
| 13 (Rev.) | .65 |
| 14 Parts: | |
| 1–59 (Rev.) | 1.75 |
| 60–199 (Rev.) | 1.50 |
| 200–end (Rev.) | 1.75 |
| 15 (Rev.) | 1.25 |
| 16 Parts: | |
| 0–149 (Rev.) | 1.75 |
| 150–end (Rev.) | 1.25 |
| 17 (Rev.) | 2.00 |
| 18 (Rev.) | 2.50 |
| 19 (Rev.) | 2.00 |
| 20 (Rev.) | 2.00 |
| 21 Parts: | |
| 1–119 (Rev.) | 1.00 |
| 120–129 (Rev.) | 1.00 |
| 130–146e (Rev.) | 1.75 |
| 147–end (Rev.) | 1.00 |

| CFR Unit (as of Jan. 1, 1967): | Price |
|---|---|
| 22 (Rev.) | $1.00 |
| 23 (Rev.) | .25 |
| 24 (Rev.) | 1.00 |
| 25 (Rev.) | 1.25 |
| 26 Parts: | |
| 1 (§§ 1.0–1–1.300) (Rev.) | 2.00 |
| 1 (§§ 1.301–1.400) (Rev.) | .65 |
| 1 (§§ 1.401–1.500) (Rev.) | 1.00 |
| 1 (§§ 1.501–1.640) (Rev.) | .70 |
| 1 (§§ 1.641–1.850) (Rev.) | 1.00 |
| 1 (§§ 1.851–1.1200) (Rev.) | 1.25 |
| 1 (§§ 1.1201–1.6000) (Rev.) | 1.50 |
| 1 (§§ 1.6001–end) to Part 19 (Rev.) | .70 |
| 20–29 | (*) |
| 30–39 (Rev.) | .75 |
| 40–169 (Rev.) | 1.75 |
| 170–299 (Rev.) | 2.25 |
| 300–499 (Supp.) | .50 |
| 500–599 (Supp.) | .35 |
| 600–end (Supp.) | .45 |
| 27 (Supp.) | .30 |
| 28 (Rev.) | .65 |
| 29 Parts: | |
| 0–499 (Rev.) | .70 |
| 500–899 (Rev.) | 2.00 |
| 900–end (Rev.) | .75 |
| 30 (Rev.) | 1.00 |
| 31 (Rev.) | 1.75 |
| 32 Parts: | |
| 1–39 (Rev.) | 2.75 |
| 40–399 (Rev.) | 1.25 |
| 400–589 (Rev.) | 1.50 |
| 590–699 (Supp.) | .50 |
| 700–799 (Rev.) | 2.00 |
| 800–999 (Rev.) | 1.25 |
| 1000–1199 (Rev.) | 1.25 |
| 1200–1599 (Rev.) | 1.25 |
| 1600–end (Rev.) | .55 |
| 32A (Rev.) | 1.00 |
| 33 Parts: | |
| 1–199 (Rev.) | 1.00 |
| 200–end (Rev.) | 1.75 |
| 34 [Reserved] | |
| 35 (Rev.) | 5.25 |
| 36 (Rev.) | .75 |
| 37 (Rev.) | 4.00 |
| 38 (Rev.) | 2.25 |
| 39 (Rev.) | 2.00 |
| 40 [Reserved] | |
| 41 Chapters: | |
| 1 (Rev.) | 2.00 |
| 2–4 (Rev.) | 1.00 |
| 5–5D (Rev.) | .60 |
| 6–17 (Rev.) | 2.00 |
| 18 (Rev.) | 2.00 |
| 19–100 (Rev.) | .60 |
| 101–end (Rev.) | 1.25 |
| 42 (Supp.) | 1.00 |
| 43 (Rev.) | 2.75 |
| 44 (Rev.) | .40 |
| 45 (Rev.) | 1.75 |
| 46 Parts: | |
| 1–145 (Rev.) | 3.00 |
| 146–149 (Rev.) | 2.50 |
| 146–149 (Supp. July 1, 1967) | .40 |
| 150–199 (Rev.) | 1.25 |
| 200–end (Rev.) | 2.00 |

| CFR Unit (as of Jan. 1, 1967): | Price |
|---|---|
| 47 Parts: | |
| 0–19 (Rev.) | $1.00 |
| 20–69 (Rev.) | 1.50 |
| 70–79 (Rev.) | 1.00 |
| 80–end (Rev.) | 1.50 |
| 48 (Rev.) | .60 |
| 49 Parts: | |
| 0–70 (Rev.) | 1.25 |
| 71–90 (Rev.) | 2.25 |
| 91–164 (Rev.) | 1.50 |
| 165–end (Supp.) | .65 |
| 50 (Rev.) | .75 |
| General Index (Rev.) | .70 |

*NOTE: No amendments to this volume were promulgated during 1966. The cumulative pocket supplement issued as of Jan. 1, 1966, should be retained.

## Title 5—ADMINISTRATIVE PERSONNEL

### Chapter I—Civil Service Commission

#### SUBCHAPTER C—REGULATIONS GOVERNING EMPLOYEES OF THE CIVIL SERVICE COMMISSION

### PART 1001—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Effective August 9, 1967, Part 1001[1] is revised and amended to read as follows:

#### Subpart A—General

Sec.
1001.735–101 Purpose.
1001.735–102 Definitions.
1001.735–103 Remedial action.

#### Subpart B—Conduct and Responsibilities of Employees

1001.735–201 Prescribed actions.
1001.735–202 Gifts, entertainment, and favors.
1001.735–203 Outside employment and activity.
1001.735–204 Financial interests.
1001.735–205 Misuse of information.
1001.735–206 Support of Commission programs.
1001.735–207 Disagreements between Government officials.
1001.735–208 Use of Government property.
1001.735–209 Indebtedness.
1001.735–210 Gambling, betting, and lotteries.
1001.735–211 Coercion.
1001.735–212 General conduct prejudicial to the Government.
1001.735–213 Miscellaneous statutory provisions.

#### Subpart C—Conduct and Responsibilities of Special Government Employees

1001.735–301 Use of Government employment.
1001.735–302 Use of inside information.
1001.735–303 Gifts, entertainment, and favors.
1001.735–304 Applicability of other provisions.

[1] Supplements Part 735 of this chapter.

AUTHORITY: The provisions of this Part 1001 issued under Executive Order 11222, 30 F.R. 6469, 3 CFR 1965 Supp., 5 CFR 735.101 et seq.

## Subpart A—General

### § 1001.735-101 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by employees and special Government employees is essential to assure the proper performance of the Commission's business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts, this part sets forth the Commission's regulations prescribing standards of conduct and responsibilities and governing statements of employment and financial interests for employees and special Government employees.

### § 1001.735-102 Definitions.

In this part:

(a) "Employee" means an employee of the Civil Service Commission, but does not include a special Government employee.

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

(c) "Special Government employee" means a "special Government employee" as defined in section 202 of title 18 of the United States Code who is employed by the Commission.

### § 1001.735-103 Remedial action.

(a) A violation of this part by an employee or special Government employee may be cause for remedial action. Remedial action may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee or special Government employee of his conflicting interest;

(3) Disciplinary action which may be in addition to any penalty prescribed by law; or

(4) Disqualification for a particular assignment.

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

## Subpart B—Conduct and Responsibilities of Employees

### § 1001.735-201 Proscribed actions.

An employee shall avoid any action which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

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

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

### § 1001.735-202 Gifts, entertainment, and favors.

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

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

(2) Conducts operations or activities that are regulated by the Commission; or

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

(b) The restrictions set forth in paragraph (a) of this section do not apply to:

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

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

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

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

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in Public Law 89-673, 80 Stat. 952.

(e) Neither this section nor § 1001.-735-203 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under Commission orders when reimbursement is prescribed by Decision B-128517 of the Comptroller General dated March 7, 1967.

### § 1001.735-203 Outside employment and activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include, but are not limited to:

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

(2) Outside employment or activity which tends to impair his mental or physical capacity to perform the duties and responsibilities of his position in an acceptable manner;

(3) Outside employment or activity which may bring criticism of, or cause embarrassment to, the Commission; or

(4) Outside employment or activity which is in violation of a statute, Executive order, or regulation, including applicable State and local statutes and ordinances.

(b) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, Executive Order 11222, Part 735 of this chapter, or this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Chairman gives written authorization for the use of nonpublic information on the basis that such use is in the public interest.

(c) Employees are encouraged to serve as members of committees or boards which plan or advise on training courses or programs offered by non-Government organizations, especially when the courses or programs are designed for, or are of particular interest to, Federal employees. However, before an employee may accept membership on such a committee or board, he shall request in writing and secure the approval of the Commission official authorized to grant the request. Bureau directors, regional directors, and heads of staff offices are authorized to grant requests made by their employees. The Commissioners and the Executive Director are the approving authorities for employees who report directly to them. The authorizing official shall transmit a copy of each approved request for inclusion in the employee's Official Personnel Folder.

(d) Employees are encouraged to accept appointments as faculty members for after-hours teaching. However, before an employee may accept such an appointment, he shall request and secure approval, and the approved request shall be included in his Official Personnel Folder, as provided in paragraph (c) of this section.

(e) An employee shall not recieve any salary or anything of monetary value from a private source as compensation for his services to the Government.

(f) An employee shall not engage in outside employment under a State or local government except in accordance with Part 734 of this chapter.

(g) An employee who engages in any kind of outside paid employment on a substantially regular basis shall submit to his immediate supervisor a memorandum describing the employment and stating approximately how many hours per week he is so employed. The immediate supervisor shall forward the memorandum through his bureau director, regional director, or staff office head for inclusion in the employee's Official Personnel Folder.

(h) This section does not preclude an employee from:

(1) Participation in the activities of National or State political parties not proscribed by law;

(2) Participation in the local self-government activities in the community in which he resides to the extent permitted by law. However, an employee may not hold elective office in his local community government without the approval of the Executive Director; or

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

**§ 1001.735-204 Financial interests.**

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive Order 11222, Part 735 of this chapter, or this part.

**§ 1001.735-205 Misuse of information.**

For the purpose of furthering a private interest, an employee shall not, except as provided in § 1001.735-203(b), directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

**§ 1001.735-206 Support of Commission programs.**

(a) When a Commission program is based on law or Executive order, every employee has a positive obligation to make it function as efficiently and economically as possible and to support it as long as it is a part of recognized public policy. An employee may, therefore, properly make an address explaining and interpreting such a program, citing its achievements, defending it against uninformed or unjust criticism, pointing out the need for possible improvements, or soliciting views for improving it.

(b) An employee shall not, either directly or indirectly, use appropriated funds to influence a Member of Congress to favor or oppose legislation in violation of 18 U.S.C. 1913. However, an employee is not prohibited from:

(1) Testifying as a representative of the Commission on pending legislation proposals before Congressional committees on request; or

(2) Assisting Congressional committees in drafting bills or reports on request, when it is clear that the employee is serving solely as a technical expert under the direction of committee leadership.

**§ 1001.735-207 Disagreements between Government officials.**

An employee shall not make public any disagreements with, or criticism of, officials, policies, or practices of the Commission or of other Federal agencies in areas relating to the Commission's functions. Such matters may be brought to the Executive Director's attention for appropriate action.

**§ 1001.735-208 Use of Government property.**

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

**§ 1001.735-209 Indebtedness.**

(a) An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law, such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court.

(b) When an employee has a levy placed against his salary for failure to pay an indebtedness for Federal income taxes, he shall be issued a written reprimand stating that failure to make satisfactory arrangements regarding future tax liabilities will be grounds for removal.

(c) When an employee is the subject of a letter of complaint stating that he has not paid his State or local taxes and has failed to make satisfactory arrangements regarding the debt, he shall be interviewed by the Director of Personnel in the central office or by the regional director in a regional office. In this interview he shall be instructed to make satisfactory arrangements for the payment of his debt immediately and informed that failure to do so will be grounds for removal.

(d) When an employee is the subject of a letter of complaint regarding any other kind of indebtedness to a unit of government, Federal, State, or local, the procedure prescribed in paragraph (c) of this section shall be observed.

(e) When a creditor who holds a legal judgment against an employee requests that the Commission assist in collecting the debt, the employee shall be interviewed by the Director of Personnel or the regional director, as appropriate. In this interview he shall be instructed to pay the debt in full within 90 days, or within whatever longer period is specified by the Director of Personnel or regional director if he determines that a 90-day time limit would impose undue hardship on the employee, and informed that failure to do so will be grounds for removal.

(f) When an employee is the subject of a letter of complaint from a creditor who does not hold a legal judgment against the employee, the Director of Personnel or regional director shall forward a copy of the letter to the employee together with a memorandum calling the employee's attention to the provisions of this section.

**§ 1001.735-210 Gambling, betting, and lotteries.**

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

**§ 1001.735-211 Coercion.**

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

**§ 1001.735-212 General conduct prejudicial to the Government.**

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

No. 147—Pt. I——2

**§ 1001.735–213 Miscellaneous statutory provisions.**

The attention of each employee is directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest.

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

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

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

(f) The prohibitions against:

(1) The disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and

(2) The disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

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

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

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

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

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

(n) The prohibitions against:

(1) Embezzlement of Government money or property (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643); and

(3) Embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

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

(p) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(q) The provision relating to the denial of the right to petition Congress (5 U.S.C. 7102).

(r) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

## Subpart C—Conduct and Responsibilities of Special Government Employees

**§ 1001.735–301 Use of Government employment.**

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

**§ 1001.735–302 Use of inside information.**

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

(b) A special Government employee may engage in teaching, lecturing, and writing to the same extent, and subject to the same restrictions, as provided in § 1001.735–203(b) for employees.

**§ 1001.735–303 Gifts, entertainment, and favors.**

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

(b) The restrictions set forth in paragraph (a) of this section do not apply to:

(1) Obvious family or personal relationships, such as those between the special Government employee and his parents, children, or spouse, when the circumstances make it clear that those relationships rather than the business of the persons concerned are the motivating factors;

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

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

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

**§ 1001.735–304 Applicability of other provisions.**

The provisions of §§ 1001.735–206 through 1001.735–213 apply to special Government employees in the same manner as to employees.

## Subpart D—Statements of Employment and Financial Interests

**§ 1001.735–401 Employees required to submit statements.**

The following employees shall submit statements of employment and financial interests in accordance with §§ 1001.735–402 through 1001.735–411:

(a) The Executive Director.

(b) The Deputy Executive Director.

(c) The Assistant to the Chairman and Director, Office of Labor-Management Relations.

(d) The General Counsel.

(e) The Deputy General Counsel.

(f) The Chairman, Board of Appeals and Review.

(g) The Director, Office of Hearing Examiners, and all employees in Hearing Examiner positions.

(h) The Director, Bureau of Management Services.

(i) The Deputy Director, Bureau of Management Services.

(j) The Director of Personnel.

(k) The Chief, Office Services Division, Bureau of Management Services.

(l) The Assistant Chief, Office Services Division, Bureau of Management Services.

(m) The Chief, Budget and Finance Division, Bureau of Management Services.

(n) The Assistant Chief, Budget and Finance Division, Bureau of Management Services.

(o) The Director, Bureau of Retirement and Insurance.

(p) The Deputy Director, Bureau of Retirement and Insurance.

(q) The Assistant to the Director, Bureau of Retirement and Insurance.

(r) The Chief, Contracts and Instructions Division, Bureau of Retirement and Insurance.

(s) The Chief Actuary, Office of the Actuary, Bureau of Retirement and Insurance.

(t) Contracts and Instructions Specialists (Assistants to the Chief, GS–14 and GS–15, Contracts and Instructions Division, Bureau of Retirement and Insurance.

(u) Supervisory Accountant, GS–15, Systems and Audits, Bureau of Retirement and Insurance.

(v) Systems Accountant, GS–14, Systems and Audits, Bureau of Retirement and Insurance.

(w) Auditors (Financial Activities), GS–13, Systems and Audits, Bureau of Retirement and Insurance.

(x) The Director, Bureau of Training.

(y) The Director, Bureau of Inspections.

(z) The Deputy Director, Bureau of Inspections.

(aa) Each Regional Director.

**§ 1001.735–402 Employee's complaint on filing requirement.**

An employee who feels that his position has been improperly included in the list in § 1001.735–401 as one requiring the submission of a statement of employment and financial interests may obtain a review of his complaint under the Commission's internal grievance procedure.

**§ 1001.735–403 Form of statements.**

An employee required to submit a statement of employment and financial interests shall submit that statement in the format prescribed by the Personnel Division.

**§ 1001.735–404 Time for submission of statements.**

An employee required to submit a statement of employment and financial interests shall submit that statement no later than:

(a) September 30, 1967, if employed before September 1, 1967; or

(b) Thirty days after he becomes subject to the reporting requirements by occupying a position covered by § 1001.735–401, if he occupies the position after August 31, 1967.

**§ 1001.735–405 Supplementary statements.**

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement, in the format prescribed by the Personnel Division, as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of title 18, United States Code, or Subpart B of this part.

**§ 1001.735–406 Interests of employees' relatives.**

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

**§ 1001.735–407 Information not known by employees.**

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

**§ 1001.735–408 Information prohibited.**

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

**§ 1001.735–409 Review of statements.**

(a) The Executive Director, the Deputy Executive Director, the Assistant to the Chairman, the General Counsel, the Deputy General Counsel, and the Chairman of the Board of Appeals and Review shall submit their statements of employment and financial interests, and their supplementary statements, directly to the Chairman of the Commission for review.

(b) Bureau directors, regional directors, and the heads of staff offices who report to the Executive Director shall submit their statements of employment and financial interests, and their supplementary statements, directly to the Executive Director for review.

(c) All other employees covered under § 1001.735–401 shall submit their statements of employment and financial interests, and their supplementary statements, directly to the Director, Bureau of Management Services, for review.

(d) When a statement submitted under paragraph (b) or (c) of this section indicates a conflict between the interests of an employee and the performance of his services for the Government, and when the conflict or appearnce of conflict cannot be resolved by the reviewing official, he shall report the information concerning the conflict or appearance of conflict to the Chairman through the counselor for the Commission. The employee concerned shall be given an opportunity to explain the conflict or appearance of conflict before remedial action is initiated.

**§ 1001.735–410 Confidentiality of statements.**

Each statement of employment and financial interests, and each supplementary statement, shall be held in confidence and retained in limited access files of the reviewing official. The use of information on the statements shall be limited to that necessary to carry out the purposes of this part. Information from a statement or a supplementary statement shall not be disclosed except by decision of the Chairman of the Commission.

**§ 1001.735–411 Effect of statements on other requirements.**

The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for or in derogation of any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which he or the other person's participation is prohibited by law, order, or regulation.

**§ 1001.735–412 Submission of statements by special Government employees.**

(a) Each special Government employee shall submit a statement of employment and financial interests not later than the time of his employment. Each special Government employee shall keep his statement current throughout his period of employment by the submission of supplementary statements.

(b) A special Government employee shall submit his statement of employment and financial interests in the format prescribed by the Personnel Division. The statement is filed with the Director, Bureau of Management Services, and is accorded the confidentiality prescribed in § 1001.735–410.

(c) The provisions of §§ 1001.735–406 through 1001.735–411 apply to special Government employees in the same manner as to employees.

(d) The Chairman of the Commission may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special Government employee who is not a consultant or an expert when he finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purposes of this paragraph, "consultant" and "expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual.

This part was approved by the Civil Service Commission on July 19, 1967.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[F.R. Doc. 67-8497; Filed, July 31, 1967; 8:45 a.m.]

# Title 7—AGRICULTURE

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

### SUBCHAPTER A—AGRICULTURAL CONSERVATION PROGRAMS

## PART 701—NATIONAL AGRICULTURAL CONSERVATION

### Subpart—1968 and Subsequent Years

INTRODUCTION AND GENERAL PROGRAM PRINCIPLES

AUTHORITY: Secs. 701.1 to 701.99 issued under sec. 4, 49 Stat. 164, secs. 7-17, 49 Stat. 1148, as amended, 71 Stat. 176, 71 Stat. 426, 72 Stat. 864, 75 Stat. 225; 16 U.S.C. 590d, 590g-590q.

### INTRODUCTION AND GENERAL PROGRAM PRINCIPLES

### § 701.1 Introduction and general program principles.

(a) *Introduction.* (1) Through the agricultural conservation program for 1968 and subsequent years (referred to in this subpart as the "program") administered by the Department of Agriculture, the Federal Government will share with farmers and ranchers in the United States, Puerto Rico, and the Virgin Islands the cost of carrying out approved soil-building and soil and water conservation practices, including related wildlife conservation practices, in accordance with the provisions of this bulletin and such modifications thereof as may hereafter be made.

(2) Information with respect to the several practices for which costs will be shared when carried out on a particular farm or ranch, and the exact specifications and rates of cost-sharing for such practices, may be obtained from the county committee for the county in which the farm or ranch is located or from the State committee.

(b) *General program principles.* The national agricultural conservation program has been developed and is to be carried out on the basis of the following general principles:

(1) The national program contains broad authorities to help meet the varied conservation problems of the nation. County and State committees and participating agencies should develop within these authorities programs which will effectively meet conservation needs of the agricultural land, water, woodland, and wildlife resources of the county and State. They should annually establish goals, objectives, and priorities to help them direct the program toward the accomplishment of the broad resource use plans for the county or State in a manner consistent with National needs now and for the future.

(2) State and county programs should be so administered as to give particular encouragement to family-operated farms to undertake a comprehensive effort of conservation practices which provide the most enduring conservation benefits practicably attainable in the current program year on the lands where they are applied and to the community of which those lands are a part.

(3) The program should be used to reduce significantly the loss of agricultural soil, water, woodland, or wildlife resources and to improve the prospect of their efficient multipurpose use in providing an adequate supply of food, fiber, water, and wildlife for the future and for the general improvement of man's total environment.

(4) Assistance for conservation measures should be used to encourage better land use and a well-balanced effort to deal with all conservation problems of the farm or ranch.

(5) If the farmer or rancher is to bear the primary responsibility for maintaining our agricultural land, water, woodland, or wildlife resources in a manner which assures their availability for productive use for the benefit of future generations the public in fairness should assume responsibility for a part of the cost of the conservation measures needed to preserve those resources for the future while they are being used to meet our current needs.

### DISTRIBUTION OF FUNDS

### § 701.2 State funds.

(a) Funds available for conservation practices for a program year will be distributed among States on the basis of conservation needs, but the proportion allocated for use in any State shall not be reduced more than 15 percent from its proportionate distribution for the preceding program year. The allocation of funds among the States for each program year shall be as provided by amendments to this section.

(b) The distribution made under this section will not include the amount set aside for administrative expenses, the amount required for increases in small Federal cost-shares in § 701.28, and the amount set aside for the naval stores conservation program.

### § 701.3 County funds.

The State committee will allocate the funds available for conservation practices among the counties within the State consistent with the needs for enduring conservation in the counties within the State and will give particular consideration to the furtherance of watershed conservation programs sponsored by local people and organizations.

### STATE AND COUNTY AGRICULTURAL CONSERVATION PROGRAMS

### § 701.4 Agencies to participate in development of State programs.

(a) A State agricultural conservation program (referred to in this subpart as "State program") shall be developed in each State in accordance with the provisions contained in this subpart and such modifications thereof as may hereafter be made. The program shall be developed by the State ACP development group, which shall consist of the State committee (including the State director of extension), the State conservationist of the Soil Conservation Service, and the Forest Service official having jurisdiction of farm forestry in the State, and, in States in the Appalachian region in which a program is developed under section 203 of Public Law 89-4 with the assistance of the State ACP development group upon request of the Governor of the State, a representative recommended by the Governor and designated by the Secretary. The president of the land-grant college and the State director of the Farmers Home Administration shall be invited to designate representatives to counsel with the group in the formulation of the State program. The chairman of the State committee shall invite representatives of the State soil conservation committee (board or commission), the State agricultural extension service, the State agency having responsibility for wildlife conservation, and other State and Federal agricultural agencies, and may invite others with conservation interests, to participate in the deliberations on the State program.

(b) The program for the State shall be that recommended by the State ACP development group and approved by the Director, Farmer Programs Division, ASCS, after obtaining the recommendations of the Soil Conservation Service and the Forest Service.

### § 701.5 Agencies to participate in development of county programs.

(a) A county agricultural conservation program (referred to in this subpart as "county program") shall be developed in each county in accordance with the provisions of the State program and such modifications thereof as may be made. The county program shall be developed by the county ACP development group, which shall consist of the county committee, the designated representative of the Soil Conservation Service in the county, and the Federal Forest Service representative having jurisdiction of farm forestry in the county. The county ACP development group, working with the community committeemen, the governing body of the soil conservation district, the farm forestry representatives of the State, the county agricultural extension agent for the county (if he is not included in the foregoing group as ex officio member of the county committee), the county supervisor of the Farmers Home Administration, and others with conservation interests, shall develop recommendations for the county program.

(b) The program for the county then shall be formulated by the county ACP development group in consultation with the governing body of the soil conservation district on the overall conservation problems in the county and, especially, on the work plans of the soil conservation district and of the Federal agencies involved to assure the most effective use of the available technical assistance and funds for cost-sharing. The program as formulated shall be recommended to the State committee for approval by the State ACP development group. The program for the county shall be that recommended by the county ACP development group and approved by the State ACP development group. The program recommendation shall be signed by the chairman of the county committee, the Soil Conservation Service technician, and the Forest Service representative where present in the county, and shall state that the program was developed in consultation with the governing body of the soil conservation district, if any, or shall state that the governing body was invited to participate in developing the program but did not accept.

## § 701.6 Selection of practices.

Practices to be included in the State program or in the county program shall be only those practices for which cost-sharing is essential to permit accomplishment of needed conservation work which would not otherwise be carried out.

## § 701.7 Adaptation of practices.

(a) The practices included in the State program must meet all conditions and requirements of the national program. Additional conditions and requirements may be included where necessary for effective use in meeting the conservation problems in the State.

(b) The practices included in the county program must meet all conditions and requirements of the State program. Additional conditions and requirements may be included where necessary for effective use in meeting the conservation problems in the county.

## § 701.8 Practice specifications.

(a) Minimum specifications which practices must meet to be eligible for Federal cost-sharing shall be set forth in the State handbook or in the county program, or be incorporated therein by specific reference to a standard publication or other written document containing such specifications.

(b) For practices involving the establishment or improvement of vegetative cover, the specifications shall include, where appropriate, liming, fertilization, and seeding rates, eligible seeds and mixtures, seeding dates, requirements for cultural operations and inoculation, and other steps essential to the successful establishment or improvement of the vegetative cover. Eligible seeds and mixtures shall include a legume or legumes where recommended for inclusion by the State experiment station or the State extension service. For mechanical or construction type practices, the specifications shall include, where appropriate, the types and sizes of material, installation or construction requirements, and other steps essential to the proper functioning of the structure. For other practices, the specifications shall include those steps essential to the successful performance of the practice.

(c) Practice specifications shall provide minimum performance requirements which will qualify the practice for cost-sharing and, where applicable, may also provide maximum limits of performance which will be eligible for cost-sharing. The minimum performance requirements established for a practice shall represent those levels of performance which are necessary to assure a satisfactory practice. The maximum limits of performance for cost-sharing established for a practice shall represent those levels of performance which are needed in order for the practice to be most effective in meeting the conservation problem and which are not in excess of levels for which cost-sharing can be justified.

(d) Specifications for wildlife conservation practices shall be developed in consultation with the State agency having responsibility for wildlife conservation.

## § 701.9 Use of liming materials and commercial fertilizers for vegetative cover.

(a) For practices which authorize Federal cost-sharing for applications of liming materials and commercial fertilizers, the minimum application, and maximum application where applicable, on which cost-sharing is authorized shall, in each case, be determined on the basis of a current soil test: *Provided, however,* That if the State ACP development group determines that available facilities are not adequate to permit the desired use of these practices under the program, it shall authorize, to the extent necessary, an alternative basis for determination by the county committee of such applications. Such alternative basis shall be such as to insure beneficial use of Federal cost-sharing approved and shall be formulated by the State ACP development group in full consultation with the representatives of the State and Federal agencies participating in the development of the State program.

(b) The application of liming materials contained in commercial fertilizers, in rock phosphate, or in basic slag will not qualify for Federal cost-sharing. The application of manure will not qualify for Federal cost-sharing; however, manure may be used, where applicable, to meet all or a part of the fertilizer requirement for a practice. Liming material or fertilizer must be applied at such time and in such a manner that a conserving cover will be the primary beneficiary of the application.

## § 701.10 Responsibility for technical phases of practices.

(a) The Soil Conservation Service is responsible for the technical phases of practices A-8, B-7, C-4, C-5, C-6, C-7, C-8, C-9, C-10, C-11, C-12, C-13, C-15, C-16, G-2, and G-3 (§§ 701.53, 701.60, 701.69, to 701.78, 701.80, 701.81, 701.96 and 701.97). This responsibility shall include (1) a finding that the practice is needed and practicable on the farm, and with respect to drainage practices, a finding as to whether any land proposed for drainage is Wetland Type 3, 4, or 5, as described in U.S. Department of the Interior, Fish and Wildlife Service, Circular 39, "Wetlands of the United States," published in 1956, (2) necessary site selection, other preliminary work, and layout work of the practice, (3) necessary supervision of the installation, and (4) certification of performance for all requirements of the practice except those for which a certification by the farmer or rancher is to be accepted in accordance with instructions issued by the Deputy Administrator. For practice C-1 (§ 701.66), the Soil Conservation Service is responsible (i) for determining that the practice is needed and practicable on the farm, and (ii) for necessary site selection, other preliminary work, and layout work of the practice. For practices B-6, B-8, and C-3 (§§ 701.59, 701.61 and 701.68), the Soil Conservation Service is responsible for determining that the practice is needed and practicable on the farm. In addition, upon agreement of the State committee and the State conservationist of the Soil Conservation Service, responsibility for all or part of the unassigned technical phases of these or other practices may be assigned to the Soil Conservation Service for all counties in the State or for specified counties. The State conservationist of the Soil Conservation Service may utilize assistance from private, State, or Federal agencies in carrying out these assigned responsibilities. These assigned responsibilities will not apply in counties with respect to which the Deputy Administrator and the Administrator, SCS, agree that it would not be administratively practicable for the Soil Conservation Service to discharge these responsibilities. In such counties, these responsibilities shall be assumed by the county committees. The Soil Conservation Service will utilize to the full extent available resources of the State forestry agencies in carrying out its assigned responsibilities for practice A-8 (§ 701.53).

(b) The Forest Service is responsible for the technical phases of practices A-7 and B-10 (§§ 701.52 and 701.63). This responsibility shall include (1) providing necessary specialized technical assistance, (2) development of specifications for forestry practices, and (3) working through State and county committees, determining performance in meeting these specifications. The Forest Service may utilize assistance from private, State, or Federal agencies in carrying out these assigned responsibilities, but services of State forestry agencies will be utilized to the full extent such services are available.

§ 701.11 Rates of cost-sharing.

(a) The maximum Federal cost-share for each practice shall be the percentage of the average cost of performing the practice considered necessary to obtain the needed performance of the practice, but which will be such that the farmer or rancher will make a substantial contribution to the cost of performing the practice. Rates of cost-sharing shall not be in excess of 50 percent of the average cost of performing the practices, except that higher rates of cost-sharing may be approved by the Director, Farmer Programs Division, ASCS:

(1) For practices which have long lasting conservation benefits and from which the returns to farmer or rancher are remote;

(2) In situations where higher rates of cost-sharing are essential to bring about the use of a practice or to increase the use of a practice on a substantial number of farms or ranches; or

(3) In situations where the income prospects for the farmer or rancher are such that he reasonably could not be expected to bear as much as 50 percent of the cost of the practice. (A higher rate may be approved under this subparagraph (3) only where it is determined that the farmer or rancher is largely dependent on the farm or ranch for his livelihood, the estimated annual family income does not exceed $3,000, and an increased rate of cost-sharing is essential to permit the farmer or rancher to carry out needed practices.)

(b) For the purpose of establishing rates of cost-sharing, the average cost of performing a practice may be the average cost for a State, a county, a part of a county, or a farm or ranch, as determined by the State committee.

(c) The rates of cost-sharing for practices included in the county program may be lower than the rates approved for general use in the State.

§ 701.12 Items of cost on which rates of cost-sharing may be based.

Except as otherwise provided by the wording of the practices contained in this subpart or elsewhere in the program, the cost of any direct and significant factor in the performance of a practice may be considered in establishing the rate of cost-sharing for the practice.

§ 701.13 State handbooks, bulletins, instructions, and forms.

The Deputy Administrator is authorized to prepare and issue State handbooks, bulletins, instructions, and forms required in administering the program. Copies of State handbooks, bulletins, instructions, and forms containing detailed information with respect to the program as it applies to specific States, counties, areas, and farms and ranches will be available in the office of the State committee and the office of the county committee. Persons wishing to participate in the program should obtain from the State committee or county committee all information needed in order to comply with all provisions of the program.

APPROVAL OF CONSERVATION PRACTICES ON INDIVIDUAL FARMS OR RANCHES

§ 701.14 Opportunity for requesting cost-sharing.

Each farmer or rancher, regardless of his race, creed, color, or national origin, shall be given an opportunity to request that the Federal Government share in the cost of those practices on which he considers he needs such assistance in order to permit their performance on his farm or ranch. The county committee, taking into consideration the farmer's or rancher's request and any conservation plan developed by the farmer or rancher with the assistance of any State or Federal agency, and without regard to the race, creed, color, or national origin of the farmer or rancher, shall direct the available funds for cost-sharing to those farms and ranches and to those practices where cost-sharing is considered most essential to the accomplishment of the basic conservation objective of the Department—the use of each acre of agricultural land within its capabilities and the treatment of each acre in accordance with its needs for protection and improvement.

§ 701.15 Prior request for cost-sharing.

Costs will be shared only for those practices, or components of practices, for which cost-sharing is requested by the farmer or rancher before performance thereof is started, except that the Director, Farmer Programs Division, ASCS, may authorize the acceptance of requests for cost-sharing filed within a reasonable period after performance is started for (a) practices E-3, F-3, and F-4 (§§ 701.89, 701.93 and 701.94), and (b) other practices where the farmer or rancher establishes that he intended to file a prior request for cost-sharing but was prevented from doing so for reasons beyond his control. For practices for which (1) approval was given under the preceding year's program, (2) performance was started but not completed during that program year, and (3) the county committee believes the extension of the approval to the current year's program is justified under the current year's program regulations and provisions, the filing of the request for cost-sharing under the preceding year's program may be regarded as meeting the requirement of the current year's program that a request for cost-sharing be filed before performance of the practice is started.

§ 701.16 Method and extent of approval.

The county committee, in accordance with a method approved by the State committee, will determine the extent to which Federal funds will be made available to share the cost of each approved practice on each farm or ranch, taking into consideration the county allocation, the conservation problems in the county and of the individual farm or ranch, and the conservation work for which requested Federal cost-sharing is considered by the county committee as most needed in the current program year. The method approved shall provide for the issuance of notices of approval showing for each approved practice the number of units of the practice for which the Federal Government will share in the cost and the amount of the Federal cost-share for the performance of that number of units of the practice. To the extent practicable, notices of approved practices shall be issued before performance of the practices is started. No practice may be approved for cost-sharing except as authorized by the national, State, or county program, or in accordance with procedures incorporated therein. Available funds for cost-sharing shall not be allocated on a farm or acreage-quota basis, but shall be directed to the accomplishment of the most enduring conservation benefits attainable.

§ 701.17 Establishment or installation of practices.

Federal cost-sharing may be authorized under the program only for the establishment or installation of the practices contained in this subpart. The establishment or installation of a practice, for the purposes of the program, shall be deemed to include the replacement, enlargement, or restoration of practices for which cost-sharing has been allowed if the practice has served for its normal lifespan, or if all of the following conditions exist:

(a) Replacement, enlargement, or restoration of the practice is needed to meet the conservation problem.

(b) The failure of the original practice was not due to the lack of proper maintenance by the current operator.

(c) The county committee believes that the replacement, enlargement, or restoration of the practice merits consideration under the program to an equal extent with other practices for which cost-sharing has not been allowed under a previous program.

§ 701.18 Repair, upkeep, and maintenance of practices.

Federal cost-sharing is not authorized for repairs or for normal upkeep or maintenance of any practice.

§ 701.19 Pooling agreements.

Farmers or ranchers in any local area may agree in writing, with the approval of the county committee, to perform designated amounts of practices which, by conserving or improving the agricultural resources of the community, will solve a mutual conservation problem on the farms or ranches of the participants. For purposes of eligibility for cost-sharing, practices carried out under such an approved written agreement will be regarded as having been carried out on the farms or ranches of the persons who performed the practices.

PRACTICE COMPLETION REQUIREMENTS

**§ 701.20 Completion of practices.**

Federal cost-sharing for the practices contained in this subpart is conditioned upon the performance of the practices in accordance with all applicable specifications and program provisions. Except as provided in §§ 701.21 to 701.23, practices must be completed during the program year in order to be eligible for cost-sharing.

**§ 701.21 Practices substantially completed during program year.**

Approved practices may be deemed, for purposes of payment of cost-shares, to have been carried out during a program year, if the county committee determines that they are substantially completed by the end of that program year. However, no cost-shares for such practices shall be paid until they have been completed in accordance with all applicable specifications and program provisions, except as provided in § 701.22.

**§ 701.22 Practices requiring more than one program year for completion.**

Cost-shares approved under a program will not be considered as earned until all components of the approved practices are completed in accordance with all applicable specifications and program provisions. Cost-shares for completed components may be paid only after the practice is substantially completed, and only on the condition that the farmer or rancher will complete the remaining components of the practice within the time prescribed by the county committee which will afford the farmer or rancher a fair and reasonable opportunity to complete them, unless prevented from doing so for reasons beyond his control and regardless of whether cost-sharing therefor is offered, or refund the cost-shares paid to him.

**§ 701.23 Practices involving the establishment or improvement of vegetative cover.**

Costs for practices involving the establishment or improvement of vegetative cover, inclduing trees, may be shared even though a good stand is not established, if the county committee determines, in accordance with standards approved by the State committee, that the practice was carried out in a manner which would normally result in the establishment of a good stand, and that failure to establish a good stand was due to weather or other conditions beyond the control of the farm or ranch operator. The county committee may require as a condition of cost-sharing in such cases that the area be reseeded or replanted or that other needed protective measures be carried out. Cost-sharing in such cases may be approved also for repeat applications of measures previously carried out or for additional eligible measures. Cost-sharing for such measures shall be approved to the extent such measures are needed to assure a good stand even though less than that required by the applicable practice wording for initial approvals.

**§ 701.24 Failure to meet minimum requirements.**

Notwithstanding other provisions of the program, costs may be shared for performance actually rendered even though the minimum requirements for a practice are not met, if the farmer or rancher establishes to the satisfaction of the county committee and the county representative of any other agency having responsibility for technical phases of the practice (a) that he made a reasonable effort to meet the minimum requirements, and (b) that the practice as performed adequately meets the conservation problem.

FEDERAL COST-SHARES

**§ 701.25 Conservation materials and services.**

(a) *Availability.* Part or all of the Federal cost-share for an approved practice may be in the form of conservation materials or services furnished through the program for use in carrying out the practice. Materials or services may not be furnished to persons who are indebted to the Federal Government, as indicated by the debt record maintained in the office of the county committee, except in those cases where the agency to which the debt is owed waives its rights to setoff in order to permit the furnishing of materials and services.

(b) *Cost to farmer or rancher.* The farmer or rancher will be responsible for paying that part of the cost of the material or service which is in excess of the amount to be advanced toward the purchase of the material or service. The maximum amount which may be advanced toward the purchase of the material or service is the Federal cost-share attributable to the use of the material or service, or, upon request by the farmer or rancher and approval by the county committee, the Federal cost-share for all components of the practice which likely will be completed during the program year, plus any applicable small cost-share increase, but not in excess of the cost of the material or service.

(c) *Responsibility for materials and services.* (1) If the material or service is properly used in carrying out the practice with respect to which it was furnished, recovery of the amount advanced toward the purchase of the material or service will be made from the persons who share in the cost-share payment for the practice, in the proportion in which they share in the cost-share payment. If the material or service is not used for the purpose for which it was furnished, the person to whom it was furnished shall be indebted to the Federal Government for the amount advanced toward the cost of the material or service.

(2) Any person to whom materials are furnished shall be responsible to the Federal Government for any damage to the materials, unless he shows that the damage was caused by circumstances beyond his control. If materials are abandoned or not used during the program year, they may, in accordance with instructions issued by the Deputy Administrator, be transferred to another person or otherwise disposed of at the expense of the person who abandoned or failed to use the material, or be retained by the person for use in a subsequent program year.

(d) *Eligibility to furnish conservation materials and services.* To be eligible to furnish conservation materials or services on the basis of purchase orders issued by the county committee, a vendor must agree that he will fill purchase orders without regard to the race, creed, color, or national origin of the farmer or rancher to whom the purchase order is issued.

**§ 701.26 Practices carried out with aid from ineligible persons.**

The entire Federal cost-share for a practice carried out with aid from an ineligible person, including a State or Federal agency, shall be credited to the eligible persons who contributed to the cost of carrying out the practice: *Provided,* That the cost-share credited to an eligible person shall not exceed his contribution to the cost of carrying out the practice.

**§ 701.27 Division of Federal cost-shares.**

(a) *Federal cost-shares.* The Federal cost-share for a practice shall be credited to the person who carried out the practice. If more than one person contributed to the carrying out of a practice, the Federal cost-share for the practice shall be divided among such persons in the proportion that the county committee determines they contributed to the carrying out of the practice. In making this determination, the county committee shall take into consideration the value of the labor, equipment, or material contributed by each person toward the carrying out of the practice, and shall assume that each contributed equally unless it is established to the satisfaction of the county committee that their respective contributions thereto were not in equal proportion. Advances toward the cost of materials or services under § 701.25, the furnishing of land, and the furnishing of the right to use water will not be considered as a contribution to the carrying out of any practice.

(b) *Death, incompetency, or disappearance.* In case of death, incompetency, or disappearance of any person, any Federal share of the cost due him shall be paid to his successor, determined in accordance with the provisions of the regulations in Part 707 of this chapter.

**§ 701.28 Increase in small Federal cost-shares.**

For practices other than practice F-4 (§ 701.94), the sum of the Federal cost-shares computed for any person with respect to any farm or ranch under the agricultural conservation program and the naval stores conservation program shall be increased as follows:

(a) Any Federal cost-share amounting to $0.71 or less shall be increased to $1.

(b) Any Federal cost-share amounting to more than $0.71, but less than $1, shall be increased by 40 percent.

(c) Any Federal cost-share amounting to $1 or more shall be increased in accordance with the following schedule:

| *Amount of cost-share computed* | *Increase in cost-share* |
|---|---|
| $1 to $1.99 | $0.40 |
| $2 to $2.99 | .80 |
| $3 to $3.99 | 1.20 |
| $4 to $4.99 | 1.60 |
| $5 to $5.99 | 2.00 |
| $6 to $6.99 | 2.40 |
| $7 to $7.99 | 2.80 |
| $8 to $8.99 | 3.20 |
| $9 to $9.99 | 3.60 |
| $10 to $10.99 | 4.00 |
| $11 to $11.99 | 4.40 |
| $12 to $12.99 | 4.80 |
| $13 to $13.99 | 5.20 |
| $14 to $14.99 | 5.60 |
| $15 to $15.99 | 6.00 |
| $16 to $16.99 | 6.40 |
| $17 to $17.99 | 6.80 |
| $18 to $18.99 | 7.20 |
| $19 to $19.99 | 7.60 |
| $20 to $20.99 | 8.00 |
| $21 to $21.99 | 8.20 |
| $22 to $22.99 | 8.40 |
| $23 to $23.99 | 8.60 |
| $24 to $24.99 | 8.80 |
| $25 to $25.99 | 9.00 |
| $26 to $26.99 | 9.20 |
| $27 to $27.99 | 9.40 |
| $28 to $28.99 | 9.60 |
| $29 to $29.99 | 9.80 |
| $30 to $30.99 | 10.00 |
| $31 to $31.99 | 10.20 |
| $32 to $32.99 | 10.40 |
| $33 to $33.99 | 10.60 |
| $34 to $34.99 | 10.80 |
| $35 to $35.99 | 11.00 |
| $36 to $36.99 | 11.20 |
| $37 to $37.99 | 11.40 |
| $38 to $38.99 | 11.60 |
| $39 to $39.99 | 11.80 |
| $40 to $40.99 | 12.00 |
| $41 to $41.99 | 12.10 |
| $42 to $42.99 | 12.20 |
| $43 to $43.99 | 12.30 |
| $44 to $44.99 | 12.40 |
| $45 to $45.99 | 12.50 |
| $46 to $46.99 | 12.60 |
| $47 to $47.99 | 12.70 |
| $48 to $48.99 | 12.80 |
| $49 to $49.99 | 12.90 |
| $50 to $50.99 | 13.00 |
| $51 to $51.99 | 13.10 |
| $52 to $52.99 | 13.20 |
| $53 to $53.99 | 13.30 |
| $54 to $54.99 | 13.40 |
| $55 to $55.99 | 13.50 |
| $56 to $56.99 | 13.60 |
| $57 to $57.99 | 13.70 |
| $58 to $58.99 | 13.80 |
| $59 to $59.99 | 13.90 |
| $60 to $185.99 | 14.00 |
| $186 to $199.99 | (1) |
| $200 and over | (2) |

[1] Increase to $200.
[2] No increase.

### § 701.29 Maximum Federal cost-share limitation.

(a) For each program year, for practices other than practice F-4 (§ 701.94), the total of all Federal cost-shares to any person with respect to farms, ranching units, and turpentine places in the United States, Puerto Rico, and the Virgin Islands for approved practices which are not carried out under pooling agreements shall not exceed the sum of $2,500, and for all approved practices, including those carried out under pooling agreements, shall not exceed the sum of $10,000. Lower cost-share limitations may be included in State and county programs where needed to provide more effective use of available funds in meeting the conservation problems in the State or county.

(b) All or any part of any Federal cost-share which otherwise would be due any person for a program year may be withheld, or required to be refunded, if, with respect to that program year, he has adopted, or participated in adopting, any scheme or device, including the dissolution, reorganization, revival, formation or use of any corporation, partnership, estate, trust, or any other means, designed to evade the provisions of this section.

(c) For the purpose of applying the maximum Federal cost-share limitation, the rules in subparagraphs (1) through (9) of this paragraph shall apply in determining whether certain individuals who may have an interest in the ownership or operation of a farm or ranch are to be considered as one person or as separate persons. In cases where more than one rule would appear to be applicable, the rule which is most restrictive as to the number of persons shall apply.

(1) *Husband and wife.* Husband and wife shall be considered as one person for all farms in which either has an interest except that a husband or wife shall be considered a separate person with respect to any farm as to which all of the conditions set forth in subparagraph (9) of this paragraph are met.

(2) *Family groups.* Members of the same family shall be considered as one person for all farms in which any member has an interest except that any member shall be considered a separate person with respect to any farm as to which all the conditions set forth in subparagraph (9) of this paragraph are met.

(3) *Partnerships.* A partnership and its members shall be considered as one person for all farms in which the partnership or any member thereof has an interest except that the partnership or any member thereof shall be considered a separate person with respect to any farm as to which all the conditions set forth in subparagraph (9) of this paragraph are met: *Provided,* That in no event shall cost-sharing be approved for both the partnership and the individual members thereof on the same farm.

(4) *Corporations.* A corporation (including a grazing association) and its shareholders or members shall be considered as one person for all farms in which the corporation or any shareholder or member has an interest except that the corporation or any shareholder or member thereof shall be considered a separate person with respect to any farm as to which all the conditions set forth in subparagraph (9) of this paragraph are met: *Provided,* That in no event shall cost-sharing be approved for both the corporation and the individual shareholders or members thereof on the same farm.

(5) *Trusts.* The trustee of a trust and the beneficiaries of the trust shall be considered as one person on all farms in which the trustee or any beneficiary of the trust has an interest except that the trustee or any beneficiary of the trust shall be considered a separate person with respect to any farm as to which all the conditions of subparagraph (9) of this paragraph are met: *Provided,* That in no event shall cost-sharing be approved for both the trustee and the beneficiaries of the trust on the same farm.

(6) *Estates.* The administrator or executor of an estate and the heirs thereof shall be considered as one person on all farms in which the administrator or executor or any heir thereof has an interest except that the administrator or executor or any heir of the estate shall be considered a separate person with respect to any farm as to which all the conditions of subparagraph (9) of this paragraph are met: *Provided,* That in no event shall cost-sharing be approved for both the administrator or executor and the heirs of the estate on the same farm.

(7) *Tenants in common and joint tenants.* All tenants in common and joint tenants on a farm shall be considered as one person with respect to such farm.

(8) *Joint undertakings.* Two or more individuals acting as a group under an arrangement which, although lacking the legal elements of a corporation or partnership, is in the nature of a joint undertaking shall be considered as one person with respect to any farm to which the joint undertaking applies. If any of the individuals has a separate interest in a farm with which the group is not involved, the payment limitation shall apply to the total of the payment earned by such individual and his share of the payment to the joint undertaking.

(9) *Exception.* The conditions which must be met in order for any individual or other entity referred to in subparagraph (1), (2), (3), (4), (5), or (6) of this paragraph to be considered a separate person are as follows:

(i) The interests of such individual or other entity in the farm and income therefrom must be separate and distinct from the interests therein of the other individuals or entity referred to in the applicable subparagraph.

(ii) Such individual or other entity must exercise, separate from the other individuals or entity referred to in the applicable subparagraph, responsibility for management of such separate interests.

(iii) The contribution of such individual or other entity to the cost of performing practices must be made from a fund or account separate from that of any other individual or entity referred to in the applicable subparagraph.

(d) For the purpose of applying the Federal cost-share limitation, a corporation or partnership shall be considered as a separate person from any other corporation or partnership which may participate in the program, even though there are common stockholders or members, with respect to any farm as to which all the following conditions are met: (1) The interests of such corporation or partnership in the farm and the income therefrom must be separate and distinct from the interests therein of the other corporation or partnership; (2) such corporation or partnership must exercise, separate from the other corporation or partnership, responsibility for management of such separate interests; and (3) the contribution of such corporation or partnership to the cost of performing practices must be made from a fund or account separate from that of the other corporation or partnership; *Provided*, That in no event shall cost-sharing be approved on the same farm for more than one corporation or partnership having common stockholders or members.

### § 701.30 Persons eligible to file application for payment of Federal cost-shares.

Any person who as owner, landlord, tenant, or sharecropper on a farm or ranch, bore a part of the cost of an approved conservation practice is eligible to file an application for payment of the Federal cost-share due him.

### § 701.31 Time and manner of filing application and required information.

(a) It shall be the responsibility of persons participating in the program to submit to the county office forms and information needed to establish the extent of the performance of approved conservation practices and compliance with applicable program provisions. Time limits with regard to the submission of such forms and information shall be established where necessary for efficient administration of the program. Such time limits shall afford a full and fair opportunity to those eligible to file the forms or information within the period prescribed. At least 2 weeks notice to the public shall be given of any general time limit prescribed. Such notice shall be given by mailing notice to the office of each county committee and making copies available to the press. Other means of notification, including radio announcements and individual notices to persons affected, shall be used to the extent practicable. Notice of time limits which are applicable to individual persons, such as time limits for reporting performance of approved practices, shall be issued in writing to the persons affected. Exceptions to time limits may be made in cases where failure to submit required forms and information within the applicable time limits is due to reasons beyond the control of the farmer or rancher.

(b) Payment of Federal cost-shares will be made only upon application submitted on the prescribed form to the county office by December 31, of the year following the current program year or such earlier date as is prescribed by the Deputy Administrator. Any application for payment may be rejected if any form or information required of the applicant is not submitted to the county office within the applicable time limit.

### § 701.32 Appeals.

Any person may obtain reconsideration and review of determinations affecting his participation in the program, in accordance with Part 780 of this chapter.

### § 701.33 Performance based upon advice or action of county or State committee.

Cases involving performance rendered in good faith in reliance upon action or advice of an authorized representative of a county committee or State committee shall be handled in accordance with Part 790 of this chapter.

## General Provisions Relating to Federal Cost-Sharing

### § 701.34 Compliance with regulatory measures.

Persons who carry out conservation practices under the program shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices in keeping with applicable laws and regulations. The person with whom the cost of the practice is shared shall be responsible to the Federal Government for any losses it may sustain because he infringes on the rights of others or fails to comply with applicable laws or regulations.

### § 701.35 Maintenance and use of practices.

(a) The sharing of costs, by the Federal Government, for the performance of approved conservation practices on any farm or ranch under the program will be subject to the condition that the person with whom the costs are shared will maintain and use such practices for the conservation purposes for which cost-sharing was authorized throughout their normal lifespans as determined by the county committee, as long as the land on which they are carried out is under his control, unless the State or county committee determines that good farming practice does not require such maintenance and use or that the failure to so maintain and use the practices was due to conditions beyond his control. If the State or county committee finds that there has not been compliance with this provision, with respect to any practice, the person with whom costs for the practice were shared shall be required to refund all of the Federal cost-share for the practice, or such part thereof as the State or county committee may determine.

### § 701.36 Practices defeating purposes of program.

If the county committee finds with the concurrence of the State committee, or if the State committee finds, that any person has adopted or participated in any practice which tends to defeat the purposes of the program, including, but not limited to, failure to maintain, in accordance with good farming practices, practices carried out during a previous program year, it may withhold, or require to be refunded, all or any part of the Federal cost-share which otherwise would be due him for the program year in which he adopted or participated in the practice which tends to defeat the purposes of the program.

### § 701.37 Depriving others of Federal cost-share.

If the State committee finds that any person has employed any scheme or device (including coercion, fraud, or misrepresentation), the effect of which would be or has been to deprive any other person of the Federal cost-share due that person under the program, it may withhold, in whole or in part, from the person participating in or employing such a scheme or device, or require him to refund in whole or in part, the Federal cost-share which otherwise would be due him for the program year in which the scheme or device was employed.

### § 701.38 Filing of false claims.

If the State committee finds that any person has knowingly supplied false information, or has knowingly filed a false claim, including a claim for payment of the Federal cost-share under the program for practices not carried out or for practices carried out in such a manner that they do not meet the required specifications therefor, such person shall not be eligible for any Federal cost-share under the program year with respect to which the false information or false claim was filed, and shall refund all amounts that may have been paid to him under that program year. The withholding or refunding of Federal cost-shares will be in addition to and not in substitution of any other penalty or liability which might otherwise be imposed.

### § 701.39 Misuse of purchase orders.

If the State committee finds that any person has knowingly used a purchase order issued to him for conservation materials or services for a purpose other than that for which it was issued and that such misuse of the purchase order tends to defeat the purpose for which it was issued, such person shall not be eligible for any Federal cost-share for the program year with respect to which the purchase order was issued, and shall refund all amounts that may have been paid to him under that program year. The withholding or refunding of Federal cost-shares will be in addition to and not in substitution of any other penalty or liability which might otherwise be imposed.

### § 701.40 Federal cost-shares not subject to claims.

Any Federal cost-share, or portion thereof, due any person shall be determined and allowed without regard to questions of title under State law; without deductions of claims for advances (except as provided in the following subsection, and except for indebtedness to the United States subject to setoff under orders issued by the Secretary); and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the owner or any other creditor.

§ 701.41 Assignments.

Any person who may be entitled to any Federal cost-share under the program may assign his right thereto, in whole or in part, in accordance with the regulations governing the assignment of payments, Part 709 of this chapter.

DEFINITIONS

§ 701.42 Definitions.

For the purposes of the program:

(a) The terms "Secretary," "Deputy Administrator," "State committee," "county," "county committee," and "cropland," shall have the meaning assigned to them in the regulations governing reconstitution of farms, allotments, and bases, Part 719 of this chapter.

(b) "State" means any one of the United States, Puerto Rico, and the Virgin Islands.

(c) "Person" means an individual, partnership, association, corporation, estate, or trust, or other business enterprise, or other legal entity (and wherever applicable, a State, a political subdivision of a State, or any agency thereof) that, as owner, landlord, tenant, or sharecropper, participates in the operation of a farm or ranch. The term "tenant" shall include a person who, as a member of a grazing association, participates in the operation of the grazing lands owned or leased by the association.

(d) "Farm" or "ranch" means that area of land considered as a farm under the regulations governing reconstitution of farms, allotments, and bases, Part 719 of this chapter, except that, for Hawaii, Puerto Rico, and the Virgin Islands, farm or ranch means that area of land considered as a farm under the regulations governing determination of farms, Parts 826, 827, and 828, respectively, of Chapter VIII of this title.

(e) "Program year" means the period, designated in the State program during which conservation practices, or components thereof, must be carried out to be eligible for cost-sharing.

AVAILABILITY OF FUNDS, APPLICABILITY, AND DELEGATION OF AUTHORITY

§ 701.43 Availability of funds.

(a) The provisions of the program are necessarily subject to such legislation as the Congress of the United States may hereafter enact; the paying of the Federal cost-shares provided herein is contingent upon such appropriation as the Congress may hereafter provide for such purpose; and the amounts of such Federal cost-shares will necessarily be within the limits finally determined by such appropriation.

(b) The funds provided for a particular program year will not be available for paying Federal cost-shares for which applications are filed in the county office after December 31, of the year following that program year.

§ 701.44 Applicability.

(a) The provisions of the program contained herein are not applicable to (1) any department or bureau of the U.S. Government or any corporation wholly owned by the United States; (2) noncropland owned by the United States which was acquired or reserved for conservation purposes, or which is to be retained permanently under Government ownership, including, but not limited to, grazing lands administered by the Forest Service of the U.S. Department of Agriculture, or by the Bureau of Land Management (including lands administered under the Taylor Grazing Act) or the Fish and Wildlife Service of the U.S. Department of the Interior, except as indicated in paragraph (b)(7) of this section; and (3) nonprivate persons for performance on any land owned by the United States or a corporation wholly owned by it.

(b) The program is applicable to (1) privately owned lands; (2) lands owned by a State or political subdivision or agency thereof; (3) lands owned by corporations which are partly owned by the United States, such as production credit associations; (4) lands temporarily owned by the United States or a corporation wholly owned by it, which were not acquired or reserved for conservation purposes, including lands administered by the Farmers Home Administration, the U.S. Department of Defense, or by any other Government agency designated by the Deputy Administrator; (5) any cropland farmed by private persons which is owned by the United States or a corporation wholly owned by it; (6) Indian lands, except that where grazing operations are carried out on Indian lands administered by the Department of the Interior, such lands are within the scope of the program only if covered by a written agreement approved by the Department of the Interior giving the operator an interest in the grazing and forage growing on the land and a right to occupy the land in order to carry out the grazing operations; and (7) noncropland owned by the United States for performance by private persons of conservation practices which directly conserve or benefit nearby or adjoining privately owned lands of such persons who maintain and use such federally owned noncropland under agreement with the Federal agency having jurisdiction thereof.

§ 701.45 Delegation of authority.

No delegation contained in this program to a State or county committee shall preclude the Deputy Administrator, or his designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

CONSERVATION PRACTICES WITH ENDURING BENEFITS WHERE PROPERLY APPLIED AND MAINTAINED

PRACTICES PRIMARILY FOR ESTABLISHMENT OF PERMANENT PROTECTIVE COVER

§ 701.46 Practice A–1: Establishment of a permanent vegetative cover in orchards and vineyards for control of erosion.

§ 701.47 Practice A–2: Establishment of a permanent vegetative cover for soil protection or as a needed land-use adjustment.

This practice is applicable only to land which should be established in permanent vegetative cover for protection against wind or water erosion, and to cropland which as part of a needed land-use adjustment, is being shifted to permanent protective vegetative cover other than as a part of a regular crop rotation. No Federal cost-sharing will be allowed under this practice for clearing land occupied by a merchantable stand of timber or pulpwood, or for clearing land which, if cleared, would be suitable for continued production of cultivated crops. Federal cost-sharing for fences shall be limited to permanent fences needed to protect the seeded area from grazing, excluding boundary and road fences.

§ 701.48 Practice A–3: Establishment of additional acreages of vegetative cover in crop rotation to retard erosion and to improve soil structure, permeability, or water-holding capacity.

This practice is applicable only to land which needs such cover to retard erosion or to improve soil structure, permeability, or water-holding capacity. Federal cost-sharing will be limited to that acreage which the county committee determines represents a desirable increase over what would be the normal plantings of eligible crops on the farm. In making this determination, consideration should be given to the need for this practice on cropland which the farmer or rancher intends to divert from the production of crop for which allotments are established for the farm.

§ 701.49 Practice A–4: Treatment of farmland to permit the use of legumes and grasses for soil improvement and protection.

This practice is applicable only to farmland devoted to legumes (other than vegetable or truck crops, soybeans, mungbeans, and peanuts) or perennial grasses, and to farmland which the county committee determines will be devoted to such eligible uses not later than the date specified in the State program. Federal cost-sharing will be limited to the application of liming materials, rock phosphate, and gypsum or other sulphur-bearing materials. Other forms of phosphate materials are eligible for cost-sharing under other practices involving the establishment or improvement of vegetative cover. Cost-shares paid or advanced for materials applied under this practice will not be considered as earned unless the land is devoted to eligible grasses and legumes at the time the materials are applied or is seeded to eligible grasses and legumes by the time specified in the State program, unless the farmer is prevented from seeding the eligible grasses and legumes within such period because of conditions beyond his control. The preceding sentence shall not be applicable if the land is needed to permit the planting of increased permitted acreage resulting from an increased crop acreage allotment or base.

§ 701.50 Practice A-5: Establishment of contour stripcropping to protect soil from wind or water erosion.

All cultural operations must be performed as nearly as practicable on the contour. The crop stubble or crop residue must be left standing over winter, or a winter cover crop established, or necessary protective tillage operations carried out, on acreage devoted to row crops. Federal cost-sharing may be authorized for removing stone walls or hedgerows where such removal is necessary to the establishment of an effective contour stripcropping system.

§ 701.51 Practice A-6: Establishment of field stripcropping to protect soil from wind or water erosion.

The crop stubble or crop residue must be left standing over winter, or a winter cover crop established, or necessary protective tillage operations carried out, on acreage devoted to row crops. Federal cost-sharing may be authorized for removing stone walls or hedgerows where such removal is necessary to the establishment of an effective field stripcropping system.

§ 701.52 Practice A-7: Establishment of a stand of trees or shrubs on farmland for purposes other than the prevention of wind or water erosion.

No Federal cost-sharing will be allowed for planting orchard trees, or for plantings for ornamental purposes. If shrubs are used, those that benefit wildlife should be given preference wherever practicable. Plantings must be protected from destructive fire and destructive grazing. Federal cost-sharing may be authorized for clearing land occupied largely by scrubby brush of no economic value to permit planting desirable tree species. Technical assistance must be utilized to determine the suitability of the land for clearing and the measures necessary to prevent erosion. Federal cost-sharing for fencing shall be limited to permanent fences needed to protect the planted area from grazing, excluding boundary and road fences.

§ 701.53 Practice A-8: Establishment of a stand of trees or shrubs on farmland to prevent wind or water erosion.

Prevention of wind or water erosion on farmland is defined as the use of (a) windbreaks, (b) shelterbelts, (c) gully stabilization, and (d) stabilization of streambanks. The use of this practice should include considerations of enhancement to wildlife habitat. No Federal cost-sharing will be allowed for planting orchard trees, or for plantings for ornamental purposes. Plantings must be protected from fire and grazing. Federal cost-sharing for fencing shall be limited to permanent fences needed to protect the planted area from grazing, excluding boundary and road fenses.

PRACTICES PRIMARILY FOR IMPROVEMENT AND PROTECTION OF ESTABLISHED VEGETATIVE COVER

§ 701.54 Practice B-1: Improvement of an established vegetative cover for soil or watershed protection.

This practice is applicable only to land in permanent vegetative cover which needs more than normal maintenance measures in order to provide adequate soil or watershed protection. The improvement measures approved for cost-sharing shall be those which will extend materially the life of the vegetative cover. Federal cost-sharing may not be approved for normal maintenance measures such as annual top dressings with fertilizer or other mineral elements. This practice is not applicable to land on which the needed improvement measures will constitute complete reestablishment of the vegetative cover.

§ 701.55 Practice B-2: Improvement or protection of vegetative cover on rangeland by artificial reseeding, deferred grazing or other measures to promote stand improvement or firebreaks.

No Federal cost-sharing will be allowed if it is determined that any area seeded is grazed before the stand is well established or that any rangeland in the unit is overgrazed.

§ 701.56 Practice B-3: Controlling competitive shrubs to permit growth of adequate desirable vegetative cover for soil protection on range or pasture land.

On areas where it is determined that the control of competitive shrubs will reduce the vegetative cover to such an extent as to induce erosion, the practice will not be approved unless followed by seeding or other approved erosion control measures.

§ 701.57 Practice B-4: Furrowing, chiseling, ripping, scarifying, pitting, or listing noncrop grazing land to prevent soil loss, retard runoff, and improve water penetration.

The operation must be performed as nearly as practicable on the contour.

§ 701.58 Practice B-5: Constructing wells for livestock water as a means of protecting vegetative cover or to make practicable the utilization of the land for vegetative cover.

The wells must be at locations which will bring about the desired protection of vegetative cover through proper distribution of grazing or better grassland management or make practicable the utilization of the land for vegetative cover. Adequate storage facilities must be provided. Pumping equipment must be installed, except for artesian wells. No Federal cost-sharing will be allowed for wells constructed primarily for the use of headquarters, or for costs other than for constructing or deepening wells and for water storage facilities.

§ 701.59 Practice B-6: Developing springs or seeps for livestock water as a means of protecting vegetative cover or to make practicable the utilization of the land for vegetative cover.

The springs or seeps must be at locations which will bring about the desired protection of vegetative cover through proper distribution of grazing or better grassland management or make practicable the utilization of the land for vegetative cover.

§ 701.60 Practice B-7: Constructing or sealing dams, pits or ponds to provide water for agricultural uses.

Structures providing multiple benefits will be encouraged. However, those to be used solely for recreation are not eligible. No Federal cost-sharing will be allowed for structures, the primary purpose of which is to bring additional land into agricultural production through irrigation.

§ 701.61 Practice B-8: Installing pipelines, supplemental water storage, cisterns, and artificial watersheds for livestock water as a means of protecting vegetative cover or to make practicable the utilization of the land for vegetative cover.

The installations must provide water at locations which will bring about the desired protection of vegetative cover through proper distribution of grazing or better grassland management or make practicable the utilization of the land for vegetative cover.

§ 701.62 Practice B-9: Constructing permanent fences as a means of protecting vegetative cover.

This practice may be approved only where fencing will contribute to better distribution of livestock and seasonal use of the forage. Fences between pasture and other land will not qualify for cost-sharing.

§ 701.63 Practice B-10: Improvement of a stand of forest trees on farmland.

Federal cost-sharing may be allowed for any of the following measures: (a) Thinning, (b) pruning crop trees, (c) release of desirable seedlings and young trees by removing or killing competing and undesirable vegetation, (d) site preparation for natural reseeding, (e) fencing, (f) erosion control measures on logging roads and trails, (g) firebreaks for woodland protection, and (h) ponds for woodland protection. The area must be protected from destructive fire. Where seedlings are present, or needed, the area must be protected from destructive grazing. Federal cost-sharing for site preparation will be limited to areas which have a sufficient number of desirable seed trees for natural reseeding, which will not restock unless brush, dense litter, and other material on the forest soil is broken up or removed so that soil is exposed, and on which the seed trees will be left until the area is restocked. Technical assistance shall be utilized, if available; otherwise the practice must be carried out in accordance with approved technical forestry standards. Federal cost-sharing for fencing shall be limited to permanent fences needed to protect the area from grazing, excluding boundary and road fences.

**§ 701.64 Practice B-11: Constructing stock trails through brush, rock, or other natural barriers as a means of protecting established vegetative cover.**

This practice may be approved only where stock trails will contribute to the protection of vegetative cover through proper distribution of grazing or better grassland management. No Federal cost-sharing will be allowed if the grazing land made accessible to livestock by the stock trails is overgrazed.

**§ 701.65 Practice B-12: Controlling noxious weeds in order to protect soil or water resources.**

This practice is limited to situations where control of weeds is necessary to the protection of the soil or water resource. Cost-sharing will be limited to control of perennial weeds (and also biennial weeds in permanent vegetative cover) designated as noxious by the State ACP development group with the approval of the Director, Farmer Programs Division, ASCS. The practice is applicable only in areas where weed control measures will be carried out on an organized basis which will minimize reinfestation.

PRACTICES PRIMARILY FOR THE CONSERVATION AND DISPOSAL OF WATER

**§ 701.66 Practice C-1: Establishment of permanent sod waterways to dispose of excess water without causing erosion.**

**§ 701.67 Practice C-2: Establishment of permanent vegetation as protection against erosion.**

Federal cost-sharing will be limited to the establishment of permanent vegetation on gullies, dams, dikes, levees, ditchbanks, farm roadsides, filter strips, field borders, and similar problem areas. Consideration should be given to choice of plants favorable to wildlife.

**§ 701.68 Practice C-3: Establishment of orchards, vineyards, bush fruits, strawberries, or perennial vegetables on the contour to prevent erosion.**

All cultural operations must be performed as nearly as practicable on the contour.

**§ 701.69 Practice C-4: Constructing terraces to detain or control the flow of water and check soil erosion.**

Necessary protective outlets or waterways must be provided. Federal cost-sharing may be authorized for removing stone walls or hedgerows where such removal is necessary to the establishment of an effective terrace system. Costs of construction may include necessary leveling and filling to permit installation of an effective system.

**§ 701.70 Practice C-5: Constructing diversion terraces, ditches, or dikes to intercept runoff and divert excess water to protected outlets.**

Necessary protective outlets or waterways must be provided. Federal cost-sharing may be authorized for removing stone walls or hedgerows where such removal is necessary to the establishment of an effective terrace system. Costs of contruction may include necessary leveling and filling to permit installation of an effective system.

**§ 701.71 Practice C-6: Constructing erosion control, detention, or sediment retention dams, pits or ponds to prevent or heal gullying or to retard or reduce runoff of water.**

**§ 701.72 Practice C-7: Constructing channel lining, chutes, drop spillways, pipe drops, drop inlets, or similar structures for the protection of outlets and water channels that dispose of excess water.**

**§ 701.73 Practice C-8: Streambank or shore protection, channel clearance, enlargement or realinement, or construction of floodways, levees, or dikes, to prevent erosion or flood damage to farmland.**

This practice shall not be approved in cases where there is any likelihood that it will create an erosion or flood hazard to other adjacent land, or where its primary purpose is to bring new land into agricultural production.

**§ 701.74 Practice C-9: Constructing permanent open drainage systems to dispose of excess water.**

Federal cost-sharing may be authorized for clearing the necessary minimum width right-of-way. Federal cost-sharing may be authorized for the spreading of spoil banks where this is necessary for the effective utilization of the drainage system. No Federal cost-sharing will be allowed for ditches, the primary purpose of which is to bring new land into agricultural production. This practice is not applicable to land other than that devoted to the production of cultivated crops or crops normally seeded for hay or pasture in the area during at least 2 of the last 5 years. No Federal cost-sharing will be allowed for cleaning a ditch or for installing structures primarily for the convenience of the farm operator. In the installation of drainage systems, due consideration shall be given to the maintenance of wildlife habitat. Cost-sharing or technical assistance shall not be authorized for draining land described as Wetland Type 3, 4, or 5 in the U.S. Department of the Interior, Fish and Wildlife Service Circular 39, "Wetlands of the United States," published in 1956. This practice is also subject to the provisions of Public Law 87-732.

**§ 701.75 Practice C-10: Installing underground drainage systems to dispose of excess water.**

No Federal cost-sharing will be allowed for systems, the primary purpose of which is to bring new land into agricultural production. This practice is not applicable to land other than that devoted to the production of cultivated crops or crops normally seeded for hay or pasture in the area during at least 2 of the last 5 years. In the installation of drainage systems, due consideration shall be given to the maintenance of wildlife habitat. Cost-sharing or technical assistance shall not be authorized for draining land described as Wetland Type 3, 4, or 5 in the U.S. Department of the Interior, Fish and Wildlife Service Circular 39, "Wetlands of the United States," published in 1956. This practice is also subject to the provisions of Public Law 87-732.

**§ 701.76 Practice C-11: Shaping or land grading to permit effective surface drainage.**

No Federal cost-sharing will be allowed for any shaping or grading which is performed through farming operations in connection with land preparation for planting or cultivation of crops. No Federal cost-sharing will be allowed for shaping or land grading on land which was not devoted to the production of cultivated crops or crops normally seeded for hay or pasture in the area during at least 2 of the last 5 years. Cost-sharing or technical assistance shall not be authorized for draining land described as Wetland Type 3, 4, or 5 in the U.S. Department of the Interior, Fish and Wildlife Service Circular 39, "Wetlands of the United States," published in 1956. This practice is also subject to the provisions of Public Law 87-732.

**§ 701.77 Practice C-12: Installing or reorganizing irrigation systems in a manner which conserves water and prevents erosion.**

The practice must be carried out in accordance with a plan approved by the responsible technician. No Federal cost-sharing will be allowed for cleaning a ditch or for installing structures primarily for the convenience of the farm operator or for portable pipe. No Federal cost-sharing will be allowed for installing or reorganizing an irrigation system if the primary purpose is to bring additional land into agricultural production.

**§ 701.78 Practice C-13: Leveling land for more efficient use of irrigation water and to prevent erosion.**

No Federal cost-sharing will be allowed for floating or restoration of grade; however, the leveling operation may be completed over a period of more than 1 program year on a component basis where the size of cuts and fills is such that a heavy leveling operation will be needed following settlement of the original fills. No Federal cost-sharing will be allowed for leveling land if the primary purpose of the leveling is to bring additional land into agricultural production. The leveling must be carried out in accordance with a plan approved by the responsible technician.

**§ 701.79 Practice C-14: Constructing or lining dams, pits, or ponds for irrigation water.**

Dams, pits, or ponds for irrigation water are included in practice B-7 (§ 701.60).

**§ 701.80 Practice C-15: Lining irrigation ditches to prevent erosion and loss of water by seepage.**

No Federal cost-sharing will be allowed for lining irrigation ditches if the primary purpose is to bring additional land into agricultural production.

**§ 701.81 Practice C-16: Constructing spreader ditches or dikes to divert and spread water to prevent erosion, to permit beneficial use of runoff, or to replenish ground water supply.**

**§ 701.82 Practice C-17: Subsoiling to improve water penetration and retard runoff to control erosion.**

CONSERVATION PRACTICES WITH BENEFITS OF LIMITED DURATION GENERALLY REQUIRING PERIODIC REPETITION

PRACTICES PRIMARILY FOR ESTABLISHING TEMPORARY PROTECTIVE VEGETATIVE COVER

**§ 701.83 Practice D-1: Establishment of vegetative cover for winter protection from erosion.**

A good stand and good growth must be obtained in sufficient time to protect the area in the fall and winter and must be maintained on the land to a date specified in the county program. Pasturing consistent with good management may be permitted, but none of the growth may be harvested for hay or seed, except that the State committee may authorize the harvesting of the growth for hay or silage in areas where it determines that a serious shortage of hay or silage exists due to adverse weather conditions and the growth harvested is needed for use on farms in the area. Volunteer stands will not qualify for cost-sharing.

**§ 701.84 Practice D-2: Establishment of vegetative cover for summer protection from erosion.**

A good stand and good growth must be obtained and left on the land or turned under. Pasturing consistent with good management may be permitted, but none of the growth may be harvested for hay or seed, except that the State committee may authorize the harvesting of the growth for hay or silage in areas where it determines that a serious shortage of hay or silage exists due to adverse weather conditions and the growth harvested is needed for use on farms in the area. Volunteer stands will not qualify for cost-sharing.

**§ 701.85 Practice D-3: Establishment of vegetative cover for green manure and for protection from erosion.**

Federal cost-sharing will be limited to acreages of biennial or perennial legumes or perennial grasses, or mixtures of such legumes with adapted grasses, seeded during the program year. A good stand and good growth must be obtained. Pasturing consistent with good management may be permitted, but none of the growth may be harvested for hay or seed, except that the State committee may authorize the harvesting of the growth for hay or silage in areas where it determines that a serious shortage of hay or silage exists due to adverse weather conditions and the growth harvested is needed for use on farms in the area. Volunteer stands will not qualify for cost-sharing.

**§ 701.86 Practice D-4: Establishment of vegetative cover to protect cropland throughout the crop year.**

This practice is applicable only to cropland which is being shifted for the entire crop year from crop production to green manure or cover crops. Eligible seedings may consist of single seedings or successive seedings of grasses, legumes, small grains, or other crops which will provide adequate soil protection for the required period. Where annuals alone are used, at least two successive seedings must be made. Pasturing consistent with good management may be permitted. No crop may be harvested for seed in the current program year. No annual crop seeded in the fall of the current program year may be harvested for seed in the succeeding year if such seeding is one of the two required seedings of such annual crops. No crop may be harvested for hay or silage in the current program year and no annual crop seeded in the fall of the current program year may be harvested for hay or silage in the succeeding year if such seeding is one of the two required seedings of such annual crops, except that the State committee may authorize the harvesting of the growth for hay or silage in areas where it determines that a serious shortage of hay or silage exists due to adverse weather conditions and the growth harvested is needed for use on farms in the area. One of the two required seedings of annuals may be a volunteer seeding which provides adequate soil protection, but no Federal cost-sharing may be allowed for the volunteer seeding.

PRACTICES PRIMARILY FOR THE TEMPORARY PROTECTION OF SOIL FROM WIND AND WATER EROSION

**§ 701.87 Practice E-1: Stubble mulching to improve soil permeability and to protect soil from wind and water erosion.**

Tillage operations must be such as to leave sufficient crop or weed residue on the surface or mixed in the upper part of the soil to provide protection against wind and water erosion.

**§ 701.88 Practice E-2: Establishment of contour farming operations on nonterraced land to protect soil from wind or water erosion.**

All cultural operations must be performed as nearly as practicable on the contour. The crop stubble or crop residue must be left standing over winter, or a winter cover crop established, or necessary protective tillage operations carried out, on acreage devoted to row crops. This practice is not applicable on any acreage for which Federal cost-sharing is approved under practice A-5 (§ 701.50). Federal cost-sharing may be authorized for removing stone walls or hedgerows where such removal is necessary to the establishment of an effective contour farming system.

**§ 701.89 Practice E-3: Wind erosion control operations.**

Eligible operations shall be confined to those having the most enduring benefits practicably attainable under existing conditions.

**§ 701.90 Practice E-4: Mulching to control wind and water erosion and to improve soil structure and permeability.**

Federal cost-sharing shall be limited to mulching material hauled onto the land. Mulching material containing manure will not qualify for cost-sharing.

CONSERVATION PRACTICES WITH LIMITED AREA APPLICABILITY

PRACTICES TO MEET SPECIAL COUNTY CONSERVATION NEEDS

**§ 701.91 Practice F-1: Special conservation practices.**

Consistent with the principles set forth in paragraph (b) of § 701.1, the county committee and designated representatives of the Soil Conservation Service and the Forest Service at the county level may recommend, and the State committee and designated representatives of the Soil Conservation Service and the Forest Service at the State level may approve, for use in a county, practices included in this subpart for which there is need locally on a substantial number of farms but which are not selected for use in the State. Such approval shall be subject to review by the Director, Farmer Programs Division, ASCS, as to compliance with the provisions contained in this subpart.

**§ 701.92 Practice F-2: County conservation practices.**

Consistent with the principles set forth in paragraph (b) of § 701.1, the Director, Farmer Programs Division, ASCS, may approve for use in a county, practices which are not included in this subpart which are needed to meet particular conservation problems in the county. Such approval may be given only upon the recommendation of the State and county committees and designated representatives of the Soil Conservation Service and the Forest Service at both the county and State levels, and upon their findings (a) that the conservation problem exists on a substantial number of farms in the county, (b) that the practices contained in the National Bulletin will not provide adequate treatment of the problem, (c) that the proposed practice will adequately meet the problem, (d) that the proposed practice would not be performed without Federal cost-sharing, (e) that the proposed practice will provide the most enduring solution to the problem practicably attainable under existing circumstances, (f) that the proposed practice is one on which the offering of financial assistance is fully justified as being in the public interest, and (g) that the proposed practice meets the standards and requirements of comparable practices contained in this subpart.

§ 701.93 Practice F-3: Practices to meet new conservation problems.

Consistent with the principles set forth in paragraph (b) of § 701.1, the Director, Farmer Programs Division, ASCS, may approve for use in a county, practices for the treatment of critical conservation problems, primarily those which have arisen subsequent to the initiation of the program in the county. Such approval may be given only upon the recommendation of the State and county committees and designated representatives of the Soil Conservation Service and the Forest Service at both the county and State levels, and upon their findings (a) that the conservation problem exists on a substantial number of farms in the county, (b) that the practices contained in the National Bulletin will not provide adequate treatment of the problem, (c) that the proposed practice will adequately meet the problem, (d) that the proposed practice would not be performed without Federal cost-sharing, (e) that the offering of Federal cost-sharing for the proposed practice is justified as within the scope of national conservation objectives, (f) that adequate facilities, including technical services, will be available to permit the practice to be carried out effectively, and (g) that treatment of the problem cannot be safely delayed until a subsequent program.

§ 701.94 Practice F-4: Emergency conservation measures to restore to productive use land damaged by natural disasters.

(a) This practice is applicable only in counties designated by the Secretary as counties in which wind erosion, floods, hurricanes, or other natural disasters have created new conservation problems which (1) if not treated will impair or endanger the land, (2) materially affect the productive capacity of the land, (3) represent damage which is unusual in character and, except for wind erosion, is not of the type which would recur frequently in the same area, and (4) will be so costly to rehabilitate that Federal assistance is required to return the land to productive agricultural use.

(b) Emergency conservation practices may be approved by the Director, Farmer Programs Division, ASCS, upon recommendation by the State and county committees and designated representatives of the Soil Conservation Service and Forest Service at both the State and county levels. Eligible measures shall be specified in the wording of the practice as approved for use in the county. Cost-sharing may be offered under this practice only for replacing a practice or restoring the land to its normal productive capacity and may not be offered for the solution of conservation problems existing prior to the disaster involved.

(c) The cost-share computed for any person for this practice shall not be increased in accordance with § 701.28, and shall not be included with the cost-shares computed for such person for other practices in applying the maximum Federal cost-share limitation in § 701.29. The total of all Federal cost-shares for this practice to any person with respect to farms and ranches in any one county shall not exceed the sum of $2,500, except that, with the written prior approval of the State committee, a higher maximum not to exceed $10,000 may be approved in individual cases upon justification by the farmer or rancher on the basis of exceptional need and his inability to otherwise carry out the work.

(d) Costs of this practice will be shared only for eligible measures carried out during the program year with respect to which the practice approval was issued, and only if cost-sharing is requested by the farm or ranch operator within 30 days after the practice is approved for use in the county or before the date on which performance of the eligible measures is started, whichever is the later. With the approval of the county committee, costs of performing this practice may be shared with farmers or ranchers who carry out eligible measures on their lands or, with the permission of the owners or operators of adjacent or nearby lands, on such adjacent or nearby lands.

CONSERVATION PRACTICES WITH BENEFITS PRIMARILY TO WILDLIFE

WILDLIFE CONSERVATION PRACTICES WITH SOIL AND WATER CONSERVATION BENEFITS

§ 701.95 Practice G-1: Establishment of vegetative cover providing wildlife food plots and habitat.

This practice is applicable only to farmland which is to be established in trees, shrubs, grasses, legumes, or other vegetative cover to provide food or habitat for wildlife. Federal cost-sharing for fencing shall be limited to permanent fences needed to protect the planted area from grazing by domestic livestock, excluding boundary and road fences.

§ 701.96 Practice G-2: Development or restoration of shallow water areas for wildlife.

This practice is applicable only to farmland which is suitably located and adapted to the development or restoration of shallow water areas for wildlife. Federal cost-sharing for plantings under this practice shall be limited to plantings within the floodable area and plantings on any embankments constructed. Federal cost-sharing for fencing shall be limited to permanent fences needed to protect the shallow water area from grazing by domestic livestock, excluding boundary and road fences.

§ 701.97 Practice G-3: Constructing ponds or dams for wildlife.

This practice is applicable only to permanent ponds or dams for wildlife constructed on farmland. No Federal cost-sharing will be allowed for ponds or dams which will impound water on areas which will be drained periodically for the production of crops, or for dams or ponds which are primarily for the commercial production of fish or other wildlife for food.

§ 701.98 Practice G-4: Other wildlife conservation practices with soil and water conservation benefits.

Consistent with the principles set forth in § 701.1, the Director, Farmer Programs Division, ASCS, may approve other wildlife conservation practices for inclusion in the State program upon recommendation of the State committee and designated representatives of the Soil Conservation Service and the Forest Service at the State level, or for inclusion in county programs upon the recommendation of the State and county committees and designated representatives of the Soil Conservation Service and the Forest Service at both the county and State levels. Such other wildlife conservation practices shall be subject to the same conditions as other practices in the program, shall meet the standards and requirements of comparable practices in the program, and shall specify the eligible measures on which Federal cost-sharing may be approved.

CONSERVATION PRACTICES WITH SUBSTANTIAL BEAUTIFICATION BENEFITS

§ 701.99 Practice H: Beautification-conservation practices.

Consistent with the principles set forth in § 701.1, the Director, Farmer Programs Division, ASCS, may approve beautification-conservation practices for inclusion in the State program upon recommendation of the State committee and designated representatives of the Soil Conservation Service and the Forest Service at the State level, or for inclusion in county programs upon the recommendation of the State and county committees and designated representatives of the Soil Conservation Service and the Forest Service at both the county and State levels. Such practices may include the establishment of protective vegetative cover of grasses, legumes, trees, or shrubs (including ornamental shrubs and perennial flowers); the construction of terraces, dikes, water impoundments, or other structures to control surface runoff, to prevent erosion, or to heal gullies; the establishment of vegetative cover to provide habitat, food, or shelter for wildlife; and other practices which provide substantial soil and water conservation benefits and which enhance the appearance of the area. The practices shall be subject to the same conditions as other practices in the program, shall meet the standards and the requirements of comparable practices in the program, and shall specify the eligible measures on which Federal cost-sharing may be approved. Additional measures on which Federal cost-sharing is not to be approved, which will increase the effectiveness or appearance of the practice, may be installed.

Signed at Washington, D.C., on July 27, 1967.

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

[F.R. Doc. 67-8932; Filed, July 31, 1967; 8:50 a.m.]

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

[Milk Order 73]

## PART 1073—MILK IN WICHITA, KANS., MARKETING AREA

### Order Suspending Certain Provisions

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 Wichita, Kans., marketing area (7 CFR Part 1073), it is hereby found and determined that:

(a) The following provisions of the order no longer tend to effectuate the declared policy of the Act for the month of August 1967:

In § 1073.51(a) that portion of the first sentence reading as follows: ", subject to a supply-demand adjustment computed pursuant to subparagraphs (1) through (3) of this paragraph"; and subparagraphs (1), (2), and (3) relating to the supply demand adjustment to the Class I price.

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of the effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

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

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

(3) This suspension will eliminate certain erratic movements of the supply-demand adjustor for August 1967 and improve Class I price alignment in this market. A Class I sales account to an outside market is no longer available and approximately 1.6 million pounds of milk is now being pooled locally thereby causing abnormal fluctuation in the supply-demand adjustor in this order.

(4) This suspension action was requested by producers at a public hearing held June 15, 1967, at Wichita, Kans. At the hearing a witness testified that emergency action in the form of a suspension order is necessary to obtain orderly marketing conditions in the area pending the time when an amended order can be issued. There was no opposition to the request. Upon this basis suspension of these provisions for the month of July 1967 was issued June 28, 1967. It is now evident amendment on the basis of the hearing cannot be effective for August 1967.

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

*It is therefore ordered*, That the aforesaid provisions of the order are hereby suspended for the period August 1, 1967, through August 31, 1967.

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

Effective date: August 1, 1967.

Signed at Washington, D.C., on July 27, 1967.

GEORGE L. MEHREN,
*Assistant Secretary.*

[F.R. Doc. 67-8933; Filed, July 31, 1967; 8:50 a.m.]

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[Milk Order 90]

## PART 1090—MILK IN CHATTANOOGA, TENN., MARKETING AREA

### Order Amending Order

**§ 1090.0 Findings and determinations.**

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

(a) *Findings upon the basis of the hearing record.* 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), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Chattanooga marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than August 1, 1967. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator, Regulatory Programs, was issued June 30, 1967, and the decision of the Assistant Secretary containing all amendment provisions of this order, was issued July 18, 1967. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective August 1, 1967, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

*Order relative to handling.* It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Chattanooga marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby amended, as follows:

1. In § 1090.27(k), subparagraph (1) is revised to read as follows:

**§ 1090.27 Duties.**

* * * * *

(k) * * *

(1) The 6th day of each month, the Class I price and Class I butterfat differential, both for the current month; and the Class II price and Class II butterfat differential, both for the preceding month, and

* * * * *

2. Section 1090.51 is revised to read as follows:

**§ 1090.51 Class prices.**

Subject to the provisions of §§ 1090.52 and 1090.53, the minimum prices per hundredweight of milk containing 3.5 percent butterfat, to be paid by each handler for milk received at his pool plant from producers during the month, shall be as follows:

(a) *Class I milk price.* The price per hundredweight for Class I milk for the month shall be the basic formula price for the preceding month, subject to the adjustments provided in subparagraphs (1) and (2) of this paragraph:

(1) Add $1.75, and plus 20 cents through April 1968;

(2) Add if the utilization percentage calculated pursuant to subparagraph (3) of this paragraph is less than, or subtract if it is more than, the standard utilization range, an amount determined by multiplying the net utilization percentage calculated pursuant to subparagraph (4) of this paragraph by 2 cents: *Provided,* That any addition or subtraction shall be limited to 50 cents per hundredweight;

(3) Calculate a utilization percentage for each month by dividing the net hundredweight of Class I milk (excluding the skim milk and butterfat in fluid milk products received during the month in the same product and same package from a plant fully regulated pursuant to Order No. 101 (Part 1101 of this chapter) regulating the handling of milk in the Knoxville marketing area) disposed of from all pool plants for the second and third preceding months into the total hundredweight of producer milk for the same months, multiplying by 100, and rounding the resultant figure to the nearest whole number;

(4) Calculate a net utilization percentage by determining the amount by which the utilization percentage calculated pursuant to subparagraph (3) of this paragraph exceeds the higher figure or is less than the lower figure of the standard utilization range in the following table:

| Month for which price applies | Months for which utilization is computed | Standard utilization range | |
|---|---|---|---|
| | | Minimum | Maximum |
| January | October-November | 114 | 118 |
| February | November-December | 117 | 121 |
| March | December-January | 117 | 121 |
| April | January-February | 117 | 121 |
| May | February-March | 119 | 123 |
| June | March-April | 124 | 128 |
| July | April-May | 134 | 138 |
| August | May-June | 134 | 138 |
| September | June-July | 128 | 132 |
| October | July-August | 115 | 119 |
| November | August-September | 110 | 114 |
| December | September-October | 114 | 118 |

(b) *Class II milk price.* The Class II milk price shall be the basic formula price for the month.

3. Section 1090.52(b) is revised to read as follows:

**§ 1090.52 Butterfat differentials to handlers.**

*　　*　　*　　*　　*

(b) *Class II milk price.* Multiply the Chicago butter price for the month by 0.115.

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

Effective date: August 1, 1967.

Signed at Washington, D.C., on July 27, 1967.

GEORGE L. MEHREN,
*Assistant Secretary.*

[F.R. Doc. 67-8937; Filed, July 31, 1967; 8:50 a.m.]

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[Milk Order 101]

## PART 1101—MILK IN KNOXVILLE, TENN., MARKETING AREA

### Order Amending Order

**§ 1101.0 Findings and determinations.**

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

(a) *Findings upon the basis of the hearing record.* 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), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Knoxville marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than August 1, 1967. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator, Regulatory Programs, was issued June 30, 1967, and the decision of the Assistant Secretary containing all amendment provisions of this order, was issued July 18, 1967. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective August 1, 1967, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

*Order relative to handling.* It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Knoxville marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby amended, as follows:

1. In § 1101.22(j), subparagraph (1) is revised to read as follows:

**§ 1101.22 Duties.**

*　　*　　*　　*　　*

(j) * * *

(1) The 6th day of each month, the Class I price and the Class I butterfat differential, both for the current month;

*　　*　　*　　*　　*

2. Section 1101.51 is revised to read as follows:

**§ 1101.51 Class prices.**

Subject to the provisions of §§ 1101.52 and 1101.53, each handler shall pay producers, at the time and in the manner set forth in §§ 1101.80 through 1101.86, not less than the prices per hundredweight computed as follows for the respective quantities of Class I milk and Class II milk computed pursuant to § 1101.46:

(a) *Class I milk price.* The price per hundredweight for Class I milk for the month shall be the basic formula price for the preceding month, subject to the adjustments provided in subparagraphs (1) and (2) of this paragraph:

(1) Add $1.50, and plus 20 cents through April 1968;

(2) Add if the utilization percentage calculated pursuant to subparagraph (3) of this paragraph is less than, or subtract if it is more than, the base utilization range, an amount determined by multiplying the net utilization percentage calculated pursuant to subparagraph (4) of this paragraph by 2 cents: *Provided*, That any addition or subtraction shall be limited to 50 cents per hundredweight;

(3) Calculate a utilization percentage for each month by dividing the net hundredweight of Class I milk disposed of from all pool plants for the second and third preceding months into the total hundredweight of producer milk for the same months, multiplying by 100, and rounding the resultant figure to the nearest whole number;

(4) Calculate a "net utilization percentage" by determining the amount by which the utilization percentage calculated pursuant to subparagraph (3) of this paragraph exceeds the higher figure or is less than the lower figure of the base utilization range in the following table:

| Pricing month | Second and third preceding months | Base utilization range |
|---|---|---|
| January | October-November | 114-118 |
| February | November-December | 114-118 |
| March | December-January | 114-118 |
| April | January-February | 114-118 |
| May | February-March | 115-119 |
| June | March-April | 124-128 |
| July | April-May | 131-135 |
| August | May-June | 130-134 |
| September | June-July | 124-128 |
| October | July-August | 116-120 |
| November | August-September | 112-116 |
| December | September-October | 110-114 |

(b) *Class II milk price.* The Class II milk price shall be the basic formula price for the month.

3. Section 1101.52(b) is revised to read as follows:

§ 1101.52 **Butterfat differentials to handlers.**

* * * * *

(b) *Class II milk.* Multiply the average price per pound of butter for the month as described in § 1101.50 by 0.115.

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

Effective date: August 1, 1967.

Signed at Washington, D.C., on July 27, 1967.

GEORGE L. MEHREN,
*Assistant Secretary.*

[F.R. Doc. 67-8938; Filed, July 31, 1967; 8:50 a.m.]

[Milk Order 103]

## PART 1103—MILK IN MISSISSIPPI MARKETING AREA

### Order Amending Order

§ 1103.0 **Findings and determinations.**

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

(a) *Findings upon the basis of the hearing record.* 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), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Mississippi marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than August 1, 1967. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Administrator, was issued May 12, 1967, and the decision of the Secretary containing all amendment provisions of this order was issued July 17, 1967. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective August 1, 1967, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER. (5 U.S.C. 553(d) (1966))

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8(c)(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

*Order relative to handling.* It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Mississippi marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby further amended, as follows:

1. Under § 1103.15 paragraphs (b), (c), (d) and (e) are revised.

2. Under § 1103.44, the introductory text and paragraphs (c) and (d) are revised.

1. Section 1103.11(a) is revised to read as follows:

§ 1103.11 **Pool plant.**

* * * * *

(a) A distributing plant, other than that of a producer-handler or one described in § 1103.61, from which during the month route disposition of fluid milk products is not less than 50 percent of its total receipts of Grade A milk and the volume so disposed of in the marketing area is at least 20 percent of the total route disposition of fluid milk products or a daily average during the month of 7,000 pounds, whichever is less;

* * * * *

2. In § 1103.15, paragraphs (b), (c), (d) and (e) are revised to read as follows:

§ 1103.15 **Producer.**

* * * * *

(b) Diverted to a nonpool plant(s) (except that diversion to an other order plant shall be limited to Class II use) by the operator of a pool plant or by a cooperative association as a handler pursuant to § 1103.13(c) during any of the months of December through August: *Provided*, That this diversion privilege shall be applicable only to the milk of those dairy farmers whose milk was delivered for 10 days of production during each of the 2 immediately preceding months to pool plants, or who held producer status throughout the entire 2 immediately preceding months, or a dairy farmer who does not meet these qualifications but has made a delivery of milk to a pool plant during the current December-August period on a farm pickup route on which all other dairy farmers on such route have diversion eligibility on the basis of the preceding provisions of this paragraph; except that only for the purpose of determining eligibility for diversion during any month of December through August a dairy farmer who was in noncompliance with the Grade A requirements of a duly constituted health authority during any part of the 2 immediately preceding months shall be considered to have maintained producer status during the period of such noncompliance;

(c) Diverted to a nonpool plant(s) (except that diversion to an other order plant shall be limited to Class II use) for not more than 10 days' production during any month of September through November except that this paragraph shall not be applicable if: (1) In the case of a cooperative association all of the diversion of milk of member producers by such cooperative association during the month fall within the limits prescribed in paragraph (d) of this section, or (2) in the case of a pool handler (other than a cooperative association) diverting milk of nonmember producers, all of such diversions from such plant fall within the limits prescribed in paragraph (e) of this section;

(d) Diverted during any month of September through November to a nonpool plant(s) (except that diversion to an other order plant shall be limited to Class II use) as milk of a member of a cooperative association for the account of such association if the amount of milk so diverted does not exceed 30 percent of the volume of Grade A milk from all producer members of such cooperative association received at pool plants during such month; or

(e) Diverted during any month of September through November to a nonpool plant(s) (except that diversion to an other order plant shall be limited to Class II use) of a producer who is not a member of a cooperative association, for the account of a handler in his capacity as the operator of a pool plant from which the quantity of milk of nonmember producers so diverted does not exceed 30 percent of the total Grade A receipts of milk at such plant from nonmember producers.

* * * * *

3. Section 1103.30(a)(1)(iv) is revised to read as follows:

**§ 1103.30 Reports of receipts and utilization.**

(a) * * *

(1) * * *

(iv) Inventories of fluid milk products on hand at the beginning and end of the month, separately in bulk and in packaged form;

* * * * *

4. In § 1103.41, paragraphs (a) and (b)(4) are revised to read as follows:

**§ 1103.41 Classes of utilization.**

* * * * *

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat.

(1) Disposed of in the form of fluid milk products, except those classified pursuant to paragraph (b) (2) and (3) of this section;

(2) In inventory of fluid milk products in packaged form on hand at the end of the month; and

(3) Not accounted for as Class II milk; and

(b) * * *

(4) Contained in inventories of bulk fluid milk products on hand at the end of the month;

* * * * *

5. In § 1103.44(c), the introductory text of subparagraph (3) of this paragraph and provision (*a*) of subdivision (iv) of subparagraph (3) of this paragraph are revised and a new subparagraph (4) is added as follows:

**§ 1103.44 Transfers.**

* * * * *

(c) * * *

(3) The skim milk and butterfat so transferred or diverted shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants.

* * * * *

(iv) * * *

(*a*) Determine the skim milk and butterfat, respectively, in Class II (as defined pursuant to § 1103.41(b)(1)) at such nonpool plant during the month, subject to the conditions of subparagraph (4) of this paragraph.

* * * * *

(4) Skim milk and butterfat disposed of from a nonpool plant, which has facilities only for receiving, assembling, or cooling milk, to a second nonpool plant (except to a producer-handler plant) located not more than 200 miles by the shortest hard-surfaced highway distance as determined by the market administrator from the nearest of the New State Capitol in Jackson or the County Courthouse in Columbus, Gulfport, or Meridian, Miss., shall be classified in the same manner as a transfer from a pool plant to a nonpool plant. The operator of the second nonpool plant shall maintain books and records which are adequate for verification of the Class II utilization claimed and are made available to the market administrator upon request; and

* * * * *

5-a. In § 1103.44(d), the introductory text and subparagraphs (2) and (3) of this paragraph are revised as follows:

**§ 1103.44 Transfers.**

* * * * *

(d) As follows, if transferred or diverted (pursuant to § 1103.15), to an other order plant in excess of receipts from such plant in the same category as described in subparagraphs (1), (2), or (3) of this paragraph:

* * * * *

(2) If transferred or diverted in bulk form, classification shall be in the classes to which allocated as a fluid milk product under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and the transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

* * * * *

6. In § 1103.46(a), a new subparagraph (2-a) is added immediately following subparagraph (2) and subparagraph (5) is revised, all of which to read as follows:

**§ 1103.46 Allocation of skim milk and butterfat classified.**

* * * * *

(a) * * *

(2-a) Except for the first month this order amendment is effective, subtract from the remaining pounds of skim milk in Class I milk, the pounds of skim milk in inventory of fluid milk products in packaged form on hand at the beginning of the month;

* * * * *

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of bulk fluid milk products (and for the first month this order amendment is effective, the pounds of fluid milk products in packaged form) on hand at the beginning of the month;

* * * * *

7. Section 1103.53 is revised to read as follows:

**§ 1103.53 Location differential to handlers.**

(a) For that milk which is received from producers at a pool plant or at such plant from a cooperative association as a handler pursuant to § 1103.13(d) and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section and for other source milk for which a location adjustment is applicable, the price specified in § 1103.51(a) shall be reduced at the following rates (where mileage determinations are applicable these distances shall be determined by the market administrator by applying the shortest hard-surfaced highway distance open to commercial truck traffic):

| Location: | *Rate per hundredweight (cents)* |
|---|---|
| (1) For milk received at a pool plant located in the Mississippi marketing area except that part in Harrison County | 16.0 |
| (2) For milk received at a pool plant located outside the marketing area, and: | |
| (i) More than 60 but not more than 160 miles from the courthouse in Gulfport, or Pascagoula, Miss., whichever is nearer | 10.0 |
| (ii) For each additional 10 miles or fraction thereof, an additional | 1.5 |

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee plant, in excess of the sum of 95 percent of receipts at such plant from producers and receipts from a cooperative association in its capacity as a handler pursuant to § 1103.13 (d) and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

8. In § 1103.70, a new paragraph (c-1) is added immediately following paragraph (c) to read as follows:

**§ 1103.70 Computation of the net pool obligation of each pool handler.**

* * * * *

(c-1) Add an amount determined by multiplying the difference between the Class I price for the preceding month, and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1103.46(a)(2-a) and the corresponding step of § 1103.46(b). If the Class I price for the current month is less than the Class I price for the preceding month, the result shall be a minus amount;

* * * * *

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

Effective date: August 1, 1967.

Signed at Washington, D.C., on July 27, 1967.

GEORGE L. MEHREN,
*Assistant Secretary.*

[F.R. Doc. 67-8934; Filed, July 31, 1967; 8:50 a.m.]

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[Milk Orders 106, 126]

## PART 1106—MILK IN OKLAHOMA METROPOLITAN MARKETING AREA

## PART 1126—MILK IN NORTH TEXAS MARKETING AREA

### Order Suspending Certain Provisions

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the orders regulating the handling of milk in the Oklahoma Metropolitan and North Texas marketing areas (7 CFR Parts 1106 and 1126), it is hereby found and determined that:

(a) The following provisions of the orders no longer tend to effectuate the declared policy of the Act for the month of August 1967:

(1) In § 1106.51(a) of the order regulating the handling of milk in the Oklahoma Metropolitan marketing area, the last sentence of the introductory text reading as follows: "To this price add or subtract a 'supply-demand adjustment' of not more than 50 cents, computed as follows:" and subparagraphs (1), (2), and (3).

(2) In § 1126.51(a) of the order regulating the handling of milk in the North Texas marketing area, that portion of the last sentence of the introductory text reading as follows: "and subject to a supply-demand adjustment of not more than 50 cents computed as follows:" and subparagraphs (1), (2), (3), (4), (5), and (6).

(b) Notice of proposed rule making, public procedure thereon, and 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

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

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

(3) This suspension will continue for the month of August 1967 the elimination of the effect of supply-demand adjustors in the Oklahoma Metropolitan and North Texas orders that was provided for June and July 1967 by suspension order issued May 25, 1967.

(4) This suspension action was requested by both producers and handlers at a public hearing held May 15, 1967, at Oklahoma City, Okla. At the hearing, witnesses testified that emergency action in the form of a suspension order is necessary to maintain orderly marketing conditions pending the time when an amended order can be issued. No testimony was offered in opposition to this request. It is now evident that amendatory action based upon this hearing will not be completed so that an amended order could be effective for August 1967.

Therefore, in view of the foregoing reasons, good cause exists for making this order effective August 1, 1967.

*It is therefore ordered*, That the aforesaid provisions of the orders are hereby suspended for the period August 1, 1967, through August 31, 1967.

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

Effective date: August 1, 1967.

Signed at Washington, D.C., on July 27, 1967.

GEORGE L. MEHREN,
*Assistant Secretary.*

[F.R. Doc. 67-8935; Filed, July 31, 1967; 8:50 a.m.]

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[Milk Order 128]

## PART 1128—MILK IN CENTRAL WEST TEXAS MARKETING AREA

### Order Amending Order [1]

**§ 1128.0 Findings and determinations.**

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

(a) *Findings upon the basis of the hearing record.* 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), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central West Texas marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than August 1, 1967. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator, Regulatory Programs, issued March 27, 1967, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued July 5, 1967. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective August 1, 1967, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER. (5 U.S.C. 553(d) (1966))

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement,

tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

ORDER RELATIVE TO HANDLING

*It is therefore ordered,* That on and after the effective date hereof the handling of milk in the Central West Texas marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby amended, as follows:

**§ 1128.53 [Amended]**

1. Section 1128.53(a) is revoked and paragraphs (b), (c), and (d) are redesignated (a), (b), and (c), respectively.

2. Section 1128.91 (a) is revised to read as follows:

**§ 1128.91 Location adjustments to producers.**

(a) In making payments to producers pursuant to § 1128.90, the uniform price for all milk computed pursuant to § 1128.72 for milk received from producers at an approved plant shall be adjusted at the rates set forth in § 1128.53, applicable at the location of such plant.

* * * * *

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

Effective date: August 1, 1967.

Signed at Washington, D.C., on July 27, 1967.

GEORGE L. MEHREN,
*Assistant Secretary.*

[F.R. Doc. 67-8939; Filed, July 31, 1967; 8:50 a.m.]

[Milk Order 1138]

## PART 1138—MILK IN RIO GRANDE VALLEY MARKETING AREA

### Order Suspending 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 Rio Grande Valley marketing area (7 CFR Part 1138), it is hereby found and determined that:

(a) The proviso in § 1138.10(a) of the order will not tend to effectuate the declared policy of the Act for the months of July and August 1967. The proviso reads as follows: ": *Provided,* That the total quantity of Class I milk disposed from such plant during the month is not less than 50 percent of such plant's receipts of Grade A milk, which receipts shall include all milk diverted from such pool plant to a nonpool plant by the handler operating such pool plant".

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of the effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

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

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

(3) The suspension action would remove for the months of July and August 1967 the requirement that a distributing plant must dispose of 50 percent of the receipts of Grade A milk as Class I milk each month in order to be a pool plant. A distributing plant which has met this requirement each month currently has use for additional milk for manufacturing use in quantities which would cause loss of pool status unless this suspension is effective. This milk is available in the area and if not used for manufacturing locally will need be transported to distant manufacturing plants at additional cost to local producer associations.

(4) Request for this suspension was made on behalf of cooperative associations representing a large percentage of all producers currently supplying the market and major handlers regulated by the order.

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

*It is therefore ordered,* That the aforesaid provision of the order is hereby suspended for the period July 1, 1967, through August 31, 1967.

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

Effective date: July 1, 1967.

Signed at Washington, D.C., on July 27, 1967.

GEORGE L. MEHREN,
*Assistant Secretary.*

[F.R. Doc. 67-8936; Filed, July 31, 1967; 8:50 a.m.]

# Title 9—ANIMALS AND ANIMAL PRODUCTS

## Chapter III—Consumer and Marketing Service (Meat Inspection), Department of Agriculture

### SUBCHAPTER A—MEAT INSPECTION REGULATIONS

### PART 310—POST-MORTEM INSPECTION

### Contamination of Head Meat of Animals Stunned by Bullets

Pursuant to the authority conferred by the Meat Inspection Act, as amended and extended (21 U.S.C. 71–96) and section 306 of the Tariff Act of 1930, as amended (19 U.S.C. 1306), § 310.19 of the Meat Inspection Regulations (9 CFR 310.19) is hereby amended by adding an "(a)" before the text of present § 310.19 and by adding a new paragraph (b) reading as follows:

**§ 310.19 Contamination of carcasses, organs or parts.**

* * * * *

(b) Brains, cheek meat and head trimmings from animals stunned by lead, sponge iron, or frangible bullets shall not be saved for use as human food but shall be handled as described in § 314.1 or § 314.4 of Part 314 of this subchapter.

(Sec. 306, 46 Stat. 689, as amended; 34 Stat. 1264, 41 Stat. 241; 19 U.S.C. 1306; 21 U.S.C. 89, 96; 29 F.R. 16210, as amended; 31 F.R. 13249, as amended)

*Statement of considerations.* Stunning of animals by lead or sponge iron bullets, or frangible type bullets (i.e., those constructed of molded, powdered metal and plastic) has been a rather common practice in federally inspected slaughtering establishments. Some time ago, because of consumer complaints concerning foreign material identified as fragments of bullets in processed sausage containing cheek meat, the Livestock Slaughter Inspection Division carried out a nationwide survey to determine the incidence of such contamination in the edible portions of animals stunned by bullets of various types.

In conducting the survey, the leading manufacturers of bullets used for stunning, and meatpackers and their national organization representatives, were freely consulted. Advice given by bullet manufacturers intended to lessen contamination of product was carefully followed in controlled tests supervised by Meat Inspection Program personnel in many inspected plants. Attempts were made to have collateral tests initiated by some of the large packer organizations and some work along these lines was actually done.

The results of this survey show convincingly that regardless of the type of bullet or the method of shooting used, approximately 10 percent of all cheek meat and head trimmings from animals stunned by shooting contain whole or fragmented bullets. The percentage of brains contaminated approaches 100 percent. Such contaminants range from almost microscopic size particles to complete bullets. Because the contamination frequently occurs deep in the musculature or other tissue of the head with little or no apparent hemorrhage or other external evidence of such contamination, its detection by usual or feasible inspection techniques is impossible.

Contamination of meat by metal is highly objectionable to consumers and is considered a health hazard. In view of the significant percentage of contaminated head tissues detected during the survey and the impracticability of eliminating such contaminated product by any feasible inspection technique, the Consumer and Marketing Service believes that steps must be taken to prevent the use for human food of such potentially contaminated product.

The restrictions against the use of head meat from bullet-stunned animals should not seriously affect the economics of the meat packing industry. Other alternative methods of stunning that do not produce contamination of edible product are approved for use by the Meat Inspection Program and are officially designated methods of humane slaughter. These methods are set forth in Part 380, Subchapter D, Chapter III of Title 9 of the Code of Federal Regulations.

The foreging amendment is intended to prevent the use in interstate or foreign commerce of meat and meat food products which are contaminated with bullets or fragments of bullets and therefore are unfit for use as human food. In order to accomplish this purpose and because of the nature of the problem and the urgency of the need for providing consumer protection at the earliest practical time, the amendment should be made effective as soon as possible. Therefore, under the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedure concerning the amendment are impracticable and contrary to the public interest and good cause is found for making it effective less than 30 days after publication hereof in the FEDERAL REGISTER.

*Effective date.* The foregoing amendment shall become effective upon publication in the FEDERAL REGISTER: *Provided, however,* That any federally inspected slaughterer who heretofore stunned particular kinds of animals only by gunshot at any official establishment, upon request to the Officer in Charge of the Meat Inspection Program for the area in which such slaughterer is located, may be allowed to continue to use such stunning method for such animals for such reasonable period of time (not to exceed 30 days) as is necesasry for him to obtain other stunning equipment, if during such period a careful and thorough piece-by-piece inspection of cheeks and head trimmings from bullet-stunned animals is made by a competent employee of such slaughterer under supervision of an inspector.

Done at Washington, D.C., this 27th day of July 1967.

R. K. SOMERS,
*Deputy Administrator, Consumer Protection, Consumer and Marketing Service.*

[F.R. Doc. 67-8940; Filed, July 31, 1967; 8:51 a.m.]

# Title 12—BANKS AND BANKING

## Chapter I—Bureau of the Comptroller of the Currency, Department of the Treasury

## PART 19—RULES OF PRACTICE AND PROCEDURES APPLICABLE TO PROCEEDINGS RELATING TO CEASE AND DESIST ORDERS

On pages 6687 through 6691, inclusive, of the FEDERAL REGISTER of May 2, 1967, there was published a notice of proposed rule making to issue regulations governing the rules of practice and procedures applicable to proceedings relating to cease and desist orders. Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed regulations.

No objections have been received and the proposed regulations are hereby adopted without change and are set forth below.

*Effective date.* These regulations shall be effective as of August 1, 1967.

[SEAL] WILLIAM B. CAMP,
*Comptroller of the Currency.*

JULY 21, 1967.

Chapter I, Title 12 of the Code of Federal Regulations is amended by addition of a new Part 19 as follows:



AUTHORITY: The provisions of this Part 19 issued under 12 U.S.C. 1818, 80 Stat. 1051; 5 U.S.C. 553, 80 Stat. 383.

### § 19.1 Scope.

The rules and procedures set forth in this part are applicable to proceedings by the Comptroller of the Currency to determine whether to order a national bank or a District bank to cease and desist from practices and violations described in section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), as amended, and enumerated in § 19.2. The procedures for issuing such orders prescribed in section 8 of such Act will be followed and hearings required thereunder will be conducted in accordance with the rules and procedures set forth in this part.

### § 19.2 Grounds for cease-and-desist orders.

If, in the opinion of the Comptroller of the Currency, any national bank or District bank is engaging in or has engaged, or the Comptroller of the Currency has reasonable cause to believe that the bank is about to engage, in an unsafe or unsound practice in conducting the business of such bank, or is violating or has violated, or the Comptroller has reasonable cause to believe that the bank is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Comptroller in connection with the granting of an application or other request by the bank, or any written agreement entered into with the Comptroller, the Comptroller may issue and serve upon the bank a notice of charges in respect thereof.

### § 19.3 Notice of charges and hearing.

The notice referred to in § 19.2 shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the bank. Such hearing shall be set for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the Comptroller at the request of the bank. Unless the bank appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease-and-desist order.

### § 19.4 Issuance of order.

In the event of the consent described in § 19.3, or if upon the record made at any such hearing, the Comptroller finds that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Comptroller may issue and serve upon the bank an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the bank and its directors, officers, employees, and agents to cease and desist from the same and to take affirmative action to correct the conditions resulting from any such violation or practice.

### § 19.5 Effective date.

A cease-and-desist order shall become effective at the expiration of 30 days after the service of such order upon the bank (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

### § 19.6 Temporary cease-and-desist orders.

Whenever the Comptroller determines that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the bank and referred to in § 19.3, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank, or is likely to otherwise seriously prejudice the interests of its depositors, the Comptroller may issue a temporary order requiring the bank to cease and desist from any such violation or practice.

### § 19.7 Effective date of temporary order.

Such order referred to in § 19.6 shall become effective upon service upon the bank and, unless set aside, limited, or suspended by a court in proceedings authorized under section 8 of the Federal Deposit Insurance Act, as amended, shall remain effective and enforceable pending the completion of the administrative proceedings held pursuant to such notice and until such time as the Comptroller shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the bank pursuant to § 19.4, until the effective date of any such order.

### § 19.8 Representation and suspension.

(a) *Appearance before a hearing examiner*. Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, may represent others with respect to a cease-and-desist proceeding upon filing with the Administrative Assistant to the Comptroller a written declaration that he is currently qualified as provided by this paragraph and is authorized to represent the particular party on whose behalf he acts. Any other person desiring to represent others before a hearing examiner may be required to file with the Administrative Assistant a power of attorney showing his authority to act in such capacity, and he may be required to show to the satisfaction of such examiner that he has the requisite qualifications. Attorneys or other representatives of parties to any proceeding provided for in this part shall file a written notice of appearance with the Administrative Assistant.

(b) *Summary suspension*. Contemptuous conduct at any hearing before the Comptroller or a hearing examiner shall be grounds for exclusion from any such hearing and suspension for the duration thereof.

### § 19.9 Notice of hearing.

Whenever a hearing is ordered by the Comptroller pursuant to section 8 of the Federal Deposit Insurance Act, a notice of hearing shall be given by the designated officer acting for the Comptroller to the party afforded the hearing. Such notice shall state the time, place, and nature of the hearing, the hearing examiner, and the legal authority and jurisdiction under which the hearing is to be held, and shall contain a statement of the matters of fact or law constituting the grounds for the hearing, and shall be delivered by personal service or by registered mail to the last known address, or other appropriate means, sufficiently in advance of the date set for hearing to comply with the provisions of the Federal Deposit Insurance Act, as amended, and § 19.3.

### § 19.10 Answer.

(a) *When required*. In any notice of hearing issued by the Comptroller, the Comptroller may direct the party afforded the hearing to file an answer to the allegations contained in the notice, and any party to any proceeding may file an answer. Except where a different period of not les. than 10 days after service of a notice of hearing is specified by the Comptroller, a party directed to file an answer, or a party who elects to file an answer, shall file the same with the Administrative Assistant within 20 days after service upon him of the notice of hearing.

(b) *Requirements of answer; effect of failure to deny*. An answer filed under this section shall specifically admit, deny, or state that the party does not have and is unable to obtain sufficient information to admit or deny each allegation in the notice of hearing. A statement of lack of information shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a party intends in good faith to deny only a part or a qualification of an allegation, he shall specify so much of it as is true and shall deny only the remainder.

(c) *Admitted allegations*. If a party filing an answer under this section elects not to contest the allegations of fact set forth in the notice of hearing, his answer shall consist of a statement that he admits all of the allegations to be true. Such an answer shall constitute a waiver of hearing as to the facts alleged in the notice, and together with the notice will provide a record basis on which the hearing examiner shall file with the Administrative Assistant his recommended decision and his findings of fact and conclusions of law. Any such party may, however, reserve the right to file with the Administrative Assistant exceptions to such recommended decision, findings, and conclusions as provided in § 19.16.

(d) *Effect of failure to answer*. Failure of a party to file an answer required by this section within the time provided shall be deemed to constitute a waiver of his right to appear and contest the allegations of the notice of hearing and to authorize the hearing examiner, without further notice to the party, to find the facts to be as alleged in the notice and to file with the Administrative Assistant a recommended decision containing such findings and appropriate conclusions. The Comptroller or the hearing examiner may, for cause shown, permit the filing of a delayed answer after the time for filing the answer has expired.

(e) *Opportunity for informal settlement*. Any interested party may at any time submit to the Administrative Assistant, for consideration by the Comptroller, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. No such offer or proposal, or counteroffer or proposal, shall be admissible in evidence over the objection of any party in any hearing in connection with such proceeding. The foregoing provisions of this section shall not preclude settlement of any proceeding through the regular adjudicatory process by the filing of an answer as provided in this section, or by submission of the case to the trial examiner on a stipulation of facts and an agreed order.

### § 19.11 Conduct of hearings.

(a) *Authority of hearing examiner*. All hearings governed by this part shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The hearing examiner designated by the Comptroller to preside at any such hearing shall have complete charge of the hearing, and he shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings. Such examiner shall have all powers necessary to that end, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpenas and subpenas duces tecum, as authorized by law, and to revoke, quash, or modify any such subpena;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold conferences for the settlement or simplification of issues or for any other proper purpose; and

(7) To consider and rule upon, as justice may require, all procedural and other motions appropriate in an adversary proceeding, except that a hearing examiner shall not have power to decide any motion to dismiss the proceedings or other motion which results in final determination of the merits of the proceedings.

Without limitation on the foregoing provisions of this paragraph, the hearing examiner, shall subject to the provisions of this part, have all the authority of section 556(c) of title 5 of the United States Code.

(b) *Prehearing conference*. The hearing examiner may, on his own initiative or at the request of any party, direct counsel for all parties to meet with him at a specified time and place prior to the hearing, or to submit suggestions to him in writing, for the purpose of considering any or all of the following:

(1) Simplification and clarification of the issues:

(2) Stipulations, admissions of fact and of the contents and authenticity of documents:

(3) Matters of which official notice will be taken: and

(4) Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of witnesses and of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

Such conferences, in the discretion of the hearing examiner, need not be recorded, but the hearing examiner shall enter in the record an order which recites the results of the conference. Such order shall include the examiner's rulings upon matters considered at the conference, together with appropriate directions to the parties, if any; and such order shall control the subsequent course of the proceedings, unless modified at the hearing to prevent manifest injustice. Except as authorized by law, the hearing examiner shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate, nor be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions in any case shall, in that case or a factually related case, participate or advise in the decision of the hearing examiner except as a witness or counsel in the proceedings.

(c) *Attendance at hearings.* A hearing shall be private and shall be attended only by the parties, their representatives or counsel, witnesses while testifying, and other persons having an official interest in the proceedings: *Provided, however,* That where the Comptroller in his discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest, he may order the hearing be public.

(d) *Transcript of testimony.* Hearings shall be recorded and transcripts will be made available to any party upon payment of the cost thereof and, in the event the hearing is public, shall be furnished on similar payment to other interested persons. A copy of the transcript of the testimony taken at any hearing, duly certified by the reporter, together with all exhibits, all papers and requests filed in the proceeding, and any briefs or memoranda of law theretofore filed in the proceeding, shall be filed with the Administrative Assistant to the Comptroller, who shall transmit the same to the hearing examiner. The Administrative Assistant shall promptly serve notice upon each of the parties of such filing and transmittal. The hearing examiner shall have authority to rule upon motions to correct the record.

(e) *Order of procedure.* The counsel for the Comptroller shall open and close.

(f) *Continuances and changes or extensions of time and changes of place of hearing.* Except as otherwise expressly provided by law, the Comptroller may by the notice of hearing or subsequent order provide time limits different from those specified in this part, and the Comptroller may, on his own initiative or for good cause shown, change or extend any time limit prescribed by these rules or the notice of hearing, or change the time and place for beginning any hearing hereunder. The hearing examiner may continue or adjourn a hearing from time to time and, as permitted by law or agreed to by the parties, from place to place. Extensions of time for making any filing or performing any act required or allowed to be done within a specified time in the course of a proceeding may be granted by the hearing examiner for good cause shown.

(g) *Call for further evidence, oral argument, briefs, reopening of hearing.* The hearing examiner may call for the production of further evidence upon any issue, may permit oral argument and submission of briefs at the hearing and, upon appropriate notice, may reopen any hearing at any time prior to the certification of his recommended decision to the Administrative Assistant. The Comptroller may order the reopening of any hearing at any time prior to the entry of his order disposing of the matter.

## § 19.12 Subpenas.

(a) *Issuance.* The hearing examiner or, in the event he is unavailable, the Comptroller, shall issue subpenas at the request of any party, requiring the attendance of witnesses or the production of documentary evidence at any designated place of hearing; except that where it appears to the hearing examiner or the Comptroller that the subpena may be unreasonable, oppressive, excessive in scope, or unduly burdensome, the party seeking the subpena may be required, as a condition precedent to the issuance of the subpena, to show the general relevance and reasonable scope of the testimony or other evidence sought. In the event the hearing examiner or the Comptroller, after consideration of all the circumstances, determines that the subpena or any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or it may refuse to issue the subpena, or issue it only upon such conditions as fairness requires.

(b) *Motion to quash.* Any person to whom a subpena is directed may, prior to the time specified therein for compliance but in no event more than five days after the date of service of such subpena, with notice to the party requesting the subpena, apply to the hearing examiner, or, if he is unavailable, to the Comptroller, to revoke, quash, or modify such subpena, accompanying such application with a statement of the reasons therefor.

(c) *Service of subpena.* Service of a subpena upon a person named therein shall be made by delivering a copy of the subpena to such person and by tendering the fees for one day's attendance and the mileage as specified in paragraph (d) of this section, except that when a subpena is issued at the request of the Comptroller of the Currency's counsel fees and mileage need not be tendered at the time of service of the subpena. If service is made by a United States marshal, or his deputy, or an employee of the Office of the Comptroller, such service shall be evidenced by his return thereon. If made by any other person, such person shall make affidavit thereto, describing the manner in which service is made, and return such affidavit on or with the original subpena. In case of failure to make service, reasons for the failure shall be stated on the original subpena. The original subpena, bearing or accompanied by the required return, affidavit, or statement, shall be returned without delay to the hearing examiner.

(d) *Attendance of witnesses.* The attendance of witnesses and the production of documents pursuant to a subpena, issued in connection with a hearing, may be required from any place in any State or in any territory at any designated place where the hearing is being conducted. Witnesses subpenaed in any proceeding under this part shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

(e) *Depositions.* The Comptroller or hearing examiner, by subpena or subpena duces tecum, may order evidence to be taken by deposition in any proceeding at any stage thereof. Such depositions may be taken by the hearing examiner or before any person designated by the Comptroller or hearing examiner and having power to administer oaths. Unless notice is waived, no deposition shall be taken except after at least five days' notice to the parties to the proceeding.

(f) *Application and order to take oral deposition.* Any party desiring to take the oral deposition of a witness, in connection with any hearing provided for in this part, shall make application in writing to the hearing examiner or, in the event he is unavailable, to the Comptroller setting forth the reasons why such deposition should be taken, the name and post office address of the witness, the matters concerning which the witness is expected to testify, its relevance, and the time when, the place where, and the name and post office address of the person before whom it is desired the deposition be taken. A copy of such application shall be served upon every other party to the proceeding by the party making such application. Upon a showing that (1) the proposed witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable at the hearing, (2) his testimony will be material, and (3) the taking of the deposition will not result in any undue burden to any other party or in undue delay of the proceeding, the hearing examiner or the Comptroller may, in his discretion, by such subpena or subpena duces tecum, order the oral deposition to be taken. Such subpena will name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is ordered to be taken, may or may not be the same as those named in the application. Notice of the issuance of such subpena shall be served upon each of the parties a reasonable time, and in no event less than five days, in advance of the time fixed for the taking of the deposition.

(g) *Procedure on deposition; objections.* Each witness testifying upon oral deposition shall be duly sworn, and the adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds of objection relied upon; but the person taking the deposition shall not have power to rule upon questions of competency or materiality or relevance of evidence. Failure to object to questions or evidence shall not be deemed a waiver unless the ground of the objection is one which might have been obviated or removed if presented at that time. The questions propounded and the answers thereto, together with all objections made (but not including argument or debate) shall be recorded by the person taking the deposition, or under his direction. The deposition shall be subscribed by the witness, unless the parties by stipulation waived the signing or the witness is ill or cannot be found or refused to sign, and certified as a true and complete transcript thereof by the person taking the deposition. If the deposition is not subscribed to by the witness, such person shall state on the record this fact and the reason therefor. Such person shall promptly send the original and two copies of such deposition, together with the original and two copies of all exhibits, by registered mail to the Administrative Assistant to the Comptroller unless otherwise directed in the order authorizing the taking of the deposition. Interested parties shall make their own arrangements with the person taking the deposition for copies of the testimony and the exhibits.

(h) *Introduction as evidence.* Subject to appropriate rulings by the hearing examiner on such objections and answers as were noted at the time the deposition was taken or as would be valid were the witness personally present and testifying, the deposition or any part thereof may be read in evidence by any party to the proceeding. Only such part or the whole of a deposition as is received in evidence at a hearing shall constitute a part of the record in such proceeding upon which a decision may be based.

(i) *Payment of fees.* Witnesses whose oral depositions are taken shall be entitled to the same fees as are paid for like services in the courts of the United States. Fees of persons taking such depositions and the fees of the reporter shall be paid by the person upon whose application the deposition was taken.

### § 19.13 Rules of evidence.

(a) *Evidence.* Every party shall have the right to present his case or defense by oral and documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(b) *Objections.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument thereon except as ordered by the hearing examiner. Rulings on such objections and on any other matters shall be a part of the transcript. Failure to object to admission or exclusion of evidence or to any ruling shall be considered a waiver of such objection.

(c) *Official notice.* All matters officially noticed by the hearing examiner shall appear on the record.

### § 19.14 Motions.

(a) *In writing.* An application or request for an order or ruling not otherwise specifically provided for in this part shall be made by motion. After a hearing examiner has been designated to preside at a hearing and before the filing with the Administrative Assistant of his recommended decision, pursuant to § 19.28, such applications or requests shall be addressed to and filed with him. At all other times motions shall be addressed to the Comptroller and filed with the Administrative Assistant. Motions shall be in writing, except that a motion made at a session of a hearing may be made orally upon the record unless the hearing examiner directs that it be reduced to writing. All written motions shall state with particularity the order or relief sought and the grounds therefor.

(b) *Objections.* Within 5 days after service of any written motion, or within such other period of time as may be fixed by the hearing examiner or the Comptroller, any party may file a written answer or objection to such motion. The moving party shall have no right to reply, except as permitted by the hearing examiner or the Comptroller. As a matter of discretion, the hearing examiner or the Comptroller may waive the requirements of this section as to motions for extensions of time, and may rule upon such motions ex parte.

(c) *Oral argument.* No oral argument will be heard on motions except as otherwise directed by the hearing examiner or the Comptroller. Written memoranda or briefs may be filed with motions or answers or objections thereto, stating the points and authorities relied upon in support of the position taken.

(d) *Rulings on motions.* Except as otherwise provided in this part, the hearing examiner shall rule upon all motions properly addressed to him and upon such other motions as the Comptroller may direct, except that if the hearing examiner finds that a prompt decision by the Comptroller on a motion is essential to the proper conduct of the proceeding, he may refer such motion to the Comptroller for decision. The Comptroller shall rule upon all motions properly submitted to him for decision.

(e) *Appeal from rulings on motions.* All motions and answers or objections thereto and rulings thereon shall become part of the record. Rulings of a hearing examiner on any motion may not be appealed to the Comptroller prior to its consideration of the hearing examiner's recommended decision, findings and conclusions except by special permission of the Comptroller; but they shall be considered by the Comptroller in reviewing the record. Requests to the Comptroller for special permission to appeal from such rulings of the hearing examiner shall be filed promptly, in writing, and shall briefly state the grounds relied on. The moving party shall immediately serve a copy thereof on every other party to the proceeding.

(f) *Continuation of hearing.* Unless otherwise ordered by the hearing examiner or the Comptroller, the hearing shall continue pending the determination of any motion by the Comptroller.

### § 19.15 Proposed findings and conclusions and recommended decision.

(a) *Proposed findings and conclusions and supporting briefs.* Within 15 days after the filing of the transcript with the Administrative Assistant (or within 15 days after the party's receipt of a copy of such transcript, if ordered before the conclusion of the hearing) a party may file with the Administrative Assistant for submission to the hearing examiner proposed findings and conclusions of law, which may be accompanied by a brief in support thereof. A copy of such proposals and brief in support thereof shall be delivered by the Administrative Assistant to the hearing examiner and a copy shall be served upon the other parties to the proceedings. All such proposals, briefs, and memoranda shall become part of the record.

(b) *Recommended decision and filing of record.* The hearing examiner shall, within 30 days after the expiration of the time allowed for the filing of proposed findings and conclusions, or within such further time as the Comptroller for good cause shall determine, file with the Administrative Assistant and certify to the Comptroller for decision the entire record of the hearing, which shall include his recommended decision and findings of fact and conclusions of law, the transcript, exhibits (including on request of any of the parties any exhibits excluded from evidence or tenders of proof), exceptions, rulings, and all briefs and memoranda filed in connection with the hearing. Promptly upon such filing the Administrative Assistant shall serve upon each party to the proceeding a copy of the hearing examiner's recommended decision, and findings and conclusions.

### § 19.16 Exceptions.

(a) *Filing.* Within 15 days after receipt of a copy of the recommended decision of the hearing examiner, any party may file with the Administrative Assistant exceptions to the recommended decision of the hearing examiner or any portion thereof or to his failure to adopt a proposed finding or conclusion, or to the admission or exclusion of evidence or to any other ruling, which exceptions may be accompanied by a supporting brief. A copy of such exceptions and brief shall be forthwith delivered by the Administrative Assistant to the hearing examiner and a copy shall also be served on the other parties to the proceedings.

(b) *Waiver.* Failure to file exceptions to the recommended decision of the hearing examiner or any portion thereof, or to his failure to adopt a proposed finding or conclusion, or to the admission or exclusion of evidence or to any ruling, within the time so required, shall be deemed to be a waiver of the objections thereto.

### § 19.17 Briefs.

(a) *Contents.* All briefs shall be confined to the particular matters in issue. Each exception or proposed finding or conclusion which is briefed shall be supported by a concise argument or by citation of such statutes, decisions or other authorities and by page reference to such portions of the record or recommended decision of the hearing examiner as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate references to the transcript.

(b) *Reply briefs*. Reply briefs may be filed within 10 days after service of briefs and shall be confined to matters in original briefs of opposing parties. Further briefs may be filed only with the permission of the Comptroller.

(c) *Delays*. Briefs not filed on or before the time fixed in this subpart will be received only upon special permission of the Comptroller.

**§ 19.18 Oral argument before the Comptroller.**

Upon his own initiative, or upon the written request of any party made within the time prescribed for the filing of exceptions, a brief in support thereof, or a reply brief, if any, for oral argument on the findings, conclusions and recommended decision of the hearing examiner, the Comptroller, if it considers justice will best be served, may order the matter to be set down for oral argument before the Comptroller. Oral argument before the Comptroller shall be recorded unless otherwise ordered by the Comptroller.

**§ 19.19 Notice of submission to the Comptroller.**

Upon the filing of the record with the Administrative Assistant and upon the expiration of the time for the filing of exceptions and all briefs permitted by the Comptroller and upon the hearing of oral argument by the Comptroller, if ordered by the Comptroller, the Administrative Assistant shall notify the parties that the case has been submitted to the Comptroller for final decision.

**§ 19.20 Decision of Comptroller.**

Appropriate members of the staff, who are not engaged in the performance of investigative or prosecuting functions in the case, or in a factually related case, may advise and assist the Comptroller in the consideration of the case. Copies of the decision and order of the Comptroller shall be furnished by the Administrative Assistant to the parties to the proceedings and to the bank involved.

**§ 19.21 Filing papers.**

Recommended decisions, exceptions, briefs and other papers required to be filed with the Comptroller or his Administrative Assistant in any proceedings shall be filed with the Administrative Assistant to the Comptroller of the Currency, Washington, D.C. 20220. Any such papers may be sent to the Administrative Assistant by mail or express but must be received in the office of the Comptroller in Washington, D.C., or postmarked by a post office, within the time limit for such filing.

**§ 19.22 Service.**

(a) *By the Comptroller*. All documents or papers required to be served by the Comptroller upon any party afforded a hearing shall be served by the Administrative Assistant unless some other person shall be designated for such purpose by the Comptroller. Such service, except for service on counsel for the Comptroller, shall be made by personal service or by registered mail, addressed to the last known address as shown on the records of the Comptroller, on the attorney or representative of record of such party, provided that if there is no attorney or representative of record, such service shall be made upon such party at the last known address as shown on the records of the Comptroller. Such service may also be made in such other manner reasonably calculated to give actual notice as the Comptroller may by regulation or otherwise provide.

(b) *By the parties*. Except as otherwise expressly provided in this part, all documents or papers filed in a proceeding under this part shall be served by the party filing the same upon the attorneys or representatives of record of all other parties to the proceeding, or, if any party is not so represented, then upon such party. Such service may be made by personal service or by registered, certified, or regular first-class mail addressed to the last known address of such parties, or their attorneys or representatives of record. All such documents or papers shall, when tendered to the Comptroller or the hearing examiner for filing, show that such service has been made.

**§ 19.23 Copies.**

Unless otherwise specifically provided in the notice of hearing, an original and seven copies of all documents and papers required or permitted to be filed or served upon the Administrative Assistant under this part, except the transcript of testimony and exhibits, shall be furnished to the Administrative Assistant.

**§ 19.24 Computing time.**

(a) *General rule*. In computing any period of time prescribed or allowed by this part, the date of the act, event or default from which the designated period of time begins to run is not to be included. The last day so computed is to be included, unless it is a Saturday, Sunday or legal holiday in the District of Columbia, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor legal holiday. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation unless the time within which the act is to be performed is 10 days or less in which event Saturdays, Sundays and legal holidays shall not be included.

(b) *Service by mail*. Whenever any party has the right or is required to do some act or take some proceeding, within a period of time prescribed in this part, after the service upon him of any document or other paper of any kind, and such service is made by mail, three days shall be added to the prescribed period from the date when the matter served is deposited in the United States mail.

**§ 19.25 Documents in proceedings confidential.**

Unless and until otherwise ordered by the Comptroller, the notice of hearing, the transcript, the recommended decision of the hearing examiner, exceptions thereto, proposed findings and conclusions of the Comptroller and other papers which are filed in connection with any hearing shall not be made public, and shall be for the confidential use only of the Comptroller, the hearing examiner, and the parties.

**§ 19.26 Formal requirements as to papers filed.**

(a) *Form*. All papers filed under this subpart shall be printed, typewritten, or otherwise reproduced. All copies shall be clear and legible.

(b) *Signature*. The original of all papers filed by a bank shall be signed by an officer thereof, and if filed by another party shall be signed by said party, or by the duly authorized agent or attorney of the bank or other party, and in all such cases shall show the signer's address. Counsel for the Comptroller shall sign the original of all papers filed by him.

(c) *Caption*. All papers filed must include at the head thereof, or on a title page, the name of the Comptroller, the name of the party, and the subject of the particular paper.

[F.R. Doc. 67-8705; Filed, July 31, 1967; 8:45 a.m.]

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## Chapter II—Federal Reserve System

### SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

## PART 263—RULES OF PRACTICE FOR FORMAL HEARINGS

1. Effective August 1, 1967, Part 263 is revised to read as follows:

**Subpart A—Rules of Practice Applicable to All Formal Hearings**



**Subpart B—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders**

**Subpart C—Rules and Procedures Applicable to Proceedings Relating to Removal and Suspension Orders**



## Subpart A—Rules of Practice Applicable to All Formal Hearings

AUTHORITY: The provisions of this Subpart A issued under sec. 11(i), 38 Stat. 262, sec. 202(n), 80 Stat. 1052, sec. 2[18], 64 Stat. 873, as amended, sec. 5, 70 Stat. 137, sec. 8, 38 Stat. 732 as amended; 12 U.S.C. 248(i), 1818(n), 1828(c), 1844; 15 U.S.C. 19.

### § 263.1 Scope.

This subpart prescribes rules of practice and procedure followed by the Board with respect to adjudications as to which a hearing is required by law or is for other reason ordered by the Board. Among such adjudications are those relating to: Suspension of a member bank from the use of credit facilities of the Federal Reserve System under section 4 of the Federal Reserve Act (12 U.S.C. 301); termination of a bank's membership in the System pursuant to section 9 of the Federal Reserve Act (12 U.S.C. 327); issuance of a cease-and-desist order under section 11 of the Clayton Act (15 U.S.C. 21); issuance of a cease-and-desist order or a removal or suspension order under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818); applications pursuant to sections 3 and 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842, 1843) as to which a hearing is required by the Act, or for other reason is ordered by the Board; and such proceedings as may be ordered by the Board with respect to bank merger applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)).

### § 263.2 Definitions.

As used in this part—

(a) The term "Secretary" means the Secretary to the Board;

(b) The term "presiding officer" means the Board, one or more members thereof, or a duly designated hearing examiner or other duly designated hearing officer, and as used in this part the term shall be construed to refer to whichever of these shall preside at a hearing hereunder, except as otherwise specified in the text;

(c) The term "party" means a person or agency named or admitted as a party, or any person or agency who has filed a written request and is entitled as of right to be admitted as a party; but a person or agency may be admitted for a limited purpose.

### § 263.3 Appearance and practice before the Board.

(a) *Power of attorney and notice of appearance.* Any person who is a member in good standing of the bar of the highest court of any State or of the District of Columbia, or of any possession, territory, or Commonwealth of the United States, may represent others before the Board upon filing with the Secretary a written declaration that he is currently qualified as provided in this paragraph, and is authorized to represent the particular party on whose behalf he acts. Any other person desiring to appear before or transact business with the Board in a representative capacity may be required to file with the Secretary a power of attorney showing his authority to act in such capacity, and he may be required to show to the satisfaction of the Board that he has the requisite qualifications. Attorneys and other representatives of parties to proceedings shall file a written notice of appearance with the Secretary or with the presiding officer.

(b) *Summary suspension.* Contemptuous conduct at any hearings to which these Rules are applicable, by any person, shall be ground for exclusion from any such hearing and for such further period as the Board may prescribe.

### § 263.4 Notice of hearing.

Whenever a hearing is ordered by the Board, notice of such hearing (together with a copy of any document incorporated therein by reference) shall be given by the Secretary or other designated officer acting for the Board to the party or parties to the proceeding and to the appropriate financial institution supervisory authority where required by law. The Board may give whatever additional notice is deemed appropriate in any given hearing. Such notice shall state the time, place, and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, and the name and address of the presiding officer, if one has been designated, and shall also contain, or incorporate by appropriate reference, a statement of the matters of fact or law constituting the grounds for the hearing. Unless otherwise provided by law or ordered by the Board, notice of any hearing shall be given not less than 20 days prior to the date set for hearing and shall be given general circulation by publication in the FEDERAL REGISTER and, where practical, by release to the press. The Board may amend a notice of hearing in any manner and to the extent consistent with provisions of applicable law.

### § 263.5 Answer.

(a) *When required.* In any notice of hearing issued by the Board, the Board may direct the party or parties afforded the hearing to file an answer to the allegations contained in the notice or referenced documents, and any party to any proceeding may file an answer. Except where a different period is provided by law or specified by the Board, a party directed to file an answer, or a party who elects to file an answer, shall file the same with the Secretary within 20 days after service upon him of the notice of hearing.

(b) *Requirements of answer; effect of failure to deny.* An answer filed under this section shall specifically admit, deny, or state that the party does not have sufficient information to admit or deny each allegation in the notice of hearing. A statement of lack of information shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a party intends to deny only a part or a qualification of an allegation, he shall admit so much of it as is true and shall deny only the remainder.

(c) *Admitted allegations.* If a party filing an answer under this section elects not to contest the allegations of fact set forth in the notice of hearing or referenced documents, his answer shall consist of a statement that he admits all of the allegations to be true. Such an answer shall constitute a waiver of hearing as to the facts alleged, and together with the notice and any referenced documents will provide a record basis on which the presiding officer shall file with the Secretary his recommended decision and his findings of fact and conclusions of law. Such admission shall not constitute a waiver of the right of such party to file with the Secretary exceptions to such recommended decision, findings and conclusions.

(d) *Effect of failure to answer.* Failure of a party to file an answer required by this section within the time provided shall constitute a waiver of his right to appear and contest the allegations of the notice of hearing and shall constitute authorization for the presiding officer, without further notice to the party, to find the facts to be as alleged in the notice and to file with the Secretary a recommended decision containing such findings and appropriate conclusions. The Board or the presiding officer may, for cause shown, permit the filing of an answer after the prescribed time.

(e) *Opportunity for informal settlement.* Any interested party may at any time submit to the Secretary, for consideration by the Board, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. No offer or proposal shall be admissible in evidence over the objection of any party in any hearing in connection with such proceeding. The foregoing provisions of this paragraph shall not preclude settlement of any proceeding through the regular adjudicatory process by the filing of an answer as provided in paragraph (c) of this section, or by the submission of the case to the presiding officer on a stipulation of facts and an agreed order.

### § 263.6 Conduct of hearings.

(a) *Designation of presiding officer.* When evidence is to be taken in a hearing, either the Board or, when duly designated for that purpose, one or more of its members, a hearing examiner, or other lawfully appointed hearing officer may preside at the hearing. All such hearings, unless otherwise provided in the notice of hearing, shall be conducted as hereinafter provided. Except as authorized by law, the presiding officer shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

nor shall he be responsible to or subject to the supervision or direction of any officer, employee, or agent of the Board engaged in the performance of investigative or prosecutive functions. A designated presiding officer may at any time withdraw if he deems himself disqualified; and, upon filing of a timely and sufficient affidavit of personal bias or disqualification of such presiding officer, the Board will determine the matter as a part of the record and decision in the case.

(b) *Authority of presiding officer.* All hearings governed by this part shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The presiding officer shall have complete charge of the hearing, and he shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings. Such officer shall have all powers necessary to that end, including but not limited to the following:

(1) To administer oaths and affirmations;

(2) To issue subpenas and subpenas duces tecum, as authorized by law, and to revoke, quash, or modify any such subpena;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold conferences for the settlement or simplification of issues or for any other proper purpose; and

(7) To consider and rule upon, as justice may require, all procedural and other motions appropriate in an adversary proceeding, except that a presiding officer other than the Board shall not have power to decide any motion to dismiss the proceedings or other motion which would result in final determination of the merits of the proceedings.

Without limitation on the foregoing, the presiding officer shall, subject to the provisions of this part, have all the authority set forth in section 556(c) of title 5 of the United States Code.

(c) *Prehearing conference.* The presiding officer may, on his own initiative or at the request of Board counsel or of any party, direct all parties or counsel to meet with him at a specified time and place prior to the hearing, or to submit suggestions to him in writing, for the purpose of considering any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations and admissions of fact and of the contents and authenticity of documents;

(3) Matters of which official notice will be taken; and

(4) Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of witnesses and of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding. Such conferences, in the discretion of the presiding officer, need not be recorded, but the presiding officer shall enter in the record an order which recites the results of the conference. Such order, a copy of which shall be served on each party and Board counsel, shall include the officer's rulings upon matters considered at the conference, together with appropriate directions, if any, to the parties and Board counsel; and such order shall control the subsequent course of the proceedings, unless modified at the hearing, for good cause found, by appropriate order of the presiding officer.

(d) *Attendance at hearings; representation of the Board.* Unless otherwise specifically provided by statute or by rule of the Board, a hearing shall ordinarily be private and shall be attended only by the parties, their representatives or counsel, representatives of the Board, witnesses while testifying, and other persons having an official interest in the proceedings: *Provided, however,* That on written request by a party or a representative of the Board, or on the Board's own motion, the Board, in its discretion and to the extent permitted by law, may permit other persons to attend or may order the hearing to be public. In connection with any such hearing or proceeding related thereto, the Board may designate as board counsel an attorney from its staff or other attorney who shall represent the Board. For the purposes of these Rules, any attorney so designated is referred to as "Board counsel." In case of adjudication other than initial licensing proceedings, neither Board counsel nor any officer or employee of the Board who has engaged in the performance of any investigative or prosecutive function in the case, or a factually related case, may participate in or advise as to the presiding officer's recommended decision or the Board's decision, except as witness or counsel in such hearing or related proceeding. Proceedings with respect to applications for initial licenses shall include, but not be limited to, applications for Board approval under section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) and such proceedings as may be ordered by the Board with respect to applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)). In such initial licensing proceedings, Board counsel shall represent the Board in an nonadversary capacity for the purpose of developing for the record information relevant to the issues to be determined by the presiding officer and the Board.

(e) *Transcript of testimony.* Hearings shall be recorded and transcripts will be made available at prescribed rates to any party and, in the event the hearing is public, to any other interested persons. The presiding officer shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or, following notice to the parties, upon the presiding officer's initiative. The transcript of testimony taken at any hearing, duly certified by the reporter, together with all exhibits, papers, and requests, briefs or memoranda of law filed in connection with the hearing shall be filed in duplicate with the Secretary by the presiding officer. The Secretary shall promptly serve notice upon each of the parties of such filing and transmittal. Following the service of notice of filing of the record, the record shall be returned to the presiding officer.

(f) *Continuances and changes or extensions of time and changes of place of hearing.* Except as otherwise expressly provided by law, the Board may by the notice of hearing or subsequent order provide time limits different from those specified in this part, and may, on its own initiative or for good cause shown, change or extend any time limit prescribed by these rules or the notice of hearing, or change the time or place for beginning any hearing hereunder. The presiding officer may, for good cause shown, and as permitted by law, change the time or place for beginning such hearing and may continue or adjourn a hearing from time to time or from place to place. Extensions of time for making any filing or performing any act required or allowed to be done within a specified time in the course of a hearing may be granted by the presiding officer for good cause shown.

(g) *Call for further evidence, oral argument, briefs, reopening of hearing.* The presiding officer may call for the production of further evidence upon any issue, may permit oral argument, the submission of briefs at the hearing and, upon appropriate notice, may reopen any hearing at any time prior to the certification of his recommended decision to the Secretary. The Board may reopen the record at any time permitted by law.

### § 263.7 Subpenas.

(a) *Issuance.* Where authorized by law, subpenas for the attendance of witnesses or for the production of documentary evidence, unless directed by the Board upon its own motion, will issue only upon application in writing to the presiding officer or, in the event he is unavailable, to the Board, except that during sessions of a hearing, such application may be made orally on the record before the presiding officer. The person seeking the subpena may be required, as a condition precedent to the issuance of the subpena, to show the general relevance and reasonable scope of the testimony or other evidence sought. In the event the presiding officer or the Board, after consideration of all the circumstances, determines that the requested subpena or any of its terms is unreasonable, oppressive, excessive in scope, unduly burdensome, or otherwise improper, he or it may refuse to issue the subpena, or issue it only upon such conditions as fairness requires.

(b) *Motion to quash.* Any person to whom a subpena is directed may, prior to the time specified therein for compliance, but in no event more than 5 days after the date of service of such subpena, with notice to the party requesting the subpena, apply to the presiding officer or, if he is unavailable, to the Board, to revoke, quash, or modify such subpena, accompanying such application with a statement of the reasons therefor.

(c) *Service of subpena.* In making service of a subpena, a copy thereof shall be exhibited to and left with the person named therein. If service is made by a U.S. marshal or his deputy, such service shall be evidenced by his return thereon. If made by any other person, such person shall make affidavit thereto, describing the manner in which service was made, and return such affidavit on or with the original subpena. In case of failure to make service, the reasons for the failure shall be stated on the original subpena. The original subpena, bearing or accompanied by the required return, affidavit or statement, shall be returned without delay to the Secretary or, if so directed on the subpena, to the presiding officer before whom the person named in the subpena is required to appear.

(d) *Attendance of witnesses.* The attendance of witnesses and the production of documents pursuant to a subpena, issued in connection with a hearing provided for in Subparts B and C of this part, may be required from any place in any State or in any territory at any designated place where the hearing is being conducted. Witnesses subpenaed in any proceeding under this part shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States, except that when a subpena is issued upon the Board's own motion or at the request of Board counsel, fees and mileage need not be tendered at the time of service of the subpena. Fees required by this paragraph shall be paid by the person upon whose application the subpena is issued.

**§ 263.8 Depositions.**

(a) *When permissible.* The Board or presiding officer, upon its or his own motion or upon appropriate application by a party to the proceeding or Board counsel, may, by subpena or subpena duces tecum, order evidence to be taken by deposition at any stage of any proceeding in which such depositions are authorized. Depositions may be taken before the presiding officer or before any person designated in the subpena and having the power to administer oaths.

(b) *Notice and application.* Unless notice is waived, no deposition shall be taken except after at least 5 days' written notice to Board counsel and the parties to the proceeding or their attorneys of record and to the Board. In such notice and application to take evidence by deposition, the party desiring to take the deposition shall state the name and post office address of the witness, the subject matter concerning which the witness is expected to testify, its relevance, the time, place, and the name and post office address of the person before whom it is desired the deposition be taken, and the reason why such deposition should be taken. Thereupon, the presiding officer or the Board may, in his or its discretion, by subpena or subpena duces tecum, order the oral deposition to be taken. Such subpena will name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is ordered to be taken, may or may not be the same as those named in the notice and application. Notice of the issuance of such subpena shall be served upon each of the parties a reasonable time in advance of the time fixed for the taking of the deposition, but in no event less than 5 days in advance of such time.

(c) *Procedure on deposition; objections.* Each witness testifying upon oral deposition shall be duly sworn, and Board counsel and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds of objection relied upon; but the person recording the deposition shall not have power to rule upon questions of competency or materiality or relevancy of evidence. Failure to object to questions or evidence shall not be deemed a waiver unless the ground of the objection is one which might have been obviated or removed if presented at that time. The questions propounded and the answers thereto, together with all objections made (but not including argument or debate), shall be recorded by the officer before whom the deposition is to be taken, or under his direction. The deposition shall be subscribed by the witness, unless the parties by stipulation waive the signing or the witness is ill, cannot be found, or refuses to sign, and certified as a true and complete transcript thereof by the person recording the testimony. If the deposition is not subscribed to by the witness, the person recording the testimony shall state on the record this fact and the reason therefor. The officer before whom the deposition is taken shall promptly send the original and two copies of such deposition, together with the original and two copies of all exhibits, by registered mail to the Secretary unless otherwise directed in the order authorizing the taking of the deposition or in the notice of the issuance thereof. Interested parties shall make their own arrangements with the person recording the testimony for copies of the testimony and the exhibits.

(d) *Introduction as evidence.* Subject to appropriate rulings by the presiding officer on such objections and answers as were noted at the time the deposition was taken or as would be valid were the witness personally present and testifying, the deposition or any part thereof may be received in evidence by the presiding officer. Only such part of a deposition as is received in evidence at a hearing shall constitute a part of the record in such proceeding upon which a decision may be based.

(e) *Payment of fees.* Deponents whose oral depositions are taken and the reporter taking the same shall be entitled to the same fees as are paid for like services in the courts of the United States, which fees shall be paid by the person upon whose application the deposition is taken.

**§ 263.9 Rules of evidence.**

(a) *Evidence.* Every party shall have the right to present his case or defense by oral and documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(b) *Objections.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument except as ordered by the presiding officer. Rulings on such objections and on any other matters shall be a part of the transcript. Failure to object to admission or exclusion of evidence or to any ruling shall be considered a waiver of such objection, but no exception to a ruling on an objection need be noted before the presiding officer in order to urge the same in the consideration of the matter by the Board.

(c) *Stipulations.* Independently of the orders or rulings issued as provided by § 263.6(c), the parties and Board counsel may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at a hearing, and when so received shall be binding on the parties and Board counsel with respect to the matters therein stipulated.

(d) *Official notice.* All matters officially noticed by the presiding officer shall appear on the record.

**§ 263.10 Motions.**

(a) *In writing.* An application or request for an order or ruling not otherwise specifically provided for in this part shall be made by motion. After a presiding officer has been designated and before the filing with the Secretary of his recommended decision, pursuant to § 263.11, such applications or requests shall be addressed to and filed with him. At all other times motions shall be addressed to the Board and filed with the Secretary. Motions shall be in writing, except that a motion made at a session of a hearing may be made orally upon the record unless the presiding officer directs that it be reduced to writing. All written motions shall state with particularity the order or relief sought and the grounds therefor. When a motion is addressed to the presiding officer, an original and two copies of such motion shall be filed.

(b) *Objections.* Within 5 days after service of any written motion, or within such other period as may be fixed by the presiding officer or the Board, any party may file a written answer or objection to such motion, together with two copies thereof. The moving party shall have no right to reply, except as permitted by the presiding officer or the Board. The presiding officer or the Board, in his or its discretion, may waive the requirements of this section as to motions for extensions of time, and may rule upon such motions ex parte.

(c) *Oral argument; briefs.* No oral argument will be heard on motions except as otherwise directed by the presiding officer or the Board. Written memoranda or briefs may be filed with motions or answers or objections, stating the points and authorities relied upon in support of the position taken.

(d) *Rulings on motions.* Except as otherwise provided in this part, the presiding officer shall rule upon all motions properly addressed to him and upon such other motions as the Board may direct, except that if the presiding officer finds that a prompt decision by the Board on a motion is essential to the proper conduct of the proceeding, he may refer such motion to the Board for decision. The Board shall rule upon all motions properly submitted to it for decision.

(e) *Appeal from rulings on motions.* All motions and answers or objections and rulings thereon shall become part of the record. The rulings of a presiding officer on any motion may not be appealed to the Board prior to its consideration of the presiding officer's recommended decision, findings, and conclusions except by special permission of the Board, but shall be considered by the Board in reviewing the record. Requests to the Board for special permission to appeal from such rulings of the presiding officer shall be filed promptly, in writing, and shall briefly state the grounds relied on.

(f) *Continuation of hearing.* Unless otherwise ordered by the presiding officer or the Board, the hearing shall continue pending the determination of any motion by the Board.

(g) *Closing of hearing.* The record of the hearing shall be closed by announcement to that effect by the presiding officer when the taking of evidence has been concluded. In the discretion of the presiding officer, the record may be closed as of a future date in order to permit the admission into the record, under circumstances determined by the presiding officer, of exhibits to be prepared.

**§ 263.11 Proposed findings and conclusions and recommended decision.**

(a) *Proposed findings and conclusions and supporting briefs.* Board counsel or any party who may wish to file with the presiding officer proposed findings and conclusions of law shall file the same, with two copies thereof, within 15 days after the receipt of written notice from the Secretary advising that the transcript has been filed with the Secretary. Proposed findings and conclusions shall be supported by citation to any relevant authorities and by page references to any relevant portions of the record and, in addition, may be accompanied by a brief in support thereof. In initial licensing proceedings, in lieu of proposed findings and conclusions of law, and within such time as the presiding officer may allow, Board counsel may submit comments with respect to the evidence of record and/or proposed findings and conclusions of law submitted by any party. All such proposed findings and conclusions of law, briefs, and other submissions shall become part of the record.

(b) *Recommended decision and filing of record.* In a proceeding in which the Board or one or more of its members has not presided at the reception of evidence, the presiding officer shall, within 45 days after the expiration of the time allowed for the filing of proposed findings and conclusions, or within such other time as the Board for good cause shall prescribe, file with the Secretary and certify to the Board for decision the entire record of the hearing, which shall include his recommended decision and findings of fact and conclusions of law, the transcript, exhibits (including on request of any of the parties any exhibits excluded from evidence or tenders of proof), exceptions, rulings, and all briefs and memoranda filed in connection with the hearing. Promptly upon such filing the Secretary shall serve upon each party to the proceeding a copy of the presiding officer's recommended decision, and findings and conclusions.

(c) *Board as presiding officer.* In proceedings in which the Board or one or more of its members has presided at the reception of evidence, the presiding officer's recommended decision, findings of fact, and conclusions of law will be omitted. In such proceedings the proposed findings and conclusions of law, briefs, and other submissions permitted under paragraph (a) of this section shall be filed with the Secretary for consideration by the Board.

**§ 263.12 Exceptions.**

(a) *Filing.* Within 15 days after service of the recommended decision and findings and conclusions of the presiding officer, or such further time as the Board for good cause shall determine, any party or Board counsel may file with the Secretary exceptions thereto or to any part thereof, or to the failure of the presiding officer to make any recommendation, finding, or conclusion, or to the admission or exclusion of evidence, or other ruling of the presiding officer, supported by such brief as may appear advisable. In any proceeding where the Board or one or more of its members is the presiding officer, the provisions of this section will not be applicable.

(b) *Waiver.* Failure to file exceptions to the recommended decision of the presiding officer or any portion thereof, or to his failure to adopt a proposed finding or conclusion, or the admission or exclusion of evidence or other ruling of the presiding officer, within the time prescribed in paragraph (a) of this section, shall be deemed to be a waiver of objection.

**§ 263.13 Briefs.**

(a) *Contents.* All briefs shall be confined to the particular matters in issue. Each proposed finding, conclusion, or exception which is briefed shall be supported by a concise supporting statement or by citation of relevant statutes, regulations, decisions, or other authorities and by page reference of relevant portions of the record or recommended decision of the presiding officer. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate page references to the transcript.

(b) *Answering briefs.* Answering briefs may be filed within 10 days after service of briefs and shall be confined to matters in the original briefs of opposing parties. Further briefs may be filed with the presiding officer only with his permission or that of the Board, and may be filed with the Board only with its permission.

**§ 263.14 Oral argument before the Board.**

Upon its own initiative, or upon written request by any party or Board counsel, the Board, in its discretion, may order the matter to be set down for oral argument before the Board or one or more members thereof. Any request for oral argument by a party filing exceptions shall be made within the time prescribed for filing such exceptions, or by any other party, within the time prescribed for the filing of an answering brief. Oral argument before the Board shall be recorded unless otherwise ordered by the Board.

**§ 263.15 Decision of Board.**

Appropriate members of the Board's staff who are not engaged in the performance of investigative or prosecuting functions in the case, or in a factually related case, may advise and assist the Board in the consideration of the case and in the preparation of appropriate documents for its disposition. Copies of the decision and order of the Board shall be served by the Secretary upon the parties to the proceedings and furnished to such other persons as the Board may direct or the law may require.

**§ 263.16 Filing papers.**

Recommended decisions, exceptions, briefs and other papers required to be filed with the Board or Secretary in any proceedings shall be filed with the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Any such papers may be sent to the Secretary by mail or express but must be received in the office of the Board in Washington, D.C., within the time limit for such filing.

**§ 263.17 Service.**

(a) *By the Board.* All documents or papers required to be served by the Board shall be served by the Secretary unless some other person shall be designated for such purpose by the Board. Such service, except for service on Board counsel, shall be made by personal service or by registered mail on the attorney or representative of record of the party, addressed to the last known address as shown on the records of the Board, provided that if there is no attorney or representative of record, such service shall be made upon such party at the last known address as shown on the records of the Board. Such service may also be made in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide.

(b) *By the parties.* All documents or papers filed in a proceeding under this part shall be served by the party filing the same upon Board counsel and the attorneys or representatives of record of all other parties, or, if any party is not so represented, then upon such party. Such service may be made by personal service or by registered, certified, or regular first-class mail addressed to the last known address of such parties, or their attorneys or representatives of record. All such documents or papers, when tendered to the Board or the presiding officer for filing, shall contain a certificate of service.

§ 263.18 **Copies.**

Unless otherwise specifically provided in the notice of hearing, an original and seven copies of all documents and papers required or permitted to be filed or served upon the Secretary under this part shall be furnished to the Secretary, except that an original and only one copy of the transcript of testimony and exhibits shall be filed with the Secretary by the presiding officer. All documents and papers filed with the presiding officer shall be filed in duplicate.

§ 263.19 **Computing time.**

(a) *General rule*. In computing any period of time prescribed or allowed by this part, the date of the act, event or default from which the designated period of time begins to run is not to be included. The last day so computed is to be included, unless it is a Saturday, Sunday, or legal holiday in the District of Columbia, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation unless the time within which the act is to be performed is 10 days or less, in which event Saturdays, Sundays, and legal holidays shall not be included. Half holidays shall not be considered as holidays.

(b) *Service by mail*. Whenever any party has the right or is required to do some act within a period of time prescribed in this part, after the service upon him of any document or other paper of any kind, and such service is made by mail, 3 days shall be added to the prescribed period from the date when the matter served is deposited in the U.S. mail.

§ 263.20 **Documents in proceedings confidential.**

Unless and until otherwise ordered by the Board or unless otherwise provided by statute or by Board regulation, the notice of hearing, the transcript, the proposed findings and conclusions, the recommended decision of the presiding officer, exceptions thereto, the findings and conclusions of the Board and other papers which are filed in connection with any hearing shall not be made public, and shall be for the confidential use only of the Board and its staff, the presiding officer, the parties and, where appropriate, other supervising authorities.

§ 263.21 **Formal requirements as to papers filed.**

(a) *Form*. All papers filed under this subpart shall be printed, typewritten, or otherwise reproduced. All copies shall be clear and legible.

(b) *Signature*. All papers shall be dated and signed by the party filing the same, or his duly authorized agent or attorney, or Board counsel, and, except in the case of Board counsel, shall indicate the address of the signer.

(c) *Caption*. All papers filed must include at the head thereof, or on a title page, the name of the Board and of the filing party, the title of the proceeding, and the subject of the particular paper.

## Subpart B—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

AUTHORITY: The provisions of this Subpart B issued under sec. 202(n), 80 Stat. 1052; 12 U.S.C. 1818(n).

§ 263.22 **Scope.**

The rules and procedures set forth in this subpart are applicable to proceedings by the Board with a view to ordering a State member bank (other than a District bank) to cease and desist from practices and violations described in section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) and enumerated in § 263.23. The procedures for issuing such orders prescribed in section 8 of said Act will be followed and hearings required thereunder will be conducted in accordance with the rules and procedures set forth in this subpart and Subpart A of this part. In connection with any proceeding under this subpart, the Board will provide the appropriate State supervisory authority with timely notice of intent to institute such a proceeding and the grounds therefor. Unless within such time as the Board deems appropriate in the circumstances of the case (which time will be specified in the notice) satisfactory corrective action is affectuated by action of the State supervisory authority, the Board will proceed as provided herein. Copies of any notice or order served upon any State bank in connection with such proceedings will also be sent to the appropriate State supervisory authority.

§ 263.23 **Grounds for cease-and-desist orders.**

If, in the opinion of the Board, any State member bank (other than a District bank) is engaging or has engaged or the Board has reasonable cause to believe that the bank is about to engage, in an unsafe or unsound practice in conducting the business of such bank, or is violating or has violated, or the Board has reasonable cause to believe that the bank is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Board in connection with the granting of an application or other request by the bank, or any written agreement entered into with the Board, the Board may issue and serve upon the bank a notice of charges in respect thereof.

§ 263.24 **Notice of charges and hearing.**

The notice referred to in § 263.23 will contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the bank. The hearing will be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the Board at the request of the bank, and shall be held in the Federal judicial district or in the territory in which the home office of the bank is located, unless the bank consents to another place. Unless the bank appears at the hearing by a duly authorized representative, it will be deemed to have consented to the issuance of the cease-and-desist order.

§ 263.25 **Issuance of order.**

In the event of such consent, or if upon the record made at any such hearing, the Board finds that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board may issue and serve upon the bank an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the bank and its directors, officers, employees, and agents to cease and desist from the same and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

§ 263.26 **Effective date.**

A cease-and-desist order will become effective at the expiration of 30 days after the service of such order upon the bank concerned (except in the case of a cease-and-desist order issued upon consent, which will become effective at the time specified therein), and will remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

§ 263.27 **Temporary cease-and-desist orders.**

Whenever the Board determines that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges referred to in § 263.23, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or of earnings of the bank, or is likely to otherwise seriously prejudice the interests of its depositors, the Board may issue a temporary order requiring the bank to cease and desist from any such violation or practice.

§ 263.28 **Effective date of temporary order.**

Such order will become effective upon service upon the bank, and, unless set aside, limited, or suspended by a court in proceedings authorized under section 8(h)(2) of the Federal Deposit Insurance Act, will remain effective and enforceable pending the completion of the administrative proceedings held pursuant to such notice and until such time as the Board dismisses the charges specified in such notice, or if a cease-and-desist order is issued against the bank pursuant to §263.25, until the effective date of any such order.

## Subpart C—Rules and Procedures Applicable to Proceedings Relating to Removal and Suspension Orders

AUTHORITY: The provisions of this Subpart C issued under sec. 202(n), 80 Stat. 1052; 12 U.S.C. 1818(n).

### § 263.29 Scope.

The rules and procedures set forth in this subpart are applicable to proceedings by the Board to remove or suspend a director, officer, or any other person participating in the conduct of the affairs of a State member bank (other than a District bank) or of a national banking association or a District bank where the facts are certified to the Board pursuant to 12 U.S.C. 1818(e)(2), 12 U.S.C. 1818(e)(4), or 12 U.S.C. 1818(e)(6), and/or prohibit such director, officer, or other person from further participation in the conduct of the affairs of such a bank, upon the grounds set forth in section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) and enumerated in this subpart. The procedures for issuing such orders prescribed in section 8 of said Act will be followed and hearings required thereunder will be conducted in accordance with the rules and procedures set forth in this subpart and Subpart A of this part. In connection with any proceeding under this subpart relating to a director, officer, or other person participating in the affairs of a State member bank (other than a District bank), the Board will provide the appropriate State supervisory authority with timely notice of intent to institute such a proceeding and the grounds therefor. Unless within such time as the Board deems appropriate in the circumstances of the case (which time will be specified in the notice) satisfactory corrective action is effectuated by action of the State supervisory authority, the Board will proceed as provided herein. Copies of any notice or order served upon any State bank in connection with such proceedings will also be sent to the appropriate State supervisory authority. In connection with any proceeding under this subpart relating to a director, officer, or other person participating in the affairs of a national banking association or a District bank where the facts are certified to the Board pursuant to 12 U.S.C. 1818(e)(2), 12 U.S.C. 1818(e)(4), or 12 U.S.C. 1818(e)(6), the Comptroller of the Currency shall be entitled to sit as a member of the Board and to participate in its deliberations on any such case and to vote thereon in all respects as a member of the Board.

### § 263.30 Grounds for removal order.

(a) Whenever, in the opinion of the Board, any director or officer of a State member bank (other than a District bank) or of a national banking association or a District bank where the facts are certified to the Board pursuant to 12 U.S.C. 1818(e)(2) has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the bank, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Board determines that the bank has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, the Board may serve upon such director or officer a written notice of its intention to remove him from office.

(b) Whenever, in the opinion of the Board, any director or officer of a State member bank (other than a District bank) or of a national banking association or a District bank where the facts are certified to the Board pursuant to 12 U.S.C. 1818(c)(4), by conduct or practice with respect to another insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to continue as a director or officer, and whenever, in the opinion of the Board, any other person participating in the conduct of the affairs of such bank, by conduct or practice with respect to such bank or other insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to participate in the conduct of the affairs of such bank, the Board may serve upon such director, officer, or other person a written notice of its intention to remove him from office and/or to prohibit his further praticipation in any manner in the conduct of the affairs of the bank.

### § 263.31 Grounds for suspension order.

In respect to any director or officer of a State member bank (other than a District bank) or any other person referred to in § 263.30 (a) and (b) and in respect to any such director or officer of, or other person participating in the conduct of the affairs of, a national banking association or a District bank where the facts are certified to the Board pursuant to 12 U.S.C. 1818(e)(6), the Board may, if it deems it necessary for the protection of the bank or the interests of its depositors, by written notice to such effect served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the bank.

### § 263.32 Effective date of suspension order.

Any suspension and/or prohibition which is subject to the notice prescribed in § 263.31 shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by section 8(f) of the Federal Deposit Insurance Act, shall remain in effect pending the completion of the administrative proceedings held pursuant to the notice served under § 263.30 (a) and (b) and until such time as the Board shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice will also be served upon the bank of which he is a director or officer or in the conduct of whose affairs he has participated.

### § 263.33 Notice of intention to remove and hearing.

A notice of intention to remove a director, officer, or other person from office and/or to prohibit his participation in the conduct of the affairs of an insured bank will contain a statement of the facts constituting grounds therefor and will fix a time and place at which a hearing will be held thereon. Such hearing will be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Board at the request of (a) such director or officer or other person, and for good cause shown, or (b) the Attorney General of the United States. Such hearing shall be held in the Federal judicial district or in the territory in which the home office of the bank involved is located, unless the person afforded the hearing consents to another place. Unless such director, officer, or other person appears at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal and/or prohibition.

### § 263.34 Issuance of removal order and effective date.

In the event of such consent, or if upon the record made at any such hearing the Board finds that any of the grounds specified in such notice has been established, the Board may issue such orders of suspension or removal from office, and/or prohibition from participation in the conduct of the affairs of the bank, as it may deem appropriate. Any such order shall become effective at the expiration of 30 days after service upon such bank and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

### § 263.35 Suspension and removal where felony charged.

(a) Whenever any director or officer of an insured State member bank (other than a District bank), or other person participating in the conduct of the affairs of such bank, is charged in any information, indictment, or complaint authorized by a U.S. attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the Board may, by written notice served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the bank. A copy of such notice will also be served upon the bank. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until such suspension and/or prohibition is terminated by the Board.

(b) In the event that a judgment of conviction with respect to such offense is entered against such director, officer, or other person, at such time as such judgment is not subject to further appellate review, the Board may issue and serve upon such director, officer, or other person an order removing him from office and/or prohibiting him from further participation in any manner in the conduct of the affairs of the bank except with the consent of the Board. A copy of such order will also be served upon such bank, whereupon such director or officer shall cease to be a director or officer of such bank. A finding of not guilty or other disposition of the charge will not preclude the Board from thereafter instituting proceedings to remove such director, officer, or other person from office and/or to prohibit further participation in bank affairs, pursuant to other provisions of this subpart.

2. The provision of section 553 of title 5, United States Code, relating to deferred effective date, is not followed in connection with the adoption of this action because the rules involved are procedural in nature and accordingly do not constitute substantive rules subject to the requirements of such section.

Dated at Washington, D.C. the 14th day of July 1967.

By order of the Board of Governors.

[SEAL] MERRITT SHERMAN,
*Secretary*.

[F.R. Doc. 67-8820; Filed, July 31, 1967; 8:45 a.m.]

## Chapter III—Federal Deposit Insurance Corporation

### SUBCHAPTER A—PROCEDURE AND RULES OF PRACTICE

## PART 308—RULES OF PRACTICE AND PROCEDURES

On May 2, 1967, a notice of proposed rule making was published in the FEDERAL REGISTER (32 F.R. 6716) stating that the Board of Directors of the Federal Deposit Insurance Corp. was considering the adoption of a revised Part 308 of its rules and regulations (12 CFR Part 301 et seq.). Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. After the consideration of all such relevant matter as was submitted the revision as so proposed is hereby adopted, with certain changes, as set forth below. Part 308 is revised to read as follows:



AUTHORITY: The provisions of this Part 308 issued under sec. 9, 64 Stat. 881; 12 U.S.C. 1819. Interpret or apply secs. 8, 10, 64 Stat. 879, 882; 80 Stat. 1028; 12 U.S.C. 1818, 1820.

## Subpart A—Rules of Practice Applicable to All Hearings

### § 308.1 Scope.

(a) This subpart prescribes rules of practice and procedure followed by the Federal Deposit Insurance Corporation in hearings held pursuant to the provisions of section 8 of the Federal Deposit Insurance Act pertaining to (1) involuntary termination of the insured status of any bank, (2) the issuance of cease-and-desist orders against any insured State nonmember bank, and (3) the issuance of orders removing or suspending from office and/or prohibiting from further participation in the conduct of the bank's affairs, any director or officer of an insured State nonmember bank or any other person participating in the conduct of the affairs of such a bank.

(b) In connection with any proceeding under Subpart C or D of this part, the Corporation will provide the appropriate State supervisory authority with timely notice of its intent to institute such a proceeding and the grounds therefor. Unless within such time as the Corporation deems appropriate in the light of the circumstances of the case (which time will be specified in the notice) satisfactory corrective action is effectuated by action of the State supervisory authority, the Corporation will proceed as provided in Subparts C and D of this part.

### § 308.2 Appearance and practice before the Corporation.

(a) *Power of attorney and notice of appearance*. Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, may represent others before the Corporation upon filing with the Secretary a written declaration that he is currently qualified as provided by this paragraph, and is authorized to represent the particular party on whose behalf he acts. Any other person desiring to appear before or transact business with the Corporation in a representative capacity may be required to file with the Secretary of the Corporation a power of attorney showing his authority to act in such capacity, and he may be required to show to the satisfaction of the Board of Directors that he has the requisite qualifications. Attorneys and representatives of parties to proceedings shall file a written notice of appearance with the Secretary or with the trial examiner.

(b) *Summary suspension*. Contemptuous conduct at an argument before the Board of Directors or at a hearing before a trial examiner shall be ground for exclusion therefrom and suspension for the duration of the argument or hearing.

### § 308.3 Notice of hearing.

Whenever a hearing is ordered by the Board of Directors in any proceeding pursuant to section 8 of the Federal Deposit Insurance Act, a notice of hearing shall be given by the Secretary or other designated officer acting for the Board of Directors to the party afforded the hearing and to the appropriate supervisory authority. Such notice shall state the time, place, and nature of the hearing, the trial examiner, and the legal authority and jurisdiction under which the hearing is to be held, and shall contain a statement of the matters of fact or law constituting the grounds for the hearing, and shall be delivered by personal service, by registered or certified mail to the last known address, or other appropriate means, sufficiently in advance of the date set for hearing to comply with the provisions of the Federal Deposit Insurance Act. The term "party" means a person or agency named or admitted as a party, or any person or agency who has filed a written request and is entitled as of right to be admitted as a party; but a person or agency may be admitted for a limited purpose.

**§ 308.4 Answer.**

(a) *When required.* In any notice of hearing issued by the Board of Directors, the Board of Directors may direct the party or parties afforded the hearing to file an answer to the allegations contained in the notice, and any party to any proceeding may file an answer. Except where a different period of not less than 10 days after service of a notice of hearing is specified by the Board of Directors, a party directed to file an answer, or a party who elects to file an answer, shall file the same with the Secretary within 20 days after service upon him of the notice of hearing.

(b) *Requirements of answer; effect of failure to deny.* An answer filed under this section shall specifically admit, deny, or state that the party does not have sufficient information to admit or deny each allegation in the notice of hearing. A statement of lack of information shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a party intends to deny only a part or a qualification of an allegation, he shall specify so much of it as is true and shall deny only the remainder.

(c) *Admitted allegations.* If a party filing an answer under this section elects not to contest any of the allegations of fact set forth in the notice of hearing, his answer shall consist of a statement that he admits all of the allegations to be true. Such an answer shall constitute a waiver of hearing as to the facts alleged in the notice, and together with the notice will provide a record basis on which the trial examiner shall file with the Secretary his recommended decision containing his findings of fact, conclusions of law and proposed order. Any such party may, however, upon service of the recommended decision, findings, conclusions and proposed order of the trial examiner, file exceptions thereto within the time provided in § 308.10(a).

(d) *Effect of failure to answer.* Failure of a party to file an answer required by this section within the time provided shall be deemed to constitute a waiver of his right to appear and contest the allegations of the notice of hearing and to authorize the trial examiner, without further notice to the party, to find the facts to be as alleged in the notice and to file with the Secretary a recommended decision containing such findings and appropriate conclusions. The Board of Directors or the trial examiner may, for cause shown, permit the filing of a delayed answer after the time for filing the answer has expired.

(e) *Opportunity for informal settlement.* Any interested party may at any time submit to the Secretary, for consideration by the Board of Directors, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. No such offer or proposal, or counteroffer or proposal, shall be admissible in evidence over the objection of any party in any hearing in connection with such proceeding. The foregoing provisions of this section shall not preclude settlement of any proceeding through the regular adjudicatory process by the filing of an answer as provided in this section, or by submission of the case to the trial examiner on a stipulation of facts and an agreed order.

**§ 308.5 Conduct of hearings.**

(a) *Selection of trial examiner.* Any hearing shall be held before a trial examiner selected by the Civil Service Commission and designated by the Board of Directors and, unless otherwise provided in the notice of hearing, shall be conducted as hereinafter provided.

(b) *Authority of trial examiner.* All hearings governed by this part shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The trial examiner designated by the Board of Directors to preside at any such hearing shall have complete charge of the hearing, and he shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings. Such examiner shall have all powers necessary to that end, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpenas and subpenas duces tecum, as authorized by law, and to revoke, quash, or modify any such subpena;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold conferences for the settlement or simplification of issues or for any other proper purpose; and

(7) To consider and rule upon, as justice may require, all procedural and other motions appropriate in an adversary proceeding, except that a trial examiner shall not have power to decide any motion to dismiss the proceedings or other motion which results in final determination of the merits of the proceedings.

Without limitation on the foregoing provisions of this paragraph, the trial examiner shall, subject to the provisions of this part, have all the authority of section 556(c) of title 5 of the United States Code.

(c) *Prehearing conference.* The trial examiner may, on his own initiative or at the request of any party, direct counsel for all parties to meet with him at a specified time and place prior to the hearing, or to submit suggestions to him in writing, for the purpose of considering any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact and of the contents and authenticity of documents;

(3) Matters of which official notice will be taken; and

(4) Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of witnesses and of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

Such conferences shall, at the request of any party, be recorded and at the conclusion thereof the trial examiner shall enter in the record an order which recites the results of the conference. Such order shall include the examiner's rulings upon matters considered at the conference, together with appropriate directions to the parties, if any; and such order shall control the subsequent course of the proceedings, unless modified at the hearing to prevent manifest injustice. Except as authorized by law, the trial examiner shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate, nor be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions in any case shall, in that case or a factually related case, participate or advise in the decision of the trial examiner except as a witness or counsel in the proceedings.

(d) *Attendance at hearings.* A hearing shall ordinarily be private and shall be attended only by the parties, their representatives or counsel, witnesses while testifying, and other persons having an official interest in the proceedings: *Provided, however,* That on written request by a party or representatives of the Board of Directors, or on the Board's own motion, the Board, in its discretion and to the extent permitted by law, may permit other persons to attend or may order the hearing to be public.

(e) *Transcript of testimony.* Hearings shall be recorded and transcripts will be made available to any party upon payment of the cost thereof and, in the event the hearing is public, shall be furnished on similar payment to other interested persons. A copy of the transcript of the testimony taken at any hearing, duly certified by the reporter, together with all exhibits, all papers and requests filed in the proceeding, and any briefs or memoranda of law theretofore filed in the proceeding, shall be filed with the Secretary of the Corporation, who shall transmit the same to the trial examiner. The Secretary shall promptly serve notice upon each of the parties of such filing and transmittal. The trial examiner shall have authority to rule upon motions to correct the record.

(f) *Order of procedure.* The counsel for the Corporation shall open and close

(g) *Continuances and changes or extensions of time and changes of place of hearing.* Except as otherwise expressly provided by law, the Board of Directors may by the notice of hearing or subsequent order provide time limits different from those specified in this part, and the Board of Directors may, on its own initiative or for good cause shown, change or extend any time limit prescribed by these rules or the notice of hearing, or change the time and place for beginning any hearing hereunder. The trial examiner may continue or adjourn a hearing from time to time and, as permitted by law or agreed to by the parties, from place to place. Extensions of time for making any filing or performing any act required or allowed to be done within a specified time in the course of a proceeding may be granted by the trial examiner for good cause shown.

(h) *Call for further evidence, oral argument, briefs, reopening of hearing.* The trial examiner may call for the production of further evidence upon any issue, may permit oral argument and submission of briefs at the hearing and, upon appropriate notice, may reopen any hearing at any time prior to the certification of his recommended decision to the Secretary. The Board of Directors shall render its decision within 90 days after the Secretary has notified the parties, pursuant to § 308.13, that the case has been submitted to the Board of Directors for final decision, unless within such 90-day period the Board of Directors shall order that such notice be set aside and the case reopened for further proceedings.

§ 308.6 **Subpenas.**

(a) *Issuance.* The trial examiner, or in the event he is unavailable, the Board of Directors, shall issue subpenas at the request of any party, requiring the attendance of witnesses or the production of documentary evidence at any designated place of hearing; except that where it appears to the trial examiner or the Board of Directors that the subpena may be unreasonable, oppressive, excessive in scope, or unduly burdensome, the party seeking the subpena may be required, as a condition precedent to the issuance of the subpena, to show the general relevance and reasonable scope of the testimony or other evidence sought. In the event the trial examiner or the Board of Directors, after consideration of all the circumstances, determines that the subpena or any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or it may refuse to issue the subpena, or issue it only upon such conditions as fairness requires.

(b) *Motion to quash.* Any person to whom a subpena is directed may, prior to the time specified therein for compliance but in no event more than five days after the date of service of such subpena, with notice to the party requesting the subpena, apply to the trial examiner, or, if he is unavailable, to the Board of Directors, to revoke, quash, or modify such subpena, accompanying such application with a statement of the reasons therefor.

(c) *Service of subpena.* Service of a subpena upon a person named therein shall be made by delivering a copy of the subpena to such person and by tendering the fees for 1 day's attendance and the mileage as specified in paragraph (d) of this section, except that when a subpena is issued at the instance of the Board of Directors fees and mileage need not be tendered at the time of service of the subpena. If service is made by a U.S. marshal, or his deputy, or an employee of the Corporation, such service shall be evidenced by his return thereon. If made by any other person, such person shall make affidavit thereto, describing the manner in which service is made, and return such affidavit on or with the original subpena. In case of failure to make service, reasons for the failure shall be stated on the original subpena. The original subpena, bearing or accompanied by the required return, affidavit or statement, shall be returned without delay to the trial examiner.

(d) *Attendance of witnesses.* The attendance of witnesses and the production of documents pursuant to a subpena, issued in connection with a hearing provided for in Subpart B, C, or D of this part, may be required from any place in any State or in any territory at any designated place where the hearing is being conducted. Witnesses subpenaed in any proceeding under this part shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

(e) *Depositions.* The Board of Directors or trial examiner, by subpena or subpena duces tecum, may order evidence to be taken by deposition in any proceeding at any stage thereof. Such depositions may be taken by the trial examiner or before any person designated by the Board of Directors or trial examiner and having power to administer oaths. Unless notice is waived, no deposition shall be taken except after at least 5 days' notice to the parties to the proceeding.

(f) *Application and order to take oral deposition.* Any party desiring to take the oral deposition of a witness, in connection with any hearing provided for in this part, shall make application in writing to the trial examiner or, in the event he is unavailable, to the Board of Directors, setting forth the reasons why such deposition should be taken, the name and post office address of the witness, the matters concerning which the witness is expected to testify, its relevance, and the time when, the place where, and the name and post office address of the person before whom it is desired the deposition be taken. A copy of such application shall be served upon every other party to the proceeding by the party making such application. Upon a showing that (1) the proposed witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable at the hearing, (2) his testimony will be material, and (3) the taking of the deposition will not result in any undue burden to any other party or in undue delay of the proceeding, the trial examiner or the Board of Directors may, in his or its discretion, by such subpena or subpena duces tecum, order the oral deposition to be taken. Such subpena will name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is ordered to be taken, may or may not be the same as those named in the application. Notice of the issuance of such subpena shall be served upon each of the parties a reasonable time, and in no event less than five days, in advance of the time fixed for the taking of the deposition.

(g) *Procedure on deposition; objections.* Each witness testifying upon oral deposition shall be duly sworn, and the adverse party shall have the right to cross-examine. Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon; but the person taking the deposition shall not have power to rule upon questions of competency or materiality or relevance of evidence. Failure to object to questions or evidence shall not be deemed a waiver except where the ground of the objection is one which might have been obviated or removed if presented at that time. The questions propounded and the answers thereto, together with all objections made (but not including argument or debate) shall be recorded by the person taking the deposition, or under his direction. The deposition shall be subscribed by the witness, unless the parties by stipulation waived the signing or the witness is ill or cannot be found or refused to sign, and certified as a true and complete transcript thereof by the person taking the deposition. If the deposition is not subscribed to by the witness, such person shall state on the record this fact and the reason therefor. Such person shall promptly send the original and two copies of such deposition, together with the original and two copies of all exhibits, by registered mail to the Secretary of the Corporation unless otherwise directed in the order authorizing the taking of the deposition. Interested parties shall make their own arrangements with the person taking the deposition for copies of the testimony and the exhibits.

(h) *Introduction as evidence.* Subject to appropriate rulings on such objections to questions of evidence as were noted at the time the deposition was taken or as would be valid were the witness personally present and testifying (except objections waived under the third sentence of paragraph (g) of this section), the deposition or any part thereof may be read in evidence by any party to the proceeding. Only such part or the whole of a deposition as is received in evidence at a hearing shall constitute a part of the record in such proceeding upon which a decision may be based.

(i) *Payment of fees.* Witnesses whose oral depositions are taken shall be entitled to the same fees as are paid for like services in the courts of the United States. Fees of persons taking such depositions and the fees of the reporter shall be paid by the person upon whose application the deposition was taken.

§ 308.7 Rules of evidence.

(a) *Evidence*. Every party shall have the right to present his case or defense by oral and documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(b) *Objections*. Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument thereon except as ordered, allowed, or requested by the trial examiner. Rulings on such objections and on any other matters shall be a part of the transcript. Failure to object to admission or exclusion of evidence or to any ruling shall be considered a waiver of such objection.

(c) *Official notice*. All matters officially noticed by the trial examiner shall appear on the record.

§ 308.8 Motions.

(a) *In writing*. An application or request for an order or ruling not otherwise specifically provided for in this part shall be made by motion. After a trial examiner has been designated to preside at a hearing and before the filing with the Secretary of his recommended decision, pursuant to § 308.9, such applications or requests shall be addressed to and filed with him. At all other times motions shall be addressed to the Board of Directors and filed with the Secretary. Motions shall be in writing, except that a motion made at a session of a hearing may be made orally upon the record unless the trial examiner directs that it be reduced to writing. All written motions shall state with particularity the order or relief sought and the grounds therefor.

(b) *Objections*. Within 5 days after service of any written motion, or within such other period of time as may be fixed by the trial examiner or the Board of Directors, any party may file a written answer or objection to such motion. The moving party shall have no right to reply, except as permitted by the trial examiner or the Board of Directors. As a matter of discretion, the trial examiner or the Board of Directors may waive the requirements of this section as to motions for extensions of time, and may rule upon such motions ex parte.

(c) *Oral argument*. No oral argument will be heard on motions except as otherwise directed by the trial examiner or the Board of Directors. Written memoranda or briefs may be filed with motions or answers or objections thereto, stating the points and authorities relied upon in support of the position taken.

(d) *Rulings on motions*. Except as otherwise provided in this part, the trial examiner shall rule upon all motions properly addressed to him and upon such other motions as the Board of Directors may direct, except that if the trial examiner finds that a prompt decision by the Board of Directors on a motion is essential to the proper conduct of the proceeding, he may refer such motion to the Board of Directors for decision. The Board of Directors shall rule upon all motions properly submitted to it for decision.

(e) *Appeal from rulings on motions*. All motions and answers or objections thereto and rulings thereon shall become part of the record. Rulings of a trial examiner on any motion may not be appealed to the Board of Directors prior to its consideration of the trial examiner's recommended decision, findings and conclusions except by special permission of the Board of Directors; but they shall be considered by the Board of Directors in reviewing the record. Requests to the Board of Directors for special permission to appeal from such rulings of the trial examiner shall be filed promptly, in writing, and shall briefly state the grounds relied on. The moving party shall immediately serve a copy thereof on every other party to the proceeding.

(f) *Continuation of hearing*. Unless otherwise ordered by the trial examiner or the Board of Directors, the hearing shall continue pending the determination of any motion by the Board of Directors.

§ 308.9 Proposed findings and conclusions and recommended decision.

(a) *Proposed findings and conclusions by parties*. Each party to a hearing shall have a period of 15 days after service of the Secretary's notice of the filing and transmittal of the record, as provided in paragraph (e) of § 308.5, or such further time as the trial examiner for good cause shall determine, to file with the trial examiner proposed findings of fact, conclusions of law and order, which may be accompanied by a brief or memorandum in support thereof. Such proposals shall be supported by citation of such statutes, decisions and other authorities, and by page references to such portions of the record, as may be relevant. All such proposals, briefs and memoranda shall become a part of the record.

(b) *Recommended decision and filing of record*. The trial examiner shall, within 30 days after the expiration of the time allowed for the filing of proposed findings, conclusions, and order, or within such further time as the Board of Directors for good cause shall determine, file with the Secretary and certify to the Board of Directors for decision the entire record of the hearing, which shall include his recommended decision, findings of fact, conclusions of law, and proposed order, the transcript, exhibits (including on request of any of the parties any exhibits excluded from evidence or tenders of proof), exceptions, rulings, and all briefs and memoranda filed in connection with the hearing. Promptly upon such filing the Secretary shall serve upon each party to the proceeding a copy of the trial examiner's recommended decision, findings, conclusions, and proposed order. The provisions of this paragraph and § 308.10 shall not apply, however, in any case where the hearing was held before the Board of Directors.

§ 308.10 Exceptions.

(a) *Filing*. Within 15 days after service of the recommended decision, findings, conclusions, and proposed order of the trial examiner, or such further time as the Board of Directors for good cause shall determine, any party (other than a party who has not filed an answer in accordance with paragraphs (a) and (d) of § 308.4, unless no answer was required of such party by the Board of Directors) may file with the Secretary exceptions thereto or any part thereof, or to the failure of the trial examiner to make any recommendation, finding, or conclusion, or to the admission or exclusion of evidence, or other ruling of the trial examiner, supported by such brief as may appear advisable.

(b) *Waiver*. Failure of a party to file exceptions to the recommended decision, findings, conclusions, and proposed order of the trial examiner or any portion thereof, or to his failure to adopt a proposed finding or conclusion, or to the admission or exclusion of evidence or other ruling of the trial examiner, within the time prescribed in paragraph (a) of this section, shall be deemed to be a waiver of objection thereto.

§ 308.11 Briefs.

(a) *Contents*. All briefs shall be confined to the particular matters in issue. Each exception or proposed finding or conclusion which is briefed shall be supported by a concise argument or by citation of such statutes, decisions or other authorities and by page reference to such portions of the record or recommended decision of the trial examiner as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate references to the transcript.

(b) *Reply briefs*. Reply briefs may be filed with the Secretary of the Corporation within 10 days after service of briefs and shall be confined to matters in original briefs of opposing parties. Further briefs may be filed only with the permission of the Board of Directors.

(c) *Delays*. Briefs not filed on or before the time fixed in this subpart will be received only upon special permission of the Board of Directors.

§ 308.12 Oral argument before the Board of Directors.

Upon its own initiative, or upon the written request of any party made within the time prescribed for the filing of exceptions, a brief in support thereof, or a reply brief, if any, for oral argument on the findings, conclusions, and recommended decision of the trial examiner, the Board of Directors, if it considers justice will best be served, may order the matter to be set down for oral argument before the Board of Directors or one or more members thereof. Oral argument before the Board of Directors shall be recorded unless otherwise ordered by the Board of Directors.

### § 308.13 Notice of submission to the Board of Directors.

Upon the filing of the record with the Secretary of the Corporation, and upon the expiration of the time for the filing of exceptions and all briefs, including reply briefs or any further briefs permitted by the Board of Directors and upon the hearing of oral argument by the Board of Directors, if ordered by the Board of Directors, the Secretary shall notify the parties that the case has been submitted to the Board of Directors for final decision.

### § 308.14 Decision of Board of Directors.

Appropriate members of the staff, who are not engaged in the performance of investigative or prosecuting functions in the case, or in a factually related case, may advise and assist the Board of Directors in the consideration of the case and in the preparation of appropriate documents for its disposition. Copies of the decision and order of the Board of Directors shall be furnished by the Secretary of the Corporation to the parties to the proceedings, the bank involved and to the appropriate State supervisory authority, in the case of a State bank. Where the proceedings involve the involuntary termination of the insured status of a bank, copies of the decision and order shall also be furnished to the Board of Governors of the Federal Reserve System in the case of a State member bank, or to the Comptroller of the Currency in the case of a national bank or a District bank.

### § 308.15 Filing papers.

Recommended decisions, exceptions, briefs and other papers required to be filed with the Board of Directors or Secretary in any proceedings shall be filed with the Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429. Any such papers may be sent to the Secretary by mail or express but must be received in the office of the Corporation in Washington, D.C., or postmarked by a post office, within the time limit for such filing.

### § 308.16 Service.

(a) *By the Board of Directors.* All documents or papers required to be served by the Board of Directors upon any party afforded a hearing shall be served by the Secretary of the Corporation unless some other person shall be designated for such purpose by the Board of Directors. Such service, except for service on counsel for the Board of Directors, shall be made by personal service or by registered mail, addressed to the last known address as shown on the records of the Board of Directors, on the attorney or representative of record of such party, provided that if there is no attorney or representative of record, such service shall be made upon such party at the last known address as shown on the records of the Board of Directors. Such service may also be made in such other manner reasonably calculated to give actual notice as the Board of Directors may by regulation or otherwise provide.

(b) *By the parties.* Except as otherwise expressly provided in this part, all documents or papers filed in a proceeding under this part shall be served by the party filing the same upon the attorneys or representatives of record of all other parties to the proceeding, or, if any party is not so represented, then upon such party. Such service may be made by personal service or by registered, certified, or regular first-class mail addressed to the last known address of such parties, or their attorneys or representatives of record. All such documents or papers shall, when tendered to the Board of Directors or the trial examiner for filing, show that such service has been made.

### § 308.17 Copies.

Unless otherwise specifically provided in the notice of hearing, an original and seven copies of all documents and papers required or permitted to be filed or served upon the Secretary of the Corporation under this part, except the transcript of testimony and exhibits, shall be furnished to the Secretary of the Corporation.

### § 308.18 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this part, the date of the act, event or default from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday, or legal holiday in the District of Columbia, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor such legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation unless the time within which the act is to be performed is 10 days or less in which event Saturdays, Sundays, and legal holidays shall not be included.

(b) *Service by mail.* Whenever any party has the right or is required to do some act or take some proceeding, within a period of time prescribed in this part, after the service upon him of any document or other paper of any kind, and such service is made by mail, 3 days shall be added to the prescribed period from the date when the matter served is deposited in the United States mail.

### § 308.19 Documents in proceedings confidential.

Unless and until otherwise ordered by the Board of Directors, the notice of hearing, the transcript, the recommended decision of the trial examiner, exceptions thereto, proposed findings or conclusions, the findings and conclusions of the Board of Directors and other papers which are filed in connection with any hearing shall not be made public, and shall be for the confidential use only of the Board of Directors, the trial examiner, the parties and appropriate supervising authorities.

### § 308.20 Formal requirements as to papers filed.

(a) *Form.* All papers filed under this subpart shall be printed, typewritten, or otherwise reproduced. All copies shall be clear and legible.

(b) *Signature.* The original of all papers filed by a bank shall be signed by an officer thereof, and if filed by another party shall be signed by said party, or by the duly authorized agent or attorney of the bank or other party, and in all such cases shall show the signer's address. Counsel for the Corporation shall sign the original of all papers filed by him.

(c) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the Corporation, the name of the party, and the subject of the particular paper.

## Subpart B—Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

### § 308.21 Scope.

Under the authority of section 8 of the Federal Deposit Insurance Act, the Board of Directors of the Corporation may terminate the insured status of an insured bank upon the grounds set forth therein and enumerated in §§ 308.22 and 308.27. The procedure for terminating the insured status of a bank as therein prescribed will be followed and hearings required thereunder will be conducted in accordance with the rules and procedures set forth in this subpart and Subpart A of this part.

### § 308.22 Grounds for termination of insurance.

Whenever the Board of Directors finds that an insured bank or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such bank, or that such bank is in an unsafe or unsound condition to continue operations as an insured bank, or that such bank or its directors or trustees have violated an applicable law, rule, regulation or order, or any condition imposed in writing by the Corporation in connection with the granting of any application or other request by the bank, or any written agreement entered into with the Corporation, the Board of Directors will first give to the Comptroller of the Currency in the case of a national bank or a District bank, to the authority having supervision of the bank in the case of a State bank, and to the Board of Governors of the Federal Reserve System in the case of a State member bank, a statement with respect to such practices or violations for the purpose of securing the correction thereof and will forward a copy thereof to the bank.

### § 308.23 Notice of intention to terminate insured status.

Unless correction of the practices, condition or violations set forth in the statement prescribed in § 308.22 is made within 120 days, or such shorter period not less than 20 days fixed by the Corporation in any case where the Board of Directors in its discretion has determined that the insurance risk of the Corporation is unduly jeopardized, or fixed by the Comptroller of the Currency in the case of a national bank, or the State authority in the case of a State bank, or Board of Governors of the Federal Reserve System in the case of a State member bank, as the case may be, the Board of Directors, if it determines to proceed further, will give to the bank not less than 30 days' written notice of its intention to terminate the status of the bank as an insured bank, and will fix a time and place for a hearing before the Board of Directors or before a person designated by it to conduct such hearing, at which evidence may be produced, and upon such evidence the Board of Directors will make written findings which shall be conclusive.

§ 308.24 Order terminating insured status.

If the Board of Directors finds that any unsafe or unsound practice or condition or violation specified in such statement has been established and has not been corrected within the time prescribed under § 308.23, in which to make such corrections, the Board of Directors may order that the insured status of the bank be terminated on a date subsequent to such finding and to the expiration of the time specified in the notice of intention issued under § 308.23.

§ 308.25 Consent to termination of insured status.

Unless the bank appears at the hearing designated in the notice of hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured bank. In the event the bank fails to appear at such hearing, the trial examiner shall forthwith report the matter to the Board of Directors and the Board may thereupon issue an order terminating the bank's insured status.

§ 308.26 Notice of termination of insured status.

Prior to the effective date of the termination of the insured status of a bank under section 8(a) of the Federal Deposit Insurance Act and at such time as the Board of Directors shall specify, the bank shall mail to each depositor at his last address of record on the books of the bank and publish in not less than two issues of a local newspaper of general circulation and shall furnish the Corporation with proof of publication of notice of such termination of insured status. The notice shall be as follows:

NOTICE

______________________
(Date)

1. The status of the ______________________, ______________________, as an insured bank under the provisions of the Federal Deposit Insurance Act, will terminate as of the close of business on the __ day of __________, 19__;

2. Any deposits made by you after that date, either new deposits or additions to existing deposits, will not be insured by the Federal Deposit Insurance Corporation;

3. Deposits in the bank on the __ day of __________, 19__, up to a maximum of $15,000 for each depositor, will continue to be insured, as provided by the Federal Deposit Insurance Act, for 2 years after the close of business on the __ day of __________, 19__: *Provided, however*, That any withdrawals after the close of business on the __ day of ____________, 19__, will reduce the insurance coverage by the amount of such withdrawals.

______________________________________
(Name of banking institution)

______________________________________
(Address)

There may be included in such notice any additional information or advice the banking institution may deem desirable.

§ 308.27 Termination of insured status of banking institution not engaged in the business of receiving deposits other than trust funds.

Whenever the Board of Directors shall have evidence indicating that an insured banking institution is not engaged in the business of receiving deposits, other than trust funds, it will give notice in writing to the banking institution of such fact, and will direct the banking institution to show cause why the insured status of the banking institution should not be terminated under the provisions of section 8(p) of the Federal Deposit Insurance Act. The banking institution shall have 30 days, or such greater period of time as the Board of Directors shall prescribe, after receipt of such notice to submit affidavits or other written proof that it is engaged in the business of receiving deposits, other than trust funds. The Board of Directors may, in its discretion, upon written request of the banking institution, authorize a hearing before it or any person designated by it. If upon consideration of the evidence, the Board of Directors finds that the banking institution is not engaged in the business of receiving deposits, other than trust funds, such finding shall be conclusive and the Corporation will notify the banking institution that its insured status will terminate at the expiration of the first full semiannual assessment period following such notice. Prior to the date of the termination of the insured status of a banking institution under section 8(c) of the Federal Deposit Insurance Act, and within the time specified by the Board of Directors, the banking institution shall mail to each depositor at his last address of record on its books and publish in not less than two issues of a local newspaper of general circulation, a notice of such termination in form substantially as follows:

NOTICE

______________________
(Date)

The status of the ______________________,
(Name of banking institution)

______________________, ________________
(City or town) (State)

as an insured bank under the Federal Deposit Insurance Act, will terminate on the __ day of __________, 19__, and its deposits will thereupon cease to be insured.

______________________________________
(Name of banking institution)

______________________________________
(Address)

There may be included in such notice any additional information or advice the banking institution may deem desirable.

## Subpart C—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

§ 308.28 Scope.

The rules and procedures set forth in this subpart are applicable to proceedings by the Board of Directors with a view to ordering an insured State nonmember bank (other than a District bank) to cease and desist from practices and violations described in section 8 of the Federal Deposit Insurance Act and enumerated in § 308.29. The procedures for issuing such orders prescribed in section 8 of said Act will be followed and hearings required thereunder will be conducted in accordance with the rules and procedures set forth in this subpart and Subpart A of this part.

§ 308.29 Grounds for cease-and-desist orders.

If, in the opinion of the Board of Directors, any insured State nonmember bank (other than a District bank) or bank which has insured deposits is engaging or has engaged, or the Board of Directors has reasonable cause to believe that the bank is about to engage, in an unsafe or unsound practice in conducting the business of such bank, or is violating or has violated, or the Board of Directors has reasonable cause to believe that the bank is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Board of Directors in connection with the granting of an application or other request by the bank, or any written agreement entered into with the Corporation, the Board of Directors may issue and serve upon the bank a notice of charges in respect thereof.

§ 308.30 Notice of charges and hearing.

The notice referred to in § 308.29 will contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the bank. The hearing will be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the Board of Directors at the request of the bank. Unless the bank appears at the hearing by a duly authorized representative, it will be deemed to have consented to the issuance of the cease-and-desist order.

§ 308.31 Issuance of order.

In the event of such consent, or if upon the record made at any such hearing, the Board of Directors finds that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board of Directors may issue and serve upon the bank an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the bank and its directors, officers, employees, and agents to cease and desist from the same and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

**§ 308.32 Effective date.**

A cease-and-desist order will become effective at the expiration of 30 days after the service of such order upon the bank concerned (except in the case of a cease-and-desist order issued upon consent, which will become effective at the time specified therein), and will remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Board of Directors or a reviewing court.

**§ 308.33 Temporary cease-and-desist orders.**

Whenever the Board of Directors determines that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges referred to in § 308.28, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank, or is likely to otherwise seriously prejudice the interests of its depositors, the Board of Directors may issue a temporary order requiring the bank to cease and desist from any such violation or practice.

**§ 308.34 Effective date of temporary order.**

Such order will become effective upon service upon the bank and, unless set aside, limited, or suspended by a court in proceedings authorized under the Federal Deposit Insurance Act will remain effective and enforceable pending the completion of the administrative proceedings held pursuant to such notice and until such time as the Board of Directors dismisses the charges specified in such notice, or if a cease-and-desist order is issued against the bank pursuant to § 308.29, until the effective date of any such order.

## Subpart D—Rules and Procedures Applicable to Proceedings Relating to Removal and Suspension Orders

**§ 308.35 Scope.**

The rules and procedures set forth in this subpart are applicable to proceedings by the Board of Directors to remove or suspend directors or officers of an insured State nonmember bank (other than a District bank) or any other person participating in the conduct of the affairs of such a bank, and/or prohibit such director, officer or other person from further participation in the conduct of the affairs of such a bank, upon the grounds set forth in section 8 of the Federal Deposit Insurance Act and enumerated in this subpart. The procedures for issuing such orders prescribed in section 8 of said Act will be followed and hearings required thereunder will be conducted in accordance with the rules and procedures set forth in this subpart and Subpart A of this part.

**§ 308.36 Grounds for removal order.**

(a) Whenever, in the opinion of the Board of Directors, any director or officer of an insured State nonmember bank (other than a District bank) has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the bank, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Board of Directors determines that the bank has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, the Board of Directors may serve upon such director or officer a written notice of its intention to remove him from office.

(b) Whenever, in the opinion of the Board of Directors, any director or officer of an insured State nonmember bank (other than a District bank), by conduct or practice with respect to another insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to continue as a director or officer and, whenever, in the opinion of the Board of Directors, any other person participating in the conduct of the affairs of an insured State nonmember bank (other than a District bank), by conduct or practice with respect to such bank or other insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to participate in the conduct of the affairs of such insured bank, the Board of Directors may serve upon such director, officer, or other person a written notice of its intention to remove him from office and/or to prohibit his further participation in any manner in the conduct of the affairs of the bank.

**§ 308.37 Grounds for suspension order.**

In respect to any director or officer of an insured State nonmember bank (other than a District bank) or any other person referred to in paragraph (a) or (b) of § 308.36 the Board of Directors may, if it deems it necessary for the protection of the bank or the interests of its depositors, by written notice to such effect served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the bank.

**§ 308.38 Effective date of suspension order.**

Any suspension and/or prohibition which is subject to the notice prescribed in § 308.37, shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by the Federal Deposit Insurance Act, shall remain in effect pending the completion of the administrative proceedings held pursuant to the notice served under paragraph (a) or (b) of § 308.36 and until such time as the Board of Directors shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice will also be served upon the bank of which he is a director or officer or in the conduct of whose affairs he has participated.

**§ 308.39 Notice of intention to remove and hearing.**

A notice of intention to remove a director, officer, or other person from office and/or to prohibit his participation in the conduct of the affairs of an insured bank, will contain a statement of the facts constituting grounds therefor and will fix a time and place at which a hearing will be held thereon. Such hearing will be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Board of Directors at the request of (a) such director or officer or other person, and for good cause shown, or (b) the Attorney General of the United States. Unless such director, officer, or other person appears at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal and/or prohibition.

**§ 308.40 Issuance of removal order and effective date.**

In the event of such consent, or if upon the record made at any such hearing the Board of Directors finds that any of the grounds specified in such notice has been established, the Board of Directors may issue such orders of suspension or removal from office, and/or prohibition from participation in the conduct of the affairs of the bank, as it may deem appropriate. Any such order shall become effective at the expiration of 30 days after service upon such bank and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board of Directors or a reviewing court.

**§ 308.41 Suspension and removal where felony charged.**

(a) Whenever any director or officer of an insured State nonmember bank (other than a District bank), or other person participating in the conduct of the affairs of such bank, is charged in any information, indictment, or complaint authorized by a U.S. attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the Board of Directors may, by written notice served upon such director, officer, or other person suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the bank. A copy of such notice will also be served upon the bank. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Board of Directors.

(b) In the event that a judgment of conviction with respect to such offense is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Board of Directors may issue and serve upon such director, officer, or other person an order removing him from office and/or prohibiting him from further participation in any manner in the conduct of the affairs of the bank except with the consent of the Board of Directors. A copy of such order will also be served upon such bank, whereupon such director or officer shall cease to be a director or officer of such bank. A finding of not guilty or other disposition of the charge will not preclude the Board of Directors from thereafter instituting proceedings to remove such director, officer, or other person from office and/or to prohibit further participation in bank affairs, pursuant to the provisions of this subpart.

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

Dated this 14th day of July 1967.

FEDERAL DEPOSIT INSURANCE CORPORATION,
[SEAL] E. F. DOWNEY,
*Secretary.*

[F.R. Doc. 67-8385; Filed, July 31, 1967; 8:45 a.m.]

# Title 14—AERONAUTICS AND SPACE

## Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 8172; Amdt. 39-454]

## PART 39—AIRWORTHINESS DIRECTIVES

### Graviner Automatic Fire Extinguishers

Amendment 39-422 (32 F.R. 7443), AD 67-17-4, requires repetitive inspections and replacement of defective Graviner Automatic Single Headed Fire Extinguisher Containers P/N's 147A and 1147A. Subsequent to the issuance of Amendment 39-422, the FAA has been advised that stress corrosion has been found in other models of Graviner fire extinguisher containers. Based on further investigation, the FAA has determined that all Graviner fire extinguishers must be inspected and replaced as necessary. The FAA has also determined that after the initial inspections, fire extinguisher containers with a stamp date later than October 1965 must be reinspected between 1,400 and 1,500 hours' time in service after the initial inspection. Therefore, this AD is being superseded by a new AD that requires all Graviner fire extinguisher containers to be inspected in accordance with Graviner Alert Service Bulletin No. 26-A30, Issue No. 2, dated April 21, 1967, and the replacement of defective containers before further flight.

In view of the possible seriousness of the failure of the fire extinguisher containers, a situation exists that requires immediate adoption of this regulation, and it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective on less than 30 days' notice.

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

GRAVINER. Applies to automatic fire extinguishers installed on, but not necessarily limited to, the airplanes listed: P/N's 112A, 147A, and 1147A installed on BAC 1-11 200 and 400 Series airplanes; P/N 132A installed on Short Bros. Skyvan SC-7, Series 2 Variant 200; and P/N 142A installed on Hawker Siddeley DH-125 Series airplanes.

Compliance required as indicated.

To prevent failure of Graviner fire extinguisher containers, accomplish the following:

(a) Within the next 25 hours' time in service after the effective date of this AD, unless already accomplished within the last 100 hours' time in service, visually inspect Graviner automatic fire extinguisher containers for cracks or leaks and weight in accordance with Graviner Alert Service Bulletin No. 26-A30, Issue No. 2, dated April 21, 1967, or later ARB-approved issue, or FAA-approved equivalent.

(b) Repeat the inspection specified in paragraph (a) at intervals not to exceed 500 hours' time in service from the last inspection for fire extinguisher containers with a stamp date October 1965 or before. For fire extinguisher containers with a stamp date later than October 1965, reinspect in accordance with paragraph (a) once between 1,400 and 1,500 hours' time in service after the initial inspection.

(c) Replace all defective fire extinguisher containers with fire extinguisher containers of the same part number with a stamp date later than October 1965 before further flight.

This supersedes Amendment 39-422 (32 F.R. 7443), AD 67-17-4.

This amendment becomes effective August 1, 1967.

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

Issued in Washington, D.C., on July 25, 1967.

R. S. SLIFF,
*Acting Director,*
*Flight Standards Service.*

[F.R. Doc. 67-8387; Filed, July 31, 1967; 8:46 a.m.]

[Docket 7997; Amdt. 39-453]

## PART 39—AIRWORTHINESS DIRECTIVES

### Rolls Royce Model Spey Mark Engines

Amendment 39-363 (32 F.R. 3690), AD 67-8-6 requires inspections at intervals of not more than 25 hours' time in service of certain Avica fuel tube clamps on Rolls Royce Model Spey Mark 506-14, 510-14, and 511-14 engines until the incorporation of specified Rolls Royce modifications, at which point the repetitive inspection interval is extended to 100 hours' time in service or discontinued depending on the modification accomplished. Based on service experience and tests conducted subsequent to the issuance of the AD, the FAA has determined that the repetitive inspections may be discontinued when either of the specified modifications is accomplished. Therefore, the AD is being amended to require inspection of the Avica fuel tube clamps until Part 1 or Part 2 of Rolls Royce Modification 2939 and 2512PP, or later ARB-approved equivalent has been incorporated.

Since this amendment relieves a restriction and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-363 (32 F.R. 3690), AD 67-8-6, is amended by deleting present paragraph (b), by redesignating paragraph (c) as paragraph (b), and by amending the new paragraph (b) by inserting the words "or Part 2" immediately after the words "Part 1".

This amendment becomes effective August 1, 1967.

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

Issued in Washington, D.C., on July 24, 1967.

R. S. SLIFF,
*Acting Director,*
*Flight Standards Service.*

[F.R. Doc. 67-8388; Filed, July 31, 1967; 8:46 a.m.]

[Airspace Docket No. 66-SW-54]

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

### Alteration of Federal Airways

On March 4, 1967, a notice of proposed rule making was published in the FEDERAL REGISTER (32 F.R. 3750) stating that the Federal Aviation Agency was considering amendments to Part 71 of the Federal Aviation Regulations that would realign V-68 from Corpus Christi, Tex., 12 AGL INT Corpus Christi 178° and McAllen, Tex., 039° radials; 12 AGL McAllen including a 12 AGL south alternate from INT Corpus Christi 178° and McAllen 039° radials to McAllen via Harlingen, Tex. The airspace above 14,000 feet MSL to be excluded on the segment of the main airway from the intersection of Corpus Christi 178° and McAllen 039° radials to McAllen. V-163 would be realigned from Brownsville, Tex., 12 AGL direct to Corpus Christi, including a 12 AGL west alternate from Brownsville to the INT of Harlingen 023° and Corpus Christi 178° radials via Harlingen.

Subsequent to publication of the notice, it was determined that there was a requirement for a holding pattern at Corpus Christi. To provide adequate separation from operations at NAS Corpus Christi, it is necessary to establish this holding pattern on the Corpus Christi 181° True radial. To provide compatability between the holding pattern radial and V-68/163, the agency is altering the alignments of V-68/163, as proposed in the notice, as follows:

1. V-68 From Corpus Christi 12 AGL INT Corpus Christi 181° T (172° Mag.) and McAllen 039° T. (030° Mag.) radials; 12 AGL McAllen, including a 12 AGL South alternate from INT Corpus Christi 181° T (172° Mag.) and McAllen 039° T (030° Mag.) radials to McAllen via Harlingen. The main airway would exclude the airspace above 14,000 feet MSL from 49 miles northeast of McAllen to McAllen.

2. V-163 From Brownsville 12 AGL INT Brownsville 356° T (347° Mag.) and Corpus Christi 181° T (172° Mag.) radials, 12 AGL Corpus Christi, including a 12 AGL West alternate from Brownsville to INT Brownsville 356° T (347° Mag.) and Corpus Christi 181° radials via Harlingen, Tex.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. The amended proposal was discussed with representatives of the Department of the Navy and the Air Transport Association of America. All comments received were given due consideration.

The Department of the Air Force objected to the revised proposal as it might require adjustment of the Air Force training area. This objection was later withdrawn.

The Air Transport Association of America objected to the reduced ceiling on V-68 as it would restrict climb and descent capability of DC-9 aircraft in and out of Harlingen. They stated a requirement for a direct airway between Harlingen and Corpus Christi. However, to accommodate military training requirements, they would not object to the proposed airway alignments until such time as provision could be made to incorporate military training missions into the common system and provide a more efficient airway structure in this area.

The airway alignments considered in the notice were a compromise structure designed to fulfill civil requirements and also provide additional airspace for military training missions. The ceiling on V-68 was proposed to provide minimum civil requirements to McAllen and at the same time release airspace above 14,000 feet MSL for the military training. The altered airway alignments considered herein will satisfy civil requirements by providing for holding pattern airspace south of Corpus Christi that will not interfere with operations at NAS Corpus Christi and that will not derogate DC-9 aircraft climb and descent capabilities at McAllen. The action taken herein is not considered as unduly restricting the military training operations.

Since the airway alignments considered herein are minor in nature and in the interest of safety, the Administrator has determined that notice and public procedure thereon is impractical.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective October 12, 1967, as hereinafter set forth.

Section 71.123 (32 F.R. 2009) is amended as follows:

1. In V-68 all after "12 AGL Corpus Christi;" is deleted and "12 AGL INT Corpus Christi 181° and McAllen, Tex., 039° radials; 12 AGL McAllen, including a 12 AGL south alternate from INT Corpus Christi 181° and McAllen 039° radials to McAllen via Harlingen, Tex. The airspace on the main airway above 14,000 feet MSL from 49 miles northeast of McAllen to McAllen and the airspace within Mexico is excluded." is substituted therefor.

2. In V-163 all before "12 AGL INT Corpus Christi 313°" is deleted and "From Brownsville, Tex., 12 AGL INT Brownsville 356° and Corpus Christi 181° radials; 12 AGL Corpus Christi, including a 12 AGL west alternate from Brownsville to INT Brownsville 356° and Corpus Christi 181° radials via Harlingen, Tex.;" is substituted therefor.

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

Issued in Washington, D.C., on July 24, 1967.

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

[F.R. Doc. 67-8889; Filed, July 31, 1967; 8:46 a.m.]

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[Airspace Docket No. 67-EA-60]

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

### Designation of Reporting Point

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to designate the Tuna DME high altitude reporting point.

Since this amendment is minor in nature and involves a subject in which the public is not particularly interested, notice and public procedure are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, this amendment will become effective more than 30 days after publication.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., October 12, 1967, as hereinafter set forth.

Section 71.207 (32 F.R. 2282) is amended by adding:

Tuna DME INT: Kennedy, N.Y., VORTAC 143° radial, 128 nautical miles from Kennedy VORTAC.

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

Issued in Washington, D.C., on July 25, 1967.

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

[F.R. Doc. 67-8890; Filed, July 31, 1967; 8:46 a.m.]

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[Airspace Docket No. 67-SO-61]

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

### Alteration of Transition Area

On June 13, 1967, a notice of proposed rule making was published in the FEDERAL REGISTER (32 F.R. 8422) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Greenwood, Miss., transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

Subsequent to the publication of the notice, it was determined that the direction "N" used in describing an extension predicated on the Greenwood VOR 063° radial should have read "NE." Additionally, the geographic coordinate (latitude 33°29'20" N., longitude 90°05'00" W.) for the Greenwood-Le Flore Airport was obtained from Coast and Geodetic Survey. Accordingly, action is taken herein to correct the technical discrepancy and to add the geographic coordinate for the airport in the description of this transition area.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.d.s.t., October 12, 1967, as hereinafter set forth.

In § 71.181 (32 F.R. 2148) the Greenwood, Miss., transition area is amended to read:

GREENWOOD, MISS.

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Greenwood-Le Flore Airport (latitude 33°29'20" N., longitude 90°05'00" W.); within 2 miles each side of the Greenwood VOR 243° and 063° radials, extending from the Greenwood control zone to 8 miles southwest of the VOR; and that airspace extending upward from 1,200 feet above the surface within 8 miles southeast and 5 miles northwest of the Greenwood VOR 243° and 063° radials, extending from 5 miles northeast of the VOR to 14 miles southwest, and within 5 miles each side of the Greenwood VOR 063° radial, extending from 5 miles northeast of the VOR to 18 miles northeast.

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

Issued in East Point, Ga., on July 24, 1967.

JAMES G. ROGERS,
*Director, Southern Region.*

[F.R. Doc. 67-8918; Filed, July 31, 1967; 8:49 a.m.]

No. 147—Pt. I——7

[Airspace Docket No. 67-WE-51]

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

### Revocation of Control Area Extension

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to revoke a control area extension that is no longer required as designated controlled airspace.

Since this action imposes no additional burden on any person, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, effective 0001 e.s.t., October 12, 1967, Part 71 of the Federal Aviation Regulations is amended as hereinafter set forth:

In § 71.165 (32 F.R. 2068), the following control area extension is revoked: Battle Mountain, Nev.

Issued in Los Angeles, Calif., on July 24, 1967.

LEE E. WARREN,
*Acting Director, Western Region.*

[F.R. Doc. 67-8919; Filed, July 31, 1967; 8:49 a.m.]

## Chapter II—Civil Aeronautics Board

### SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-500; Amdt. 7]

## PART 208—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

### Carrier Solicitation of Members of Chartering Organization After Charter Contract Has Been Signed

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 26th day of July 1967.

By notice of proposed rule making issued June 2, 1967, EDR-117, Docket 18285, and published at 32 F.R. 8248, the Board advised of its intention to amend Part 208 of the Economic Regulations to permit supplemental air carriers to solicit individual members of a chartering organization to form a charter group after the charter contract has been signed.

Interested persons were afforded an opportunity to participate in the making of this rule, but no comments were received. Therefore, the Board will now make final the rule as proposed.

Accordingly, the Civil Aeronautics Board hereby amends Part 208 of its Economic Regulations (14 CFR Part 208) effective August 31, 1967, as follows:

Amend § 208.200a to read as follows:

**§ 208.200a Solicitation and formation of a chartering group.**

(a) A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip, except after a charter contract has been signed.

(b) A carrier shall not employ, directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group to make the charter flight, except after a charter contract has been signed.

(Sec. 204(a), 72 Stat. 743, 49 U.S.C. 1324. Interpret or apply secs. 401 and 417 of the Act, 72 Stat. 754, as amended by 76 Stat. 143, 49 U.S.C. 1371; 76 Stat. 145, 49 U.S.C. 1387; sec. 7 of Public Law 87-528, 76 Stat. 146; 49 U.S.C. 1371)

By the Civil Aeronautics Board.

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

[F.R. Doc. 67-8904; Filed, July 31, 1967; 8:47 a.m.]

[Reg. ER-501; Amdt. 4]

## PART 214—TERMS, CONDITIONS, AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS AUTHORIZING CHARTER TRANSPORTATION ONLY

### Carrier Solicitation of Members of Chartering Organization After Charter Contract Has Been Signed

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 26th day of July 1967.

By notice of proposed rule making issued June 2, 1967, EDR-117, Docket 18285, and published at 32 F.R. 8248, the Board advised of its intention to amend Part 214 of the Economic Regulations so that foreign air carriers whose permits authorize charter transportation only, could solicit individual members of a chartering organization to form a charter group after the charter contract has been signed.

Interested persons were afforded an opportunity to participate in the making of this rule, but no comments were received. Therefore, the Board will now make final the rule as proposed.

Accordingly, the Civil Aeronautics Board hereby amends Part 214 of its Economic Regulations (14 CFR Part 214) effective August 31, 1967, as follows:

Amend § 214.11 to read as follows:

**§ 214.11 Solicitation and formation of a chartering group.**

(a) A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip, except after a charter contract has been signed.

(b) A carrier shall not employ, directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group to make the charter flight, except after a charter contract has been signed.

(Sec. 204(a), 72 Stat. 743, 49 U.S.C. 1324. Interpret or apply sec. 402, 72 Stat. 757, 49 U.S.C. 1372)

By the Civil Aeronautics Board.

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

[F.R. Doc. 67-8905; Filed, July 31, 1967; 8:48 a.m.]

[Reg. ER-502; Amdt. 11]

## PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION

### Carrier Solicitation of Members of Chartering Organization After Charter Contract Has Been Signed

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 26th day of July 1967.

By notice of proposed rule making issued June 2, 1967, EDR-117, Docket 18285, and published at 32 F.R. 8248, the Board advised of its intention to amend Part 295 of the Economic Regulations to permit supplemental air carriers engaged in transatlantic supplemental air transportation to solicit individual members of a chartering organization to form a charter group after the charter contract has been signed.

Interested persons were afforded an opportunity to participate in the making of this rule, but no comments were received. Therefore, the Board will now make final the rule as proposed.

Accordingly, the Civil Aeronautics Board hereby amends Part 295 of its Economic Regulations (14 CFR Part 295) effective August 31, 1967, as follows:

Amend § 295.11 to read as follows:

**§ 295.11 Solicitation and formation of a chartering group.**

(a) A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip, except after a charter contract has been signed.

(b) A carrier shall not employ, directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group to make the charter flight, except after a charter contract has been signed.

(Sec. 204(a), 72 Stat. 743, 49 U.S.C. 1324. Interpret or apply secs. 401 and 417 of the Act, 72 Stat. 754, as amended by 76 Stat. 143, 49 U.S.C. 1371; 76 Stat. 145, 49 U.S.C. 1387; sec. 7 of Public Law 87-528, 76 Stat. 146, 49 U.S.C. 1371.)

By the Civil Aeronautics Board.

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

[F.R. Doc. 67-8906; Filed, July 31, 1967; 8:48 a.m.]

# Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

## PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

## PART 121—FOOD ADDITIVES

### DDT; Establishment of Pesticide and Food Additive Tolerances

No comments were received in response to the notice published in the FEDERAL REGISTER of June 10, 1967 (32 F.R. 8379), proposing the establishment of tolerances for residues of the insecticide DDT in or on fresh hops and dried hops, resulting from application of DDT to growing hops. No requests were received to refer the proposal to an advisory committee. Accordingly, the Commissioner of Food and Drugs concludes that the amendments should be adopted as proposed.

Therefore, by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (secs. 408(e), 409(d), 68 Stat. 514, 72 Stat. 1787; 21 U.S.C. 346a(e), 348(d)) and delegated by him to the Commissioner (21 CFR 2.120), Parts 120 and 121 are amended as follows:

1. Section 120.147 is amended by adding a new tolerance following "50 parts per million * * *," as follows:

**§ 120.147 DDT; tolerances for residues.**

*　　*　　*　　*　　*

20 parts per million in or on fresh hops. Any byproducts or refuse from such hops are not to be used for feeding livestock.

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2. Section 121.1093 is amended by adding a new tolerance following "100 parts per million * * *," as follows:

**§ 121.1093 DDT.**

*　　*　　*　　*　　*

80 parts per million in or on dried hops.

*　　*　　*　　*　　*

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.

(Secs. 408(e), 409(d), 68 Stat. 514, 72 Stat. 1787; 21 U.S.C. 346a(e), 348(d))

Dated: July 20, 1967.

J. K. KIRK,
*Associate Commissioner for Compliance.*

[F.R. Doc. 67-8931; Filed, July 31, 1967; 8:50 a.m.]

# Title 22—FOREIGN RELATIONS

## Chapter V—United States Information Agency

## PART 502—WORLDWIDE FREE FLOW (EXPORT-IMPORT) OF AUDIO-VISUAL MATERIALS

### Miscellaneous; Coordination With U.S. Customs Bureau

The following material replaces § 502.8 (c) of Title 22 of the Code of Federal Regulations.

**§ 502.8 Miscellaneous; coordination with U.S. Customs Bureau.**

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(c) For customs regulations relating to entry of articles conditionally free under item 870.30 see 19 CFR 10.121. U.S. importers and consignees who, due either to inadvertence or lack of knowledge as to customs procedures, believe that a recent import shipment of audiovisual material is eligible for duty-free treatment under the regulations in this part may contact the U.S. Information Agency Office identified in the regulations in this part to obtain advice and information respecting steps necessary to explore their claim with appropriate customs officers.

*　　*　　*　　*　　*

LEONARD H. MARKS,
*Director,*
*U.S. Information Agency.*

JULY 24, 1967.

[F.R. Doc. 67-8924; Filed, July 31, 1967; 8:49 a.m.]

# Title 24—HOUSING AND HOUSING CREDIT

## Subtitle A—Office of the Secretary, Department of Housing and Urban Development

## PART 7—EQUAL EMPLOYMENT OPPORTUNITY; POLICY AND PROCEDURES

In Subtitle A a new Part 7 is added as follows:



AUTHORITY: The provisions of this Part 7 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); E.O. 11246 of Sept. 24, 1965, 30 F.R. 12319, 3 CFR 1965 Supp.; 42 U.S.C. 2000e note.

### Subpart A—Equal Employment Opportunity Without Regard to Race, Creed, Color, or National Origin

GENERAL PROVISIONS

**§ 7.1 Policy.**

In conformity with the policy expressed in Executive Order No. 11246, and with implementing regulations of the Civil Service Commission issued pursuant thereto, it is the policy and intent of the Department of Housing and Urban Development to provide equality of opportunity in employment for all qualified persons; to prohibit discrimination because of race, creed, color, or national origin in all aspects of its personnel policies, programs, practices, and operations and in all its working conditions and relationships with employees and applicants for employment; and to promote the full realization of equal opportunity in employment through continuing programs of affirmative action at every management level within the Department.

**§ 7.2 Definitions.**

(a) For the purpose of this subpart, "organizational unit" means the jurisdictional area of each Assistant Secretary, the President of FNMA, each office head reporting directly to the Secretary, each Regional Administrator, each Director of an FHA Insuring Office, and each Manager of a FNMA Agency Office.

(b) For the purposes of this subpart, "field office" means each Regional Office, each FHA Insuring Office, and each FNMA Agency Office.

COMPLAINTS

§ 7.11 General.

(a) Any aggrieved employee or qualified applicant for employment who believes that he has been discriminated against because of race, creed, color, or national origin may file a complaint of alleged discrimination. Such complaint must be in writing and may be filed by either the aggrieved individual or his authorized representative. A complaint may also be filed by an organization for the aggrieved employee or applicant and with his consent.

(b) The Department will also entertain from an individual or an organization complaints or allegations of a general pattern or practice of discrimination which may be unrelated to any specific complaint involving a particular individual.

(c) In order to expedite the processing of complaints of discrimination, the complainant should be urged to include in his complaint the following information:

(1) Whether the alleged discrimination is based upon race, creed, color, or national origin.

(2) The specific action or personnel matter about which the complaint is made.

(3) Facts and other pertinent information to support the allegation of discrimination.

However, in no event shall the lack of complete information at the time of filing constitute grounds for refusing to process a complaint.

(d) A complaint under this subpart shall be filed with the Deputy Equal Employment Opportunity Office for the organizational unit concerned or with the Equal Employment Opportunity Officer for the Department. Any other employee of the Department to whom a complaint under this subpart is tendered shall decline to accept it and shall refer the complainant or his representative to the Deputy Equal Employment Opportunity Officer for the organizational unit concerned or the Equal Employment Opportunity Officer for the Department. The Deputy Equal Employment Opportunity Officer receiving the complaint shall promptly forward it to the Equal Employment Opportunity Officer, who shall make a determination as to acceptability (see § 7.14). The initial recipient of the complaint shall furnish a copy of the complaint to the head of the field office or other organizational unit concerned. The Equal Employment Opportunity Officer shall promptly transmit an accepted complaint to the appropriate Deputy Equal Employment Opportunity Officer for processing in accordance with this subpart.

§ 7.12 Time limit for filing.

(a) A complaint must be filed within 30 calendar days of the date of the action giving rise to the complaint or, if an official personnel action is involved, within 30 calendar days of its effective date, except that a complaint related to an official adverse action must be filed within 10 calendar days after the effective date of the action.

(b) The Equal Employment Opportunity Officer may extend the prescribed time limit for good cause shown by the complainant.

(c) A complaint concerned with a continuing discriminatory practice having a material bearing on employment may be filed at any time.

§ 7.13 Presentation of complaint.

(a) In presenting his complaint, the complainant shall be free from restraint, interference, coercion, discrimination, or reprisal and shall have the right to be accompanied, represented, and advised by a representative of his choosing. A reasonable amount of official time shall be allowed for an employee to present his complaint if he is otherwise in an active duty status.

(b) If an employee is designated to represent a complainant, the representative shall be free from restraint, interference, coercion, discrimination, or reprisal and shall have a reasonable amount of official time to present the complaint if he is otherwise in an active duty status.

§ 7.14 Acceptability.

(a) The Equal Employment Opportunity Officer shall determine whether the complaint comes within the purview of this subpart and shall advise the complainant in writing of the acceptance or rejection of his complaint.

(b) If the Equal Employment Opportunity Officer determines that the complaint is to be rejected, he shall also notify the complainant in writing of the reasons for the rejection and of his right to appeal the rejection to the Civil Service Commission.

§ 7.15 Processing of complaint.

The Deputy Equal Employment Opportunity Officer for each organizational unit shall serve as processing officer for complaints involving the organizational unit for which he is responsible. The Equal Employment Opportunity Officer may, as he deems necessary, assume jurisdiction of any case. This may include the designation as processing officer of a Deputy Equal Employment Opportunity Officer other than the Deputy Equal Employment Opportunity Officer for the organizational unit concerned. In the latter case, the Equal Employment Opportunity Officer shall so notify all interested parties.

§ 7.16 Investigation.

(a) Subject to the concurrence of the Equal Employment Opportunity Officer, the processing officer shall be responsible for promptly investigating the complaint. The Equal Employment Opportunity Officer may, as he deems necessary, assume jurisdiction in the conduct of the investigation; this may include requesting that the investigation be conducted by the Inspection Division.

(b) In conducting the investigation, the processing officer in his discretion may waive or terminate the investigation if at any point the complaint is resolved in accordance with § 7.17.

(c) The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his complaint as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant.

(d) The processing officer shall furnish the complainant and his representative a written summary which contains all the information in the investigation that is material to the resolution of the complaint.

§ 7.17 Informal adjustment of complaint.

After the complainant or his representative has been furnished the written summary of the investigation, the officer processing the complaint shall endeavor to adjust the complaint on an informal basis. This subpart does not prohibit a processing officer, at any stage during the processing of a complaint, from discussing the matter with the complainant with a view to resolving the matter on an informal basis. If such informal negotiation results in a resolution satisfactory to the complainant, the case may be closed if the complainant voluntarily submits a written request for the withdrawal of his complaint and upon approval of the Equal Employment Opportunity Officer.

§ 7.18 Hearing.

(a) *Offer of hearing.* In any case which is not disposed of informally, the processing officer shall advise the complainant in writing of the tentative findings of the processing officer, of the complainant's right to a hearing, and of the importance on his part to indicate within 10 days, and preferably on a form to be provided, whether or not he desires a hearing. If the complainant indicates that he does not desire a hearing, or if after 10 days from the date of delivery of the tentative findings to the complainant the processing officer has received no indication as to whether or not the complainant desires a hearing, he shall then transmit his findings with the complete case file to the Equal Employment Opportunity Officer, simultaneously furnishing a copy of the findings to the appropriate Assistant Secretary, the General Counsel, the President of FNMA, Regional Administrator, or other head of office reporting directly to the Secretary.

(b) *Hearing officer.* A hearing officer shall be selected by the processing officer with the approval of the Equal Employment Opportunity Officer and shall be an employee specially selected and trained to conduct hearings. The hearing officer shall not be a person who either investigated the complaint or took or reviewed an action or decision giving rise to the complaint.

(c) *Prehearing conference.* In arranging for the hearing, the hearing officer shall set up a prehearing conference at which he shall seek to clarify the issues, accept stipulations on facts to which both parties agree, establish schedule for the proceedings, and explain his role in the proceedings.

(d) *Conduct of hearing.* The hearing officer shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the hearing officer shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the complaint or an employment policy or practice relevant to the complaint shall be received in evidence. The complainant, his representative, and the representatives of the Department at the hearing shall be given the opportunity to cross-examine witnesses who appear and testify. Testimony shall be under oath or affirmation.

(e) *Witnesses.* (1) Department employees shall be made available as witnesses upon a showing satisfactory to the hearing officer of the reasonable necessity therefor, when the complainant makes such a request and when it is administratively practicable to comply with the request. Requests for the attendance of witnesses shall be made in writing to the hearing officer at least 10 calendar days prior to the date of the hearing.

(2) Employees shall be in a duty status during the time they are made available as witnesses; all witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal in presenting testimony.

(3) Reasons for a denial of a request for the appearance of an employee as a witness shall be documented in the record of the complaint.

(f) *Right to counsel at hearing.* A complainant in proceedings under this subpart shall have the right, in connection with the hearing, to be accompanied, represented, and advised by counsel, or by any other representative of his choosing.

(g) *Record of hearing.* (1) The hearing officer shall record the hearing on a verbatim basis or prepare a written summary of the hearing. When the hearing is recorded by a voice-recording machine and the Department does not furnish the complainant a transcript, the Department shall give the complainant and his representative an opportunity to listen to the recording, together with a copy of the summary of the hearing. When the hearing is summarized, the summary of the hearing shall, as a minimum, identify each witness and summarize his testimony. The Department shall include with the verbatim transcript or written summary of the hearing all documents submitted to and accepted by the hearing officer. The Department shall give the complainant a copy of the transcript when the hearing is transcribed on a verbatim basis or a copy of the summary of the hearing. If a summary of a hearing is made, the parties shall be entitled to submit written exceptions to the summary and any exceptions so submitted shall be made part of the record of the hearing.

(2) The hearing officer shall transmit the record of hearing, together with appropriate findings thereon, to the Equal Employment Opportunity Officer, simultaneously furnishing a copy of the record of the hearing, together with a copy of the findings, through the Deputy Equal Employment Opportunity Officer to the appropriate Assistant Secretary, the President of FNMA, Regional Administrator, or other head of office reporting directly to the Secretary.

### § 7.19 Final decision.

(a) The Equal Employment Opportunity Officer shall make the final decision on a complaint processed under this subpart, except with respect to an employee in his jurisdiction, in which case the matter will be referred to the Secretary or Under Secretary. The decision shall be in writing and shall resolve the issue of discrimination raised by the complainant. Any required remedial action determined to be necessary or desirable to resolve the issue shall be incorporated in the notice of final decision. Copies of the decision shall be sent to the complainant and his representative, to the processing officer, and to the appropriate Assistant Secretary, the President of FNMA, Regional Administrator, or other head of office reporting directly to the Secretary.

(b) The written notice of decision shall advise the complainant of his right to appeal to the Civil Service Commission if he is not satisfied with the resolution of the complaint. The notice shall also advise him of the time limit within which an appeal may be filed.

(c) A decision by the Equal Employment Opportunity Officer may be reopened and reconsidered by the Secretary, who may affirm, modify, or reverse the decision, request further investigation, or grant a new hearing.

### § 7.20 Avoidance of delay.

(a) Complaints shall be processed expeditiously and within 60 calendar days from the date of receipt when no hearing is held, or within 90 calendar days if a hearing is held. The processing officer shall keep the Equal Employment Opportunity Officer advised of the progress being made with regard to each complaint and shall inform him immediately of any unforeseen or undue delay. When a complaint has not been processed within the prescribed time limits, the complainant may appeal to the Civil Service Commission for a review of the reasons for the processing delay.

(b) The Equal Employment Opportunity Officer may cancel a complaint if the complainant fails to pursue a complaint without undue delay. The complainant must be notified in writing of any such cancellation and of his right to appeal such cancellation to the Civil Service Commission. In lieu of cancellation, the complaint may be adjudicated if sufficient information is available for that purpose.

### § 7.21 Complaint file.

A file for each complaint shall be established in the Office of the Equal Employment Opportunity Officer, and as a minimum shall include copies of:

(a) The complaint;

(b) A written summary of the investigation;

(c) A record of the hearing (if a hearing was held);

(d) The decision; and

(e) If the complaint is reopened by the Secretary, the decision of the Secretary showing the reconsideration given the complaint. The complaint file shall not contain any document that has not been made available to the complainant.

## Appeal to the Civil Service Commission

### § 7.31 Entitlement.

(a) A complainant may appeal to the Civil Service Commission a final decision made under this subpart that:

(1) Rejects his complaint because it was not filed within the prescribed time limits, or determined not to meet the requirements of this subpart; or

(2) Cancels his complaint because of the complainant's failure to prosecute the complaint, or because of the complainant's voluntary separation for reasons not related to the complaint; or

(3) Does not resolve the complaint to his satisfaction.

(b) An appeal under paragraph (a) of this section must be presented in writing and filed with the Board of Appeals and Review, U.S. Civil Service Commission, Washington, D.C. 20415.

(c) A complainant may not appeal to the Civil Service Commission under paragraph (a) of this section when the issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other appeal by the complainant to the Commission.

### § 7.32 Time limit.

(a) An appeal to the Commission may be filed at any time after the receipt of notice of final decision, but no later than 10 calendar days after receipt of that notice.

(b) The Commission may extend the prescribed time limits upon a showing by the complainant that he was not advised of the time limit or that he was otherwise unaware of it or that circumstances beyond his control prevented him from filing within the prescribed time limit.

## Subpart B—Equal Opportunity Without Regard to Politics, Marital Status, or Physical Handicap

### § 7.41 Policy.

(a) In determining the merit and fitness of a person for competitive appointment or appointment by noncompetitive action to a position in the competitive service within the Department, appointing officers, selecting officials, and other employees who participate in the selection process shall not discriminate on the basis of the person's political affiliations (except when required by statute) or marital status, nor shall they discriminate on the basis of a physical handicap with respect to any position the duties of which may be performed efficiently by a person with the physical handicap.

(b) No officer or employee of the Department shall take an adverse action against an employee covered by the Civil Service Commission regulations, nor shall action be taken to terminate a probationer under the Commission's regulations, (1) for political reasons, except when required by statute; (2) that is based on discrimination because of marital status; or (3) because of a physical handicap with respect to any position the duties of which may be performed efficiently by a person with the physical handicap.

### Subpart C—Equal Opportunity Without Regard to Sex

**§ 7.51 Policy.**

It is the policy of the Department to pursue and maintain a positive program to assure equal opportunity in employment and advancement without regard to sex.

**§ 7.52 Specific prohibitions.**

(a) In determining the merit and fitness of a person for competitive appointment, for appointment by noncompetitive action to a position in the competitive service within the Department, or for any other position change in the competitive service, appointing officers, selecting officials, or other employees who participate in the selection process shall not discriminate on the basis of the person's sex.

(b) An appointing officer, selecting official, or other employee who participates in the selection process shall not restrict his consideration of eligibles or employees for competitive appointment or appointment by noncompetitive action to positions in the competitive service within the Department to one sex, except in unusual circumstances when the Civil Service Commission finds the action justified. Any request for Commission approval to so restrict the consideration of eligibles must be based upon objective nondiscriminatory standards.

(c) At the direction of the Director of Personnel of the Department, designated personnel officers shall establish such procedures as may be necessary to assure that there shall be no discrimination because of sex in the selection of employees for training under the Civil Service Commission regulations and that a supervisor may not restrict his consideration of employees for selection for training to one sex, except in unusual circumstances when the Commission finds the action justified.

(d) Sex may not be used as a basis for assigning a position to a competitive level under the Civil Service Commission reduction-in-force regulations, except for a position for which restriction of certification of eligibles by sex is found justified by the Commission. The sex of an employee may not be considered as a factor in determining the employee's qualifications for a position under the Civil Service Commission reduction-in-force regulations, except where the position is one for which restriction of certification of eligibles by sex is found justified by the Commission.

(e) An adverse action shall not be taken against an employee covered by the Civil Service Commission adverse action regulations, nor may action be taken to terminate a probationer, because of the sex of the employee or of the probationer.

**§ 7.53 Appeal to the Civil Service Commission.**

(a) When a complaint of discrimination because of sex is not resolved under appropriate administrative appeal procedures to the satisfaction of the complainant, the complainant may, within a reasonable time, file an appeal with the Civil Service Commission.

(b) When the basis of the complaint of discrimination because of sex of the complainant involves an action that is otherwise appealable to the Civil Service Commission, the case will be processed under the regulations appropriate to that appeal when the complainant makes a timely appeal in accordance with the regulations in this part.

*Effective date.* The regulations in this part shall be effective as of May 1, 1967.

ROBERT C. WEAVER,
*Secretary of Housing and Urban Development.*

[F.R. Doc. 67-8898; Filed, July 31, 1967; 9:21 a.m.]

# Title 28—JUDICIAL ADMINISTRATION

## Chapter I—Department of Justice

[Order No. 382-67]

### PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

### Subpart V—Authorizations With Respect to Personnel and Certain Administrative Matters

CERTIFICATION OF OBLIGATIONS BY BUREAU OF PRISONS

By virtue of the authority vested in me by sections 509 and 510 of Title 28 and section 301 of Title 5 of the United States Code, and section 1311(c) of the Supplemental Appropriation Act, 1955 (68 Stat. 831; 31 U.S.C. 200(c)), § 0.147 of Subpart V of Part 0 of Chapter I of Title 28 of the Code of Federal Regulations is amended by changing the phrase immediately following the second semicolon to read as follows: "for the Bureau of Prisons, the Deputy Assistant Director, Administrative Services;".

Dated: July 24, 1967.

RAMSEY CLARK,
*Attorney General.*

[F.R. Doc. 67-8871; Filed, July 31, 1967; 8:45 a.m.]

# Title 32—NATIONAL DEFENSE

## Chapter I—Office of the Secretary of Defense

SUBCHAPTER O—MILITARY POSTAL SERVICE

### PART 280—USE OF MILITARY POSTAL SERVICE

The following revision to Part 280 was approved by the Deputy Secretary of Defense on July 10, 1967:

Sec.
280.1 Purpose and applicability.
280.2 Scope and definitions.
280.3 Policy and principles.
280.4 Responsibilities.

AUTHORITY: The provisions of this Part 280 issued under 5 U.S.C. 301.

**§ 280.1 Purpose and applicability.**

This part reissues DoD Directive 4605.1, "Use of Military Postal Service," dated January 8, 1955, designates the organizations, agencies, and personnel entitled to use the facilities of the military postal service, and prescribes policies and procedures governing the furnishing of uniform postal support by the Military Departments.

**§ 280.2 Scope and definitions.**

The military postal service includes the postal facilities of the Army, Navy, and the Air Force established under DoD Directive 5030.11,[1] "Postal Agreement Between the Post Office Department and the Department of Defense," dated March 5, 1959.

(a) These facilities are maintained and operated for the purpose of providing complete postal services for the U.S. Armed Forces in areas where the U.S. Civil Postal Service does not operate and in any other place where the military situation requires.

(b) This service is an extension of the U.S. domestic postal system and operates in conformity with the U.S. Postal Manual, published under Title 39, "Postal Service," Code of Federal Regulations; other Post Office Department instructions, and military directives.

**§ 280.3 Policy and principles.**

(a) As outlined in DoD Directive 5030.11,[1] "Postal Agreement Between the Post Office Department and the Department of Defense," dated March 5, 1959 (Enclosure 1, sec. 1, par. 4) the establishment, operation, and use of the U.S. Military Postal Service in sovereign foreign countries "in peace-time" is contingent upon agreement with the host government, since it is customary among nations to preserve a monopoly of postal service, including postage revenue and control of customs.

(1) International agreements permitting establishment of military postal facilities usually limit the use of such facilities to the Armed Forces and certain civilian agencies and organizations

[1] Filed as part of original document; copies available at the Publications Counter, OASD(A), Pentagon, Room 3B200, or OX 52167.

serving with or related to the Armed Forces.

(2) The cost of operating military postal facilities overseas is borne by the Military Departments. Currently, that cost includes the transportation of Army and Air Post Office/Fleet Post Office (APO/FPO) mail, inter- and intra-command, between the United States and oversea areas, exclusive of territories and possessions, both by air and surface transport, commercial as well as military.

(b) The Secretaries of the Military Departments are authorized to (1) furnish postal support to the eligible individuals and agencies listed in this part in accordance with the principles specified herein, and (2) make determinations as to the eligibility of other agencies or individuals to receive postal support under such policies and principles.

(c) Postal support will be furnished only when all of the following conditions are met:

(1) Agencies and individuals requesting postal support are providing services to the U.S. Armed Forces which are essential or of substantial assistance to the accomplishment of the U.S. Government mission. Commercial activities requesting postal support must serve the U.S. Forces exclusively.

(2) The furnishing of postal support to agencies and individuals:

(i) Will not interfere with the accomplishment of the U.S. military mission.

(ii) Is consistent with the terms of any agreements which the United States has entered into with the government of the nation concerned.

(iii) Will not place the privileges and immunities of the U.S. Forces in jeopardy.

(d) Postal support furnished in accordance with this part will be periodically reviewed by commanders with the purpose of adjusting such support to conform with current missions.

(e) Where more than one Military Department has postal facilities within an area, postal support policies shall be coordinated to attain uniformity of application.

(f) The following personnel and organizations are entitled to use the military postal facilities:

(1) Members and units of the U.S. Armed Forces on active duty, including the U.S. Coast Guard.

(2) U.S. citizen employees of the Department of Defense, who are serving with U.S. military activities in a foreign country, or any area, territory, or possession of the United States where no U.S. civil post office is available.

(3) U.S. citizen representatives of the American Red Cross who are attached to and accompanying U.S. Armed Forces.

(4) U.S. contractors and their U.S. citizen employees engaged in work under contract with the U.S. Government. (When postal support is not provided for in the contract, it will be furnished in accordance with the policy and principles of this part.)

(5) American dependent schools and their U.S. citizen employees, when such schools are operated from appropriated U.S. Government funds.

(6) Civilian religious representatives or religious groups visiting oversea commands in the interest of and to assist the U.S. forces, provided such persons have obtained an official invitation to travel as specified in DoD Instruction 1330.[1] "Visits of Civilian Religious Leaders to Military Installations in Overseas Areas," dated August 11, 1966.

(7) Celebrities and entertainers; athletic clinic instructors; representatives of educational institutions or other social agencies, whose purpose is to provide a service to the United States (such individuals shall have been officially invited to travel to overseas under provisions of DoD Instruction 1330.13,[1] "Armed Forces Professional Entertainment Program Overseas," dated August 20, 1959.

(8) United Service Organizations, Inc. (USO), and their U.S. citizen employees when established in overseas areas, under provisions of DoD Directive 1330.12,[1] "United Service Organizations, Inc.," dated December 6, 1960.

(9) Foreign military nationals on duty or training with a U.S. military organization or unit.

(i) Such individuals may utilize the military postal facilities for purchase of stamps, and receipt and dispatch of mail to and from their home country only.

(ii) In correspondence with persons in their home country, mail will be addressed in the same manner as it would be if they were in their home country. The use of a U.S. military postal address in home country is not authorized.

(10) U.S. military banking facilities designated by the Secretary of the Treasury as a Depository and Financial Agent of the U.S. Government in overseas areas.

(i) Postal support is limited to transactions emanating from official operations for the benefit of the military activities and their personnel.

(ii) U.S. citizen employees of such banking facilities are authorized use of the Military Postal Service.

(11) Nonappropriated fund activities and their U.S. citizen employees, when such activities have been defined as instrumentalities of the U.S. Government.

(12) U.S. universities and colleges (and their U.S. citizen employees) operating in oversea areas by authority of the Secretaries of the Military Departments to provide education to members of the military service and their authorized dependents.

(13) Dependents of the personnel in Item 12, above, when accompanying the principal (postal privileges will be withdrawn ninety (90) days subsequent to the departure of the sponsor when the dependent remains overseas or when sponsorship is terminated for any other reason).

(14) U.S. citizen correspondent and public information agencies who have been accredited by The Assistant Secretary of Defense (Public Affairs) under DoD Directive 5122.5,[1] "Assistant Secretary of Defense (Public Affairs," dated July 10, 1961 (26 F.R. 7111)), and subject to approval of the oversea unified commander.

(15) Masters and civilian crews of Military Sea Transportation Service nucleus fleet ships, and merchant ships operating for the account of the Military Sea Transportation Service, including contract operated, time chartered, consecutive voyage chartered and General Agency Agreement vessels, under conditions prescribed by the Military Departments.

(16) International Military Commands and agencies of the North Atlantic Treaty Organization (NATO) (as specified in DoD Instruction 2010.1,[1] "Support of International Military Activities," dated Mar. 1, 1961), for official mail only.

(g) The following personnel and organizations are entitled to use U.S. military postal facilities located in foreign countries to the extent that military postal facilities of the command permit; or, in areas where the military Commander-in-Chief deems the local civil postal service to be inadequate:

(1) Members of the Armed Forces of Allies or contingents thereof assigned or attached to the U.S. Armed Forces corresponding to and from their home country only.

(2) U.S. Government departments and independent agencies, U.S. citizen employees thereof, and their dependents, when acompanying the principal.

(3) Retired personnel of the U.S. Armed Forces and their dependents when accompanying the principal.

(4) U.S. nonprofit, service, social, civic, and fraternal type organizations providing all individual members are authorized privileges in their own right.

(5) U.S. Federal employee organizations at overseas bases for the conduct of labor union business.

(h) Upon request of the foreign government concerned, foreign military units serving with the U.S. Armed Forces may be authorized to transmit closed mails through U.S. military postal channels when adequate international postal facilities are not available.

(i) Vessels under U.S. Navy operational control being transferred to foreign governments under military assistance programs may be authorized to use the Military Postal Service while enroute to their home country.

(j) Other allied warships participating in U.S. naval maneuvers or operating in U.S. waters may be authorized to use the facilities of the Navy Postal Service for receiving closed mail on request, provided that the mail is transported at the requesting country's expense to the appropriate Fleet Post Office.

(k) Request for authority for persons and organizations not enumerated in paragraphs (a) through (j) of this section to use military postal facilities in time of peace, or request for exceptions to the above, may be submitted to appropriate departmental headquarters which, through mutual coordination and agreement with the other military departments, will approve or disapprove each request.

[1] Filed as part of original document; copies available at the Publications Counter, OASD(A), Pentagon, Room 3B200, or OX 52167.

(l) In the event of national emergency, hostilities, or occupation, U.S. citizen personnel, not otherwise authorized use of the military postal service under any other provisions of this part, may be authorized use of the facilities for letter class mail including postal cards and post cards, and voice recordings.

(1) Such individuals must be in oversea areas where international postal service is not available or adequate.

(2) If adequate international postal service becomes available subsequent to the authorization, use of the Military Postal Service will be withdrawn.

**§ 280.4 Responsibilities.**

In carrying out the provisions of this part the Secretaries of the Military Departments will assure that:

(a) The provisions of the U.S. Post Office Department Manual (Title 39, "Postal Service," Code of Federal Regulations) and local restrictions are enforced to prevent military post offices from accepting prohibited items of mail.

(b) Existing postal agreements with foreign sovereign governments are enforced.

(c) Persons and organizations entitled to use the military postal facilities do not use it to act as intermediaries for persons or organizations not authorized to use the service.

(d) Persons and organizations using the military postal facilities comply with local customs requirements.

(e) Postal privileges are withdrawn from retired military personnel and civilians when there is evidence of abuse of the privilege.

(f) The Military Postal Service is not used by individuals or agencies for commercial or business purposes or to transmit items intended for resale in the course of conducting a business or enterprise. This prohibition does not extend to news copy, film, recording tape, or similar material transmitted through the postal service by accredited news media representatives when use of these facilities have been authorized under § 280.3 (h)(14).

(g) Organizations, agencies, and individuals no longer eligible to use the postal service discontinue such use not later than ninety (90) days subsequent to the date they are notified of ineligibility.

MAURICE W. ROCHE,
*Director, Correspondence and Directives Division, OASD (Administration).*

[F.R. Doc. 67-8867; Filed, July 31, 1967; 8:45 a.m.]

# Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

## Chapter I—Veterans Administration

## PART 14—LEGAL SERVICES, GENERAL COUNSEL

### Disposition of Claims and Collection Action

1. In § 14.607, paragraph (c) is amended to read as follows:

**§ 14.607 Disposition of claims.**

* * * * *

(c) In cases of a claim for not more than $2,500 wherein the Chief Attorney determines liability on the part of the United States under the act, he will determine a fair and reasonable amount for reimbursement. After ascertaining from the General Counsel the availability of funds to pay the claim, the Chief Attorney will notify the claimant or his attorney, if any, of the allowance of his claim and forward him an appropriate voucher for his signature. Upon return of the voucher properly signed by the claimant, the Chief Attorney will, if he approves the claim, indicate his approval by signing the voucher in the space thereon as the Administrator's authorized designee. (See § 2.6(e)(2) of this chapter.) He will then forward the voucher to the General Counsel for necessary action to effect payment.

* * * * *

2. Section 14.608 is revised to read as follows:

**§ 14.608 Collection action; damage to or loss of Government property.**

(a) In a case where the Chief Attorney determines that damage to or loss of Government property under the jurisdiction of the Veterans Administration resulted from the negligence or other legal wrong of a person other than an employee of the United States, and such damages do not exceed $20,000, he will request payment of the amount of damage from the person liable therefor or his insurer.

(b) The Chief Attorney may collect, compromise, suspend, or terminated collection action on any such claim not exceeding $2,500 in conformity with the standards in § 1.900 series of this chapter. Any such claim not exceeding $2,500 which is not compromised or on which collection action is not suspended or terminated, will be referred by the Chief Attorney direct to the appropriate U.S. attorney along with the information required by §§ 1.951 through 1.953 of this chapter. Any claim in excess of $2,500 on which voluntary payment in full has not been made, will be transmitted along with the report required by § 14.605, a report on credit data (§ 1.952 of this chapter), and any other pertinent information, to the General Counsel for appropriate action.

(c) The General Counsel or those designated in § 2.6(d)(3) of this chapter will take action to collect, compromise, suspend, or terminate collection action on such claims not exceeding $20,000 in conformity with § 1.900 series of this chapter. Any such claims not compromised, or on which collection action is not suspended or terminated in accordance with § 1.900 series of this chapter, will be referred promptly to the Department of Justice for appropriate action.

(d) The provisions of paragraphs (a) through (c) of this section are not applicable to the collection of claims involving damage to General Services Administration Motor Pool System vehicles issued for Veterans Administration use. Whenever there is any indication that a party other than the operator of a motor pool system vehicle is at fault in an accident, all documents and data pertaining to the accident and its investigation will be submitted to the General Services Administration Regional Counsel of the region that issued the vehicle who has jurisdiction over such matters. Whenever a motor pool system vehicle is involved in an accident, resulting in damage to the property of, or injury to the person of, a third party, and the third party asserts a claim against the Veterans Administration based upon the alleged negligence of the vehicle operator, the claim will be considered under § 14.600 et seq.

(72 Stat. 1114; 38 U.S.C. 210)

These VA regulations are effective date of approval.

Approved: July 25, 1967.

By direction of the Administrator.

[SEAL] CYRIL F. BRICKFIELD,
*Deputy Administrator.*

[F.R. Doc. 67-8912; Filed, July 31, 1967; 8:48 a.m.]

# Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

## Chapter 101—Federal Property Management Regulations

SUBCHAPTER E—SUPPLY AND PROCUREMENT

## PART 101-26—PROCUREMENT SOURCES AND PROGRAMS

### Discrepancies in GSA Shipments; Cancellation of Orders for GSA Stocked Items

New Standard Form 361, Discrepancy in Shipment Report, is prescribed for use in reporting discrepancies in GSA shipments. In addition, agencies are cautioned to use discretion in requesting cancellation of orders of low dollar value.

The table of contents for Part 101-26 is amended to provide a revised heading for Subpart 101-26.3 and to show § 101-26.4902-1052 deleted, as follows:



### Subpart 101-26.3—Procurement From GSA Supply Depots

Section 101-26.307-1 is amended and §§ 101-26.307-2 and 101-26.309 are revised to read as follows:

**§ 101-26.307-1 Reporting requirements.**

(a) When overages, shortages, or damages are incurred in shipments of stock items on which GSA pays the transportation charge, agencies shall document such discrepancies with sufficient information to enable initiation and processing of claims against carriers for shortages and damages and the disposition of any overages in shipment.

Discrepancies which are incurred in shipments on which GSA does not pay the transportation charge will be processed in accordance with instructions contained in § 101-47.702 of this chapter.

(b) Standard Form 361, Discrepancy in Shipment Report (illustrated at § 101-40.4906-3 of this chapter), shall be used to report discrepancies in accordance with instructions contained in this § 101-26.307 and the GSA Handbook, Over, Short, or Damaged Shipments from GSA Supply Depots, promulgated by the Commissioner, Federal Supply Service.

* * * * *

**§ 101-26.307-2 Adjustments.**

GSA will adjust any damage or other discrepancy resulting from over or under deliveries or from over or under charges. When the difference involved represents an amount of $5 or less on any one invoice, no adjustment in billing or payment is required. (GAO Manual, Title 7, par. 4220.30.) However, agencies are not relieved from the requirement to report discrepancies on Standard Form 361 when the value involved is less than $5.

**§ 101-26.309 Cancellation of orders for GSA stock items.**

When an agency determines that material ordered from GSA is not required, GSA will accept requests for cancellation as long as the items ordered have not been shipped. However, since processing cancellations is costly and interferes with normal order processing, agencies are cautioned to use discretion in requesting cancellation of low dollar value orders. Cancellation of orders may be accomplished by agencies through written, telegraphic, or telephonic communication with the GSA regional office to which the order was sent. However, telephonic communication should be used whenever feasible to forestall shipment of material and subsequent billing by GSA. If material has been shipped, GSA will advise that cancellation cannot be effected and agency requests for return for credit will be processed under the provisions of §§ 101-26.310 and 101-26.311.

### Subpart 101-26.49—Illustrations of Forms

**§ 101-26.4902-1052 [Deleted]**

Section 101-26.4902-1052, which illustrates GSA form 1052, Over, Short, and/or Damage Report, is deleted.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

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

Dated: July 26, 1967.

J. E. MOODY,
*Acting Administrator of General Services.*

[F.R. Doc. 67-8925; Filed, July 31, 1967; 8:49 a.m.]

# Title 50—WILDLIFE AND FISHERIES

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

SUBCHAPTER B—HUNTING AND POSSESSION OF WILDLIFE

### PART 10—MIGRATORY BIRDS

### Open Seasons, Bag Limits, and Possession of Certain Migratory Game Birds; Correction

F.R. Doc. 67-8470, published on page 10797 in the issue dated Saturday, July 22, 1967, is corrected by changing the dates under § 10.53(a)(1) Ohio to read "September 15-September 23."

JOHN S. GOTTSCHALK,
*Director, Bureau of Sport Fisheries and Wildlife.*

JULY 28, 1967.

[F.R. Doc. 67-8961; Filed, July 31, 1967; 8:51 a.m.]

SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM

### PART 32—HUNTING

### Yazoo National Wildlife Refuge, Miss.

On page 8765 of the FEDERAL REGISTER of June 20, 1967, there was published a notice of a proposed amendment to § 32.31 of Title 50, Code of Federal Regulations. The purpose of this amendment is to provide public hunting of big game on the Yazoo National Wildlife Refuge, Miss., as legislatively permitted.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections with respect to the proposed amendment. No comments, suggestions, or objections have been received. The proposed amendment is hereby adopted without change.

Since this amendment benefits the public by relieving existing restrictions on hunting, it shall become effective upon publication in the FEDERAL REGISTER.

(Sec. 10, 45 Stat. 1224; 16 U.S.C. 715i; sec. 4, 80 Stat. 926; 16 U.S.C. 668aa)

Section 32.31 is amended by the addition of the following area as one where hunting of big game is authorized:

**§ 32.31 List of open areas; big game.**

* * * * *

MISSISSIPPI

Yazoo National Wildlife Refuge.

* * * * *

JOHN S. GOTTSCHALK,
*Director, Bureau of Sport Fisheries and Wildlife.*

JULY 26, 1967.

[F.R. Doc. 67-8869; Filed, July 31, 1967; 8:45 a.m.]

# Proposed Rule Making

## DEPARTMENT OF AGRICULTURE

### Consumer and Marketing Service

[ 7 CFR Part 987 ]

[Docket No. AO 269-A4]

### DOMESTIC DATES PRODUCED OR PACKED IN DESIGNATED AREA OF CALIFORNIA

### Decision and Referendum Order With Respect to Proposed Amendment of Marketing Agreement and Order, as Amended

Pursuant to the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held in Indio, Calif., on April 12, 1967, after notice thereof published in the FEDERAL REGISTER (32 F.R. 4417) on proposals to amend the marketing agreement, as amended, and Order No. 987, as amended (7 CFR Part 987), regulating the handling of domestic dates produced or packed in a designated area of California. The amended marketing agreement and the amended order are effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

On the basis of the evidence adduced at the hearing, and the record thereof, the recommended decision in this proceeding was filed on June 1, 1967, with the Hearing Clerk, U.S. Department of Agriculture, and notice thereof, affording opportunity to file written exceptions thereto, was published June 7, 1967, in the FEDERAL REGISTER (F.R. Doc. 67-6309; 32 F.R. 8171).

The material issues, findings and conclusions, and general findings of the recommended decision set forth in the FEDERAL REGISTER (F.R. Doc. 67-6309; 32 F.R. 8171) are hereby approved and adopted as the material issues, findings and conclusions, and general findings of this decision as if set forth in full herein, except as they are modified by the ruling on the exception as hereinafter set forth.

*Ruling on exception.* An exception to the recommended decision was filed, within the prescribed time, by Billy J. Peightal, for California Date Growers Association, Indio, Calif. This exception has been considered carefully and fully, in conjunction with the evidence in the record and the proposed findings and conclusions of the recommended decision, in arriving at the findings and conclusions set forth herein.

The exception, and the ruling thereon, is as follows:

Exception was taken to the recommended decision because it did not conclude that § 987.51 should be revised to require dates certified for handling, which are transferred to, and repacked by, a handler who also packs field-run dates, to be recertified following the repacking. While this requirement is evident from the several provisions of the order, it would be helpful to specifically state it. Therefore, the exception is granted. At the end of the discussion (32 F.R. 8172) on material issue (1) in the recommended decision, a paragraph reading as follows is added: "However, if dates certified for handling are transferred to, and repacked by, a handler who also packs and handles dates received as field-run dates, the certified dates received and repacked should be recertified prior to handling. Such has been the practice under the program based on an interpretation of the present provisions on inspection and transfer, and this should be clarified within the provisions of the marketing agreement and order. These transfers occur among regular handlers within the area of production. Recertification is the necessary means of assuring that any commingling of certified dates with uncertified dates, in operations involving repacking, will not result in packed dates failing to meet grade requirements. Accordingly, § 987.51 should be amended by adding thereto the following: 'Except for packed dates inspected and certified for handling prior to transfer and which are not repacked, any receiving handler (other than a repacker not otherwise a handler, who shall comply with § 987.53) shall comply with the requirements of § 987.41 on all dates, but this shall apply to repacked dates previously inspected and certified for handling only if the handler also packs dates received as field-run dates' ". Section 987.51 is amended to effect this conclusion.

*Amendment of the amended marketing agreement and order.* Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement, as Amended, Regulating the Handling of Domestic Dates Produced or Packed in a Designated Area of California" and "Order Amending the Order, as Amended, Regulating the Handling of Domestic Dates Produced or Packed in a Designated Area of California" which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the aforesaid rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

*Referendum order.* Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), it is hereby directed that a referendum be conducted among producers who, during the period August 1, 1966, through May 31, 1967 (which period is hereby determined to be a representative period for the purpose of such referendum), have been engaged in the production of the Deglet Noor, Zahidi, Halawy, or Khadrawy variety of domestic dates produced or packed in the area of production (i.e., the Counties of Riverside, Orange, and Los Angeles, and that portion of San Bernardino County lying west of 116° W. longitude, located within the State of California) to ascertain whether such producers favor the issuance of the said annexed order amending the order, as amended, regulating the handling of domestic dates produced or packed in a designated area of California.

Warren C. Noland, Edmund J. Blaine, and Joseph C. Genske, of the Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture, are hereby designated referendum agents of the Secretary of Agriculture to conduct said referendum severally or jointly.

The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Tree Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (30 F.R. 15414).

The ballots used in the referendum shall contain a summary describing the terms and conditions of the proposed amendatory order.

Any producer entitled to vote in the referendum who does not receive a copy of the aforesaid annexed order, voting instructions, or a ballot or other necessary information will be able to obtain the same from Warren C. Noland, Los Angeles Marketing Field Office, Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture, 1031 South Broadway, Los Angeles, Calif. 90015.

*It is hereby ordered,* That all of this decision and referendum order, except the annexed marketing agreement, as amended, be published in the FEDERAL REGISTER. The regulatory provisions of the said marketing agreement, as amended, are identical with those contained in the said order, as amended, and as further amended by the annexed order which will be published with this decision.

Dated: July 27, 1967.

GEORGE L. MEHREN,
*Assistant Secretary.*

*Order*[1] *Amending the Order, as Amended, Regulating the Handling of Domestic Dates Produced or Packed in a Designated Area of California*

**§ 987.0 Findings and determinations.**

(a) *Previous findings and determinations.* The findings and determinations hereinafter set forth are supplementary, and in addition, to the findings and determinations made in connection with the issuance of the order and previously issued amendments thereto; and all of said prior findings and determinations are hereby ratified and affirmed except insofar as such prior findings and determinations may be in conflict with the findings and determinations set forth herein. (For prior findings and determinations see 20 F.R. 5056; 23 F.R. 6904; 27 F.R. 6817; 29 F.R. 9706.)

(b) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder (7 CFR Part 900), a public hearing was held in Indio, Calif., on April 12, 1967, on a proposed amendment of the marketing agreement, as amended, and Order No. 987, as amended (7 CFR Part 987), regulating the handling of domestic dates produced or packed in a designated area of California. On the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended and as hereby further amended, and all the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said order, as amended and as hereby further amended, regulates the handling of domestic dates produced or packed in a designated area of California in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The said order, as amended and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the area of production would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of domestic dates in the area of production covered by the order, as amended and as hereby further amended, which would require different terms applicable to different parts of such area; and

(5) All handling of domestic dates produced or packed in the area of production is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

*It is therefore, ordered,* That, on and after the effective date hereof, all handling of domestic dates produced or packed in the area of production shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended, and as hereby further amended as follows:

DEFINITIONS

1. Revise § 987.8 to read:

**§ 987.8 Handler.**

"Handler" means any person handling dates which have not been inspected and certified for handling in the hands of a previous holder and any repacker: *Provided,* That for the purposes of §§ 987.22 and 987.24 a person shall qualify as a handler only if he has acquired the dates directly from producers.

2. Add a new section, § 987.8a, as follows:

**§ 987.8a Repacker.**

"Repacker" means any wholesaler or jobber who receives packed dates certified for handling pursuant to § 987.41(a), repackages them in containers other than those in which received, and handles such repackaged dates.

DATE ADMINISTRATIVE COMMITTEE

3. Revise §§ 987.21 and 987.22 to read:

**§ 987.21 Establishment of Date Administrative Committee.**

A Date Administrative Committee composed of seven members is hereby established to administer the terms and conditions of this part: *Provided,* That the number of members may be changed pursuant to § 987.22 (b) and (c). For each member there shall be an alternate member, and the provisions of this part applicable to the number, nomination, and selection of members shall also apply to the number, nomination, and selection of alternate members.

**§ 987.22 Membership representation.**

(a) Members shall be selected by the Secretary from the following groups:

(1) The group comprised of (i) handlers each of whom produced during the then current crop year through February at least 51 percent of all the dates handled by him during such period, and (ii) producers each of whom delivered to such handlers during such period at least 50 percent of his deliveries to all handlers during the period.

(2) The group comprised of cooperative marketing associations.

(3) The group comprised of all other handlers and producers.

(b) Each such group shall have, for each term of office, one member for each quantity of dates handled in the group that represents 14.28 percent of the tonnage handled by all groups: *Provided,* That each group shall have at least one member. For each term of office, the tonnages handled shall be those handled through February of the crop year in which the selection occurs. In computing the number of members for a group, the group may have, in addition to one member for each full 14.28 percent, one member for any remaining fractional part more than one-half of the basic 14.28 percent. To provide a member for any such fractional part and at least one member for each group, the Secretary may increase the total number of members of the Committee beyond seven. When a group specified in paragraph (a) (1) or (3) of this section is entitled to an even number of members, one-half of the members shall be handler members and one-half shall be producer members; and when such a group is entitled to an odd number of members other than one, there shall be one more handler member than producer members. At least one of the members for the group specified in paragraph (a)(2) of this section shall be an employee of a cooperative marketing association in such group and serve as a handler member, and the remainder of the members for the group shall be producer members of such associations.

(c) The members of the Committee serving on the effective date of this amended subpart shall, subject to the limitations in § 987.25, continue to serve during the remainder of the term of office ending May 14, 1968, and as provided in § 987.23. The number of members as provided in § 987.122 prior to such effective date for each of the various groups (i.e., one member for the group specified in paragraph (a)(1) of this section, five members for the group specified in paragraph (a)(2) of this section, and one member for the group specified in paragraph (a)(3) of this section) shall continue applicable so long as the number of members for each group meets the requirements prescribed in paragraph (b) of this section. Whenever it is determined pursuant to paragraph (b) of this section that a change of representation is required for the ensuing term of office, the Secretary shall, on the basis of information submitted by the Committee and other available information, revise the representation consistent with the provisions of said paragraph (b) of this section.

4. Revise § 987.24 to read:

**§ 987.24 Nomination and selection.**

(a) Each group specified in § 987.22 (a) may nominate, at a nomination meeting or meetings held during each crop year on or before April 15, nominees for members to represent the group during the ensuing term of office. For any group specified in § 987.22(a) (1) or (3) entitled to more than one member, separate meetings of producers and of handlers shall be held. For any such group which is not entitled to more than one member, joint meetings of producers and handlers shall be held. Except as otherwise set forth in this section, in any of such meetings each producer and each handler shall be entitled to one vote for each position to be filled, and the individual receiving the highest number of votes for the position shall be the nominee. Whenever there is more than one cooperative marketing association in the group specified in § 987.22(a)(2), the

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and orders have been met.

associations shall jointly select their nominees. In case of lack of agreement among the associations, and in the voting by handlers separately from producers of the group specified in § 987.22 (a)(3), the vote for each position shall be weighted by the tonnage of dates each association or handler acquired from producers and had certified for handling or for further processing during the then current crop year through February.

(b) Immediately after the completion of the meetings covered by this section, the Committee shall report to the Secretary the nominees for each position together with a certificate of all necessary tonnage data and other information deemed by the Committee to be pertinent or which is required by the Secretary. The Secretary shall select, in his discretion, members from such nominees or from other qualified persons; but any such selection shall be from the groups, and on the basis, prescribed in § 987.22. However, the Secretary shall allow a reasonable time for nominations to be received before proceeding with any selection without regard to nominations.

MARKET DEVELOPMENT

5. Revise § 987.33 to read:

**§ 987.33 Research and promotion.**

(a) The Committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects, including marketing promotion and paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption of dates. The expenses of such projects shall be paid from funds collected pursuant to § 987.72. However, no program of paid advertising nor major program of marketing promotion shall be adopted unless favored by at least six Committee members when the total membership is seven, or seven members when the total is eight. Upon conclusion of each program, but at least annually, the Committee shall summarize and report on the program status and accomplishments, to its members and the Secretary. A similar report to the Committee shall be required of any contracting party on any paid advertising or major program. Also, for each advertising or major program the contracting party shall be required to maintain records of money received and expenditures and such shall be available to the Committee and the Secretary. The Committee shall, with the approval of the Secretary, establish criteria which will determine such major program.

**§ 987.39 [Amended]**

6. At the end of the first sentence of § 987.39 insert before the period "for any variety of dates."

**§ 987.51 [Amended]**

7. At the end of § 987.51 add: "Except for packed dates inspected and certified for handling prior to transfer and which are not repacked, any receiving handler (other than a repacker not otherwise a handler, who shall comply with § 987.53) shall comply with the requirements of § 987.41 on all dates, but this shall apply to repacked dates previously inspected and certified for handling only if the handler also packs dates received as field-run dates."

8. Add a new section, § 987.53, as follows:

**§ 987.53 Application of regulations to repackers.**

Repackers shall be exempt from those requirements of this part, including reporting requirements, with respect to packed dates which had been certified for handling, pursuant to § 987.41(a), prior to receipt, except that: (a) A repacker who processes such dates by machine pitting shall comply with the grade, size, inspection, certification, and identification requirements, and (b) a repacker who repackages such dates in containers other than those in which received, shall comply with the then effective container regulations established pursuant to § 987.48.

[F.R. Doc. 67-8943; Filed, July 31, 1967; 8:51 a.m.]

# DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## [ 14 CFR Part 39 ]

[Docket No. 8300]

## AIRWORTHINESS DIRECTIVES

### BAC 1-11 Model 212AR, 401AK, and 410AQ Airplanes

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to British Aircraft Corp., BAC 1-11 Model 212AR, 401AK, and 410AQ airplanes which have a center fuel tank fitted with Thompson Ramo fuel pumps P/N 248800/4 or pumps manufactured under license by Plessey which include additional part numbers 570/1/21221/004. It has been determined that failure or disengagement of a fuel pump retaining screw in the center fuel tank installation would permit movement of the pump unit. The movement of this unit would allow fuel leakage due to the displacement of the peripheral seals and might also break the electrical power supply connection to the pump. In view of the seriousness of such a failure and to ensure that failsafe design requirements are maintained, the proposed AD would require inspection of the center fuel tank installation within the next 200 hours' time in service after the effective date of this AD and its modification in accordance with BAC Service Bulletin No. 28-PM 2701 within the next 1,000 hours' time in service after the effective date of this AD.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20590. All communications received on or before August 31, 1967, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423).

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

BRITISH AIRCRAFT. Applies to BAC 1-11 airplanes Model/Type 212AR, 401AK, 410AQ, which have a center fuel tank fitted with Thompson Ramo fuel pumps P/N 248800/4 or pumps manufactured under license by Plessey which include additional part numbers 570/1/21221/004.

Compliance required as indicated.

To prevent fuel pump movement and consequent fuel leakage, accomplish the following:

(a) Within the next 200 hours' time in service after the effective date of this AD, unless already accomplished, inspect the center tank fuel pump installation in accordance with BAC 1-11 Alert Service Bulletin 28-A-PM 2701, Issue 1, or later ARB-approved issue, or FAA-approved equivalent.

(b) If leaks are found when conducting the inspection required by paragraph (a), before further flight stop the leaks by repositioning the fuel booster pump and, if necessary, replacing the seals between the pump and cannister.

(c) Within the next 1,000 hours' time in service after the effective date of this AD, modify the center tank fuel booster pumps in accordance with British Aircraft Corp. Service Bulletin No. 28-PM 2701 or later ARB-approved issue, or an equivalent approved by the Chief, Aircraft Certification Staff, European Region.

Issued in Washington, D.C., on July 24, 1967.

R. S. SLIFF,
*Acting Director,*
*Flight Standards Service.*

[F.R. Doc. 67-8892; Filed, July 31, 1967; 8:47 a.m.]

## [ 14 CFR Part 39 ]

[Docket No. 67-SO-72]

## AIRWORTHINESS DIRECTIVES

### Piper PA-28 and PA-32 Series Airplanes

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Piper PA-28 and PA-32 series airplanes. There have been reports of problems in the fuel system which have caused fuel interruptions and inadvertent fuel spillage. Since this condition is likely to exist or develop in other airplanes of the same type design, the proposed airworthiness directive would require modifications to be made to the fuel selector quadrant, quick drain valve operating lever and installation of new fuel lines from the outboard tip tanks.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket, Post Office Box 20636, Atlanta, Ga. 30320. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423). In consideration of the foregoing, it is proposed to amend § 39.13 of the Federal Aviation Regulations by adding the following airworthiness directive:

PIPER. Applies to Piper PA-28 and PA-32 series airplanes. Serial numbers affected are noted below:

Compliance is required within the next 100 hours' time in service after the effective date of this AD unless already accomplished.

To prevent—

(a) Possible sticking of the quick drain in the fuel selector valve;

(b) Improper positioning of the fuel selector valve between detents;

(c) Rotation of the fuel selector lever knob; and

(d) Excessive time delay in reestablishing fuel flow from a tip tank after all of the usable fuel from that tank has been used, accomplish the following:

(a) On Model PA 28-235 airplanes, Serial Nos. 28-10001 through 28-10851; Model PA-32-260 airplanes, Serial Nos. 32-04, 32-1 through 32-14, 32-16 through 32-853; Models PA-32-300 and PA-32S-300 airplanes, Serial Nos. 32-15, 32-40000 through 32-40153:

(1) Install a new manual-return quick-drain valve operating lever, P/N 65289-00;

(2) Install pin in the fuel selector knob;

(3) Install indicators on the fuel selector quadrant to indicate the exact position of the selector valve.

Installation instructions and all necessary parts are contained in Piper Kit No. 757139V and Service Bulletin No. 249.

(b) On Model PA-28-235 airplanes, Serial Nos. 28-10001 through 28-10719: Install new fuel lines at the wing tip tanks in accordance with Piper Service Bulletin 253 and Piper Kit No. 757151V. All necessary parts and installation instructions are contained in this kit.

(c) On Model PA-28-235 airplanes, Serial Nos. 28-10720 through 28-10851; Model PA-32-260 airplanes, Serial Nos. 32-04, 32-1 through 32-14, 32-16 through 32-853; Model PA-32-300, PA-32S-300 airplanes, Serial Nos. 32-15, 32-40000 through 32-40153:

Install new fuel lines at the wing tip tanks in accordance with Piper Service Bulletin 253 and Piper Kit No. 757152V. All necessary parts and installation instructions are contained in this kit.

Other means of compliance with the requirements of this directive may be utilized, if approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region.

Compliance time may be adjusted up to a maxium of 20 hours to coincide with aircraft annual or 100-hour scheduled inspections.

(Piper Service Bulletins No. 249 dated May 16, 1967, and No. 253 dated July 7, 1967, cover this same subject.)

Issued in East Point, Ga., on July 21, 1967.

GORDON A. WILLIAMS, JR.,
*Acting Director, Southern Region.*

[F.R. Doc. 67-8893; Filed, July 31, 1967; 8:47 a.m.]

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[ 14 CFR Part 71 ]

[Airspace Docket No. 67-CE-64]

## CONTROL ZONE AND TRANSITION AREA

### Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the control zone and the transition area at Alpena, Mich.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106.

Since designation of the Alpena, Mich., control zone and transition area the airport coordinates for the Phelps-Collins Airport have been changed. In addition, the Federal Aviation Administration has determined that it is necessary to establish two holding patterns for turbojet aircraft operating in the Alpena terminal area. Therefore, it is necessary to alter the Alpena control zone and transition area to reflect the changes in coordinates and to further alter the 1,200-foot floor transition area to protect turbojet aircraft in the holding patterns.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

(1) In § 71.171 (32 F.R. 2071), the following control zone is amended to read:

ALPENA, MICH.

That airspace within a 5-mile radius of Phelps-Collins Airport, Alpena, Mich. (latitude 45°05'00'' N., longitude 83°33'00'' W.); within 2 miles each side of the Alpena VORTAC 346° radial, extending from the 5-mile radius zone to 8 miles north of the VORTAC; within 2 miles each side of the Alpena VORTAC 186° radial, extending from the 5-mile radius zone to 8 miles south of the VORTAC; within 2 miles each side of the Alpena VORTAC 306° radial extending from the 5-mile radius zone to 8 miles northwest of the VORTAC; and within 2 miles each side of the 180° bearing from the Alpena RBN, extending from the 5-mile radius zone to the RBN. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

(2) In § 71.181 (32 F.R. 2148) the following transition area is amended to read:

ALPENA, MICH.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Phelps-Collins Airport, Alpena, Mich. (latitude 45°05'00'' N., longitude 83°33'00'' W.); within 5 miles east and 8 miles west of the 180° and 360° bearings from the Alpena RBN, extending from 2 miles south to 12 miles north of the RBN, within 5 miles west and 8 miles east of the Alpena VORTAC 186° radial, extending from the VORTAC to 12 miles south of the VORTAC, within 5 miles east and 8 miles west of the Alpena VORTAC 346° radial, extending from the VORTAC to 22 miles north of the VORTAC, and within 5 miles northeast and 8 miles southwest of the Alpena VORTAC 306° radial, extending from the VORTAC to 12 miles northwest of the VORTAC, and that airspace extending upward from 1,200 feet above the surface within a 21-mile radius of Phelps-Collins Airport, within the arc of a 29-mile radius circle centered on the Alpena RBN, extending from a line 5 miles west of and parallel to the 360° bearing from the RBN clockwise to a line 5 miles east of and parallel to the 021° bearing from the RBN, within 6 miles southeast and 9 miles northwest of the Alpena VORTAC 232° radial extending from the 21-mile radius area to 48 miles southwest of the VORTAC, and within 6 miles northeast and 9 miles southwest of the Alpena VORTAC 305° radial extending from the 21-mile radius area to 48 miles northwest of the VORTAC, excluding the portion which coincides with the Oscoda, Mich., transition area.

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348).

Issued at Kansas City, Mo., on July 13, 1967.

DANIEL E. BARROW,
*Acting Director, Central Region.*

[F.R. Doc. 67-8920; Filed, July 31, 1967; 8:49 a.m.]

## [ 14 CFR Part 71 ]

[Airspace Docket No. 67-WE-42]

## CONTROL ZONE AND TRANSITION AREA

### Proposed Alteration

The Federal Aviation Administration is considering amendments to Part 71 of the Federal Aviation Regulations which would alter the controlled airspace in the Hoquiam, Wash., terminal area.

Interested persons may participate in the proposed rule-making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 5651 West Manchester Avenue, Post Office Box 90007, Airport Station, Los Angeles, Calif. 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 5651 West Manchester Avenue, Los Angeles, Calif. 90045.

A new VOR/DME approach procedure has been developed for Runway 24 at Bowerman Field, Hoquiam, Wash. The new approach is predicated on 18-mile DME arc transitions from the Hoquiam VORTAC 046° M (V-27W) and 066° M (V-204) radials to the 058° M final approach radial. The proposed approach will require additional 700-foot transition area to provide controlled airspace for those portions of the transition routings conducted below 1,500 feet above the surface. In addition, a 5-mile control zone extension will be required east of the current Hoquiam control zone to provide protection for that portion of the approach conducted below 1,000 feet above the surface.

In view of the foregoing, the FAA proposes the following airspace actions:

In § 71.171 (32 F.R. 2101) the Hoquiam, Wash., control zone is amended to read as follows:

HOQUIAM, WASH.

Within a 5-mile radius of Bowerman Field, Hoquiam, Wash. (latitude 46°58'15" N., longitude 123°56'05" W.), within 2 miles each side of the Hoquiam VORTAC 081° radial, extending from the 5-mile radius zone to the VORTAC, and within 2 miles each side of the Hoquiam VORTAC 080° radial, extending from the 5-mile radius zone to 20.5 miles east of the VORTAC.

In § 71.181 (32 F.R. 2199) the Hoquiam, Wash., transition area is amended to read as follows:

That airspace extending upward from 700 feet above the surface east of Bowerman Field, bounded on the north by a line 2 miles north of and parallel to the Hoquiam VORTAC 068° radial, on the south by a line 2 miles south of and parallel to the Hoquiam 080° radial, extending eastward between the arcs of 5- and 13-mile radius circles centered on Bowerman Field (latitude 46°58'15" N., longitude 123°56'05" W.); that airspace extending upward from 1,200 feet above the surface, within 8 miles north and 8 miles south of the Hoquiam VORTAC 069° and 249° radials, extending from 13 miles west to 15 miles east of the VORTAC.

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (72 Stat. 749; 49 U.S.C. 1348).

Issued in Los Angeles, Calif., on July 24, 1967.

LEE E. WARREN,
*Acting Director, Western Region.*

[F.R. Doc. 67-8921; Filed, July 31, 1967; 8:49 a.m.]

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## [ 14 CFR Part 71 ]

[Airspace Docket No. 67-CE-91]

## TRANSITION AREA

### Proposed Alteration and Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Independence, Kans., and designate a transition area at Coffeyville, Kans.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106.

As the result of the development of a public instrument approach procedure to serve McGugin Municipal Airport, Coffeyville, Kans., utilizing the city-owned nondirectional beacon as a navigational aid, it is necessary to designate a 700-foot floor transition area at Coffeyville to protect aircraft executing this approach procedure. In addition, the public instrument approach procedure for Independence, Kans., Municipal Airport is being realigned. Therefore, it is necessary to alter the Independence transition area to protect aircraft executing this revised approach procedure.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (32 F.R. 2148), the following transition area is amended to read:

INDEPENDENCE, KANS.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Independence Municipal Airport (latitude 37°09'30" N., longitude 95°46'30" W.); and that airspace extending upward from 1,200 feet above the surface within 5 miles west and 8 miles east of the 193° bearing from Independence Municipal Airport, extending from the airport to 12 miles south of the airport.

In § 71.181 (32 F.R. 2148), the following transition area is added:

COFFEYVILLE, KANS.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of McGugin Municipal Airport (latitude 37°05'43" N., longitude 95°34'27" W.), excluding the portion which overlies the Independence, Kansas transition area.

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348).

Issued in Kansas City, Mo., on July 13, 1967.

DANIEL E. BARROW,
*Acting Director, Central Region.*

[F.R. Doc. 67-8922; Filed, July 31, 1967; 8:49 a.m.]

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## [ 14 CFR Part 71 ]

[Airspace Docket No. 67-SW-50]

## TRANSITION AREA

### Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to designate a transition area at Uvalde, Tex.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Southwest Region, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Tex. 76101. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Air Traffic Division. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Tex. An informal Docket will also be available for examination at the Office of the Chief, Air Traffic Division.

It is proposed to designate the Uvalde, Tex., transition area as that airspace extending upward from 700 feet above the surface within a 5-mile radius of Garner Field (latitude 29°12'54" N., longitude 99°44'30" W.) and within 2 miles each side of the 171° bearing (161° magnetic) from the Uvalde RBN (latitude 29°13'06" N., longitude 99°44'29" W.) extending from the 5-mile radius area to 8 miles south of the RBN; that airspace extending upward from 1,200 feet above the surface within a 23-mile radius of Garner Field; and that airspace extending upward from 4,500 feet MSL bounded by a line beginning at latitude 29°19'50" N., longitude 99°09'30" W., to latitude 28°54'00" N., longitude 99°05'00" W., to latitude 28°52'00" N., longitude 99°25'00" W., to latitude 28°20'00" N. at the United States-Mexico border, thence northwest along the United States-Mexico border to and counterclockwise along the arc of a 60-mile radius circle centered at latitude 29°21'35" N., longitude 100°46'35" W. to latitude 30°10'00" N., thence east along latitude 30°10'00" N., to and counterclockwise along the arc of a 75-mile radius circle centered at latitude 29°38'37.7" N., longitude 98°27'39.7" W. to latitude 29°24'00" N., thence to point of beginning.

The proposed transition area will provide airspace protection for aircraft executing instrument approach/departure procedures at Garner Field and for en route operations in the Uvalde area.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348).

Issued in Fort Worth, Tex., on July 21, 1967.

A. L. COULTER,
*Acting Director, Southwest Region.*

[F.R. Doc. 67-8923; Filed, July 31, 1967; 8:49 a.m.]

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## [ 14 CFR Part 121 ]

[Docket No. 7594; Notice 67-34]

## IFR LANDINGS

### Pilot in Command Experience Requirements

The Federal Aviation Administration is considering amending Part 121 of the Federal Aviation Regulations to provide that the 100 hours of pilot in command experience required by §§ 121.651(e) and 121.653(d) may be reduced (not to exceed 50 percent) by substituting one landing in Part 121 operations for one required hour of pilot in command experience.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket GC-24, 800 Independence Avenue SW., Washington, D.C. 20590. All communications received on or before October 2, 1967, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

When the 100 hour pilot in command experience requirement was adopted in 1961, the FAA stated: "The safe execution of an instrument approach to the lowest minimums requires the highest degree of pilot familiarity with the airplane, its controls, instruments, and performance characteristics. One hundred hours of experience in a new type of airplane as pilot in command in air carrier or commercial operations is necessary in order to achieve this degree of familiarity so essential to safe operations at the lowest landing minimums."

For domestic and flag air carriers, § 121.651(e) now provides that, if a pilot in command of an airplane has not served 100 hours as pilot in command in air carrier or commercial operations in the type of airplane he is operating, the ceiling and visibility landing minimums in the air carrier operations specifications for each regular, provisional, or refueling airport are increased by 100 feet and one-half mile, respectively. Section 121.653(d) contains a similar requirement for supplemental air carriers and commercial operators.

The Air Transport Association (ATA), on behalf of its member airlines, has requested an amendment to § 121.651(e) providing "for a reduction of the 100 hour requirement, to not less than 50 hours, by giving 1-hour credit for each landing accomplished." In its request, ATA states that it was the airlines' opinion that the 100 hour requirement was inequitable because: "Pilots serving on aircraft operating over a short-haul route structure acquire experience in the pertinent phases of flight at a much faster rate than do those operating over longer route segments." The FAA is issuing this notice in response to the ATA request.

The FAA still believes that the highest degree of pilot familiarity with the type of aircraft is necessary to safe operations at the lowest landing minimums. While the FAA believes that the deletion of the 100 hour requirement is not justified at this time, it also believes that the basic purpose of the 100 hour requirement would not be compromised by authorizing the substitution that ATA requests. Pilot familiarity with new types of aircraft is increasing, in part because of the improved quality of training programs since the adoption of Amdt. 121-7. Also, the FAA has had favorable experience with similar substitutions authorized in the programed hours of initial flight assignment under § 121.414(c)(3). Therefore, the FAA, proposes to grant the ATA request, and to extend the authority to make the substitution to all Part 121 certificate holders by deleting §§ 121.651(e) and 121.653(d) and adding a new § 121.652 applicable to all Part 121 certificate holders.

Present § 121.651(e) requires 100 hours of experience as pilot in command in "air carrier or commercial operations", while present § 121.653(d) requires that experience in "operations under this part". Both paragraphs are intended to require the 100 hours experience in actual Part 121 operations (not including training or ferry flights), and proposed new § 121.652 uses the phrase "in operations under this part" to resolve any apparent difference on this point. Also, § 121.652(b) would continue to prohibit use of the sliding scale (if authorized) until the pilot meets the requirements of § 121.652(a).

In consideration of the foregoing, it is proposed to amend Part 121 as follows:

**§ 121.651 [Amended]**

1. By deleting paragraph (e) of § 121.651.

2. By adding the following new § 121.652:

**§ 121.652 Landing weather minimums: IFR: all certificate holders.**

(a) If the pilot in command of an aircraft has not served 100 hours as pilot in command in operations under this part in the type of aircraft he is operating, the ceiling and visibility landing minimums in the certificate holder's operations specifications for regular, provisional, or refueling airports are increased by 100 feet and one-half mile, respectively. The ceiling and visibility minimums need not be increased above those applicable to the airport when used as an alternate airport. The 100 hours of pilot in command experience required by this paragraph may be reduced (not to exceed 50 percent) by substituting one landing in operations under this part in the type of airplane for one required hour of pilot in command experience.

(b) The sliding scale when authorized in the certificate holder's operations specifications does not apply until the pilot in command meets the requirements of paragraph (a) of this section in the type of airplane he is operating.

**§ 121.653 [Amended]**

3. By deleting paragraph (d) of § 121.653.

This proposal is made under the authority of sections 313(a) and 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a) and 1421).

Issued in Washington, D.C., on July 24, 1967.

R. S. SLIFF,
*Acting Director,*
*Flight Standards Service.*

[F.R. Doc. 67-8894; Filed, July 31, 1967; 8:47 a.m.]

# CIVIL AERONAUTICS BOARD

[ 14 CFR Parts 202, 203 ]

[Docket No. 18830; EDR-120]

## CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY; INTERSTATE, OVERSEAS, AND FOREIGN AIR TRANSPORTATION

### Service of Airport Notices Upon FAA

JULY 26, 1967.

Notice is hereby given that the Civil Aeronautics Board has under consideration proposed amendments of Parts 202 and 203 of the Board's Economic Regulations (14 CFR Parts 202 and 203) so as to provide for service of airport notices upon the Federal Aviation Administration.

The features of the proposed amendments are described in the explanatory statement set forth below and the proposed amendments are set forth in the proposed rule set forth below. The regulation is proposed under the authority of sections 204(a) and 401 of the Federal Aviation Act of 1958 (72 Stat. 743, 754; 49 U.S.C. 1324, 1371).

Interested persons may participate in the proposed rulemaking through submission of ten (10) copies of written data, views, or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant matter in communications received on or before August 31, 1967, will be considered by the Board before taking final action on the proposed rule. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 710 Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., upon receipt thereof.

By the Civil Aeronautics Board.

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

*Explanatory statement.* Section 202.3 of the Economic Regulations requires that each airport notice or application for permission to use an airport be served upon the Postmaster General, certain air carriers, and the chief executives of the city and State in which the airport is located. The Federal Aviation Administration has requested that Part 202 be revised so as to require service of airport notices upon it. In view of the Federal Aviation Administration's statutory responsibilities in the field of airport development and safety, the Board proposes to grant the request. To conform Part 203 with Part 202, a similar amendment is proposed as to the former.

*Proposed rule.* It is proposed to amend Parts 202 and 203 of the Economic Regulations (14 CFR Parts 202 and 203) as follows:

1. Add a new subparagraph (4) to § 202.3(c) to read as follows:

**§ 202.3 Airport authorization.**

* * * * *

(c) *Persons to be served.* * * *

(4) The Federal Aviation Administration, marked for attention of the Director of Airport Services.

2. Amend § 203.7(d) to read as follows:

**§ 203.7 Persons upon whom notice must be served.**

* * * * *

(d) In the case of an Airport Notice—Foreign Air Transportation, each scheduled air carrier which regularly renders service to or from the point intended to be served through the proposed airport; and also the Federal Aviation Administration, marked for attention of the Director of Airport Services.

* * * * *

[F.R. Doc. 67-8903; Filed, July 31, 1967; 8:47 a.m.]

# INTERSTATE COMMERCE COMMISSION

[ 49 CFR Part 276 ]

[Ex Parte No. MC-19 (Sub-No. 4)]

## MOTOR CARRIERS OF HOUSEHOLD GOODS

### Accessorial or Terminal Services; Tariffs Providing Therefor; Packaging and Uncrating Charges

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 13th day of July 1967.

It appearing that the Commission in Common Carriers of Household Goods, 17 M.C.C. 467, 505-506 (1939), promulgated a set of rules governing the practices of motor common carriers of household goods, including rule 4, § 276.4[1] of the Code of Federal Regulations, 49 CFR 276.4 (Accessorial or terminal services; tariffs providing therefor; packing and uncrating charges), as hereinafter described;

It further appearing, that freight forwarders that are exempt from regulation under section 402(b) (2) of the Interstate Commerce Act and motor common carriers acting in that capacity, have made extensive use of containerization in transporting used household goods;

It further appearing, that numerous certificated motor common carriers have been rendering accessorial or terminal services in connection with containerized shipments of used household goods for or on behalf of exempt freight forwarders under tariffs that fail to conform with rule 4 of Ex Parte No. MC-19;

And it further appearing, that the use of containerization was not in vogue at the time of the Commission's investigation in Ex Parte No. MC-19, and it is desirable that the Commission determine whether the rendition of said accessorial or terminal services in connection with containerization shipments of used household goods for or on behalf of exempt freight forwarders or motor common carriers acting in that capacity, should be excepted from the application of rule 4:

*It is ordered,* That a proceeding be, and it is hereby, instituted under authority of part II of the Interstate Commerce Act (section 217) and section 4 of the Administrative Procedure Act for the purpose of determining whether § 276.4 should be amended. As here pertinent said section reads as follows:

(a) Such common carriers shall establish in the manner prescribed in section 217 of part II of the Interstate Commerce Act, and the rules and regulations issued pursuant thereto, the charges to be made for each accessorial or terminal service rendered in connection with the transportation of household goods by motor vehicle. The tariffs establishing such charges shall separately state each service to be rendered and the charge therefor * * *. This section shall apply only where the line-haul transportation is performed by a motor carrier. * * *

It is proposed that the period following "carrier" be stricken and the following language, preceded by a comma, added: "except that local transportation services by certificated motor common carriers, within or without terminal areas, for or on behalf of freight forwarders exempt from regulation under section 402(b) (2) of the Interstate Commerce Act, in connection with through movements of used household goods in interstate or foreign commerce, shall not constitute line-haul transportation within the purview of this rule."

*It is further ordered,* That any person desiring to become a party to this proceeding shall notify the Commission of that fact and whether he is for or against the proposed amendment not later than 15 days from the date of publication of this order in the FEDERAL REGISTER. Thereafter, the Secretary of the Commission shall serve a service list upon all parties to this proceeding within 30 days from the date of this publication.

*It is further ordered.* That this proceeding be handled under modified procedure, the filing and serving of pleadings to be as follows: (a) Opening statement of facts and argument by any

[1] Formerly numbered 49 CFR 176.4.

parties in support of the proposed amendment on or before 60 days from the date of service of this order; (b) 30 days thereafter, statement of facts and argument by any party in opposition; and (c) 10 days thereafter, replies by any supporting parties.

*And it is further ordered*, That a copy of this order be served on the Public Utility Commissions or Boards, or similar regulatory bodies, of each State having jurisdiction over transportation by motor common carrier; that a copy be posted in the Office of the Secretary of the Interstate Commerce Commission for public inspection, and that a copy be delivered to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER as notice to all interested parties.

Date of service, July 27, 1967.

By the Commission.

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

[F.R. Doc. 67-8911; Filed, July 31, 1967; 8:48 a.m.]

# Notices

## DEPARTMENT OF STATE

### Agency for International Development

### AID FOR INTERNATIONAL MEDICINE, INC.

#### Registration as Voluntary Foreign Aid Agency

In accordance with the regulations of the Agency for International Development concerning Registration of Agencies for Voluntary Foreign Aid (AID Regulation 3) 22 CFR Part 203, promulgated pursuant to section 621 of the Foreign Assistance Act of 1961, as amended, notice is hereby given that a certificate of registration as a voluntary foreign aid agency has been issued by the Advisory Committee on Voluntary Foreign Aid of the Agency for International Development to the following agency:

Aid for International Medicine, Inc., 1411 North Van Buren Street, Wilmington, Del. 19806.

Dated: June 30, 1967.

HERBERT J. WATERS,
*Assistant Administrator for War on Hunger.*

[F.R. Doc. 67-8879; Filed, July 31, 1967; 8:45 a.m.]

### ANDEAN FOUNDATION, INC.

#### Registration as Voluntary Foreign Aid Agency

In accordance with the regulations of the Agency for International Development concerning Registration of Agencies for Voluntary Foreign Aid (AID Regulation 3) 22 CFR Part 203, promulgated pursuant to section 621 of the Foreign Assistance Act of 1961, as amended, notice is hereby given that a certificate of registration as a voluntary foreign aid agency has been issued by the Advisory Committee on Voluntary Foreign Aid of the Agency for International Development to the following agency:

Andean Foundation, Inc., Clifton, Va. 22024.

Dated: June 30, 1967.

HERBERT J. WATERS,
*Assistant Administrator for War on Hunger.*

[F.R. Doc. 67-8880; Filed, July 31, 1967; 8:45 a.m.]

### DIRECT RELIEF FOUNDATION

#### Registration as Voluntary Foreign Aid Agency

In accordance with the regulations of the Agency for International Development concerning Registration of Agencies for Voluntary Foreign Aid (AID Regulation 3) 22 CFR Part 203, promulgated pursuant to section 621 of the Foreign Assistance Act of 1961, as amended, notice is hereby given that a certificate of registration as a voluntary foreign aid agency has been issued by the Advisory Committee on Voluntary Foreign Aid of the Agency for International Development to the following agency:

Direct Relief Foundation, 27 East Canon Perdido Street, Santa Barbara, Calif. 93101.

Dated: June 30, 1967.

HERBERT J. WATERS,
*Assistant Administrator for War on Hunger.*

[F.R. Doc. 67-8881; Filed, July 31, 1967; 8:46 a.m.]

### FRIENDS OF SOOCHOW

#### Registration as Voluntary Foreign Aid Agency

In accordance with the regulations of the Agency for International Development concerning Registration of Agencies for Voluntary Foreign Aid (AID Regulation 3) 22 CFR Part 203, promulgated pursuant to section 621 of the Foreign Assistance Act of 1961, as amended, notice is hereby given that a certificate of registration as a voluntary foreign aid agency has been issued by the Advisory Committee on Voluntary Foreign Aid of the Agency for International Development to the following agency:

Friends of Soochow, Box 133, Westwood Plaza, Los Angeles, Calif. 90024.

Dated: June 30, 1967.

HERBERT J. WATERS,
*Assistant Administrator for War on Hunger.*

[F.R. Doc. 67-8882; Filed, July 31, 1967; 8:46 a.m.]

### KOINONIA FOUNDATION

#### Registration as Voluntary Foreign Aid Agency

In accordance with the regulations of the Agency for International Development concerning Registration of Agencies for Voluntary Foreign Aid (AID Regulation 3) 22 CFR Part 203, promulgated pursuant to section 621 of the Foreign Assistance Act of 1961, as amended, notice is hereby given that a certificate of registration as a voluntary foreign aid agency has been issued by the Advisory Committee on Voluntary Foreign Aid of the Agency for International Development to the following agency:

Koinonia Foundation, Pikesville Box 5744, Baltimore, Md. 21208.

Dated: June 30, 1967.

HERBERT J. WATERS,
*Assistant Administrator for War on Hunger.*

[F.R. Doc. 67-8883; Filed, July 31, 1967; 8:46 a.m.]

### NATIONAL ASSOCIATION OF THE PARTNERS OF THE ALLIANCE, INC.

#### Registration as Voluntary Foreign Aid Agency

In accordance with the regulations of the Agency for International Development concerning Registration of Agencies for Voluntary Foreign Aid (AID Regulation 3) 22 CFR Part 203, promulgated pursuant to section 621 of the Foreign Assistance Act of 1961, as amended, notice is hereby given that a certificate of registration as a voluntary foreign aid agency has been issued by the Advisory Committee on Voluntary Foreign Aid of the Agency for International Development to the following agency.

National Association of the Partners of the Alliance, Inc., 1518 K Street NW., Washington, D.C. 20005.

Dated: June 30, 1967.

HERBERT J. WATERS,
*Assistant Administrator for War on Hunger.*

[F.R. Doc. 67-8884; Filed, July 31, 1967; 8:46 a.m.]

### UNITED ISRAEL APPEAL, INC.

#### Registration as Voluntary Foreign Aid Agency

In accordance with the regulations of the Agency for International Development concerning Registration of Agencies for Voluntary Foriegn Aid (AID Regulation 3) 22 CFR Part 203, promulgated pursuant to section 621 of the Foreign Assistance Act of 1961, as amended, notice is hereby given that a certificate of registration as a voluntary foreign aid agency has been issued by the Advisory Committee on Voluntary Foreign Aid of the Agency for International Development to the following agency:

United Israel Appeal, Inc., 515 Park Avenue, New York, N.Y. 10022

Dated: June 30, 1967.

HERBERT J. WATERS,
*Assistant Administrator for War on Hunger.*

[F.R. Doc. 67-8885; Filed, July 31, 1967; 8:46 a.m.]

## DEPARTMENT OF THE INTERIOR

### National Park Service

[Order No. 40]

### LAND LIAISON OFFICERS

#### Delegation of Authority

Land Liaison Officers in the Midwest, Southeast, Southwest, and Western Regions of the National Park Service are authorized to:

1. Approve and accept options and offers to sell or exchange with the United States lands, or interests in lands, within areas under the jurisdiction and control of the National Park Service, and execute all necessary agreements and conveyances incident thereto when the amount involved does not exceed $100,000.

2. Accept deeds conveying to the United States lands, or interests in lands, within areas under the jurisdiction or control of the National Park Service.

3. Execute, approve, and administer contracts not in excess of $50,000 for appraisals, surveys, and other services related to and required in the performance of their official functions, in conformity with statutory authority and applicable regulations, and subject to the availability of funds.

(245 DM 1, 27 F.R. 6395; 5 U.S.C., sec. 22; sec. 2, Reorganization Plan No. 3 of 1950; National Park Service Order No. 29, 28 F.R. 10306, dated Sept. 20, 1963)

Dated: July 18, 1967.

PHILIP O. STEWART,
*Chief, Division of Land and Water Rights.*

[F.R. Doc. 67-8870; Filed, July 31, 1967; 8:45 a.m.]

## STATUE OF LIBERTY NATIONAL MONUMENT

### Notice of Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5, Public Law 89-249, public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Evelyn Hill, Inc., authorizing it to continue to provide concession facilities and services for the public at the Statue of Liberty National Monument, for a period of five (5) years.

The foregoing concessioner has performed its obligations under a prior contract to the satisfaction of the National Park Service and, therefore, pursuant to the act cited above, is entitled to be given preference in the negotiation of a new contract. However, pursuant to the act cited above, the Secretary is also required to consider and evaluate all proposals received as a result of this notice. Interested parties should contact the Chief, Division of Concessions Management, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

Dated: July 27, 1967.

LESLIE P. ARNBERGER,
*Acting Assistant Director, National Park Service.*

[F.R. Doc. 67-8956; Filed, July 31, 1967; 8:51 a.m.]

# DEPARTMENT OF AGRICULTURE

## Office of the Secretary

## NORTH DAKOTA AND TEXAS

### Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the States of North Dakota and Texas natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

NORTH DAKOTA

La Moure.

TEXAS

| | |
|---|---|
| Aransas. | Kleberg. |
| Brooks. | Nueces. |
| Cameron. | San Patricio. |
| Duval. | Starr. |
| Hidalgo. | Willacy. |
| Jim Hogg. | Zapata. |
| Jim Wells. | |

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after June 30, 1968, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., the 26th day of July 1967.

ORVILLE L. FREEMAN,
*Secretary.*

[F.R. Doc. 67-8896; Filed, July 31, 1967; 8:47 a.m.]

## TEXAS

### Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the State of Texas natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

TEXAS

FHA DISTRICT ONE

| | |
|---|---|
| Armstrong. | Hutchinson. |
| Briscoe. | Lipscomb. |
| Carson. | Moore. |
| Childress. | Ochiltree. |
| Collingsworth. | Oldham. |
| Dallam. | Parmer. |
| Deaf Smith. | Potter. |
| Donley. | Randall. |
| Gray. | Roberts. |
| Hall. | Sherman. |
| Hansford. | Swisher. |
| Hartley. | Wheeler. |
| Hemphill. | |

FHA DISTRICT TWO

| | |
|---|---|
| Bailey. | Hockley. |
| Castro. | Lamb. |
| Cochran. | Lubbock. |
| Crosby. | Lynn. |
| Garza. | Terry. |
| Hale. | Yoakum. |

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after June 30, 1968, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 26th day of July 1967.

ORVILLE L. FREEMAN,
*Secretary.*

[F.R. Doc. 67-8897; Filed, July 31, 1967; 8:47 a.m.]

## Rural Community Development Service

### ORGANIZATION AND FUNCTIONS

Notice is hereby given for the guidance of the public as to the organization and functions of the Rural Community Development Service, pursuant to 5 U.S.C. 552, 559.

*Organization and functions.* The Rural Community Development Service (RCDS) is located in Washington, D.C. It is an agency of the U.S. Department of Agriculture (USDA) established on February 24, 1965, by Secretary's Memorandum No. 1570. It is under the general direction and supervision of the Assistant Secretary for Rural Development and Conservation. It does not have a field organization.

The RCDS provides staff assistance to the Secretary of Agriculture and the Assistant Secretary for Rural Development and Conservation at the Washington level in the implementation and coordination of rural development programs. It cooperates with USDA agencies and other Federal departments on all phases of rural development. One of its chief functions is to assist in implementing the "outreach" activities of USDA. It does this by (1) identifying Federal programs outside USDA that are still not effectively reaching rural areas because of difficulties of communicating with a dispersed rural population; and (2) working with Federal departments and agencies having such programs to develop effective means for overcoming these difficulties by appropriate adjustments in the programs and by devising appropriate methods of utilizing the services of the Farmers Home Administration and other USDA agencies to facilitate rural development programs which supplement the regular programs of these agencies in rural areas.

Material and records maintained by the RCDS are available to the public in accordance with regulations published in 32 F.R. 9723.

Done in Washington, D.C., this 26th day of July 1967.

KENNETH M. BIRKHEAD,
*Administrator of the Rural Community Development Service.*

[F.R. Doc. 67-8942; Filed, July 31, 1967; 8:51 a.m.]

# DEPARTMENT OF COMMERCE

## Business and Defense Services Administration

### FORSYTH DENTAL CENTER ET AL.

#### Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration, Washington, D.C. 20230, within 20 calendar days after date on which this notice of application is published in the FEDERAL REGISTER.

Regulations issued under cited Act, published in the February 4, 1967, issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C.

A copy of each comment filed with the Director of the Office of Scientific and Technical Equipment must also be mailed or delivered to the applicant, or its authorized agent, if any, to whose application the comment pertains; and the comment filed with the Director must certify that such copy has been mailed or delivered to the applicant.

Docket No. 67-00126-33-46500. Applicant: Forsyth Dental Center, 140 The Fenway, Boston, Mass. 02115. Article: Diamond Knife for ultrathin sectioning, Microtome model, Polyester III. Manufacturer: Walter Rawyler, Switzerland. Intended use of article: Applicant states:

For preparing ultrathin sections of calcified tissues for study with the electron microscope.

Application received by Commissioner of Customs: June 15, 1967.

Docket No. 67-00129-33-46040. Applicant: Veterans Administration Hospital, 1201 Northwest 16th Street, Miami, Fla. 33125. Article: Electron Microscope, 1 Norelco Model EM-300 and associated equipment. Manufacturer: Phillips Electronic Instruments, Holland, Europe. Intended use of article: Applicant states:

*Medical Research:* A major part of the electron microscopy work deals with the structure of ribosomes and strands of deoxyribonucleic acid (DNA). A second important aspect is the detection of viruses in various forms of human kidney diseases.

Application received by Commissioner of Customs: June 20, 1967.

Docket No. 67-00134-65-77040. Applicant: Midwest Research Institute, 425 Volker Boulevard, Kansas City, Mo. 64110. Article: Mass Spectrometer Atlas Model CH 4B with associated equipment. Manufacturer: Fried. Krupp Mess- und Analysentechnik, Bremen, West Germany. Intended use of article: The intended use of this article will be to continue a program in the syntheses of complex organic molecules, as potential chemotherapeutic agents to aid in the treatment and cure of diseases. Elucidation of the structure of organic molecules which are relatively nonvolatile and subject to thermal decomposition will be investigated in a program for the syntheses of pest control agents. Complex organic molecules of carbohydrate derivatives will be investigated. The article will also be used for elucidation of structures of new potential propellents, fuels and oxidizers which are subject to violent decomposition. Fundamental processes occurring during nucleation of water will be studied. Mechanisms of thermal decomposition of polymeric materials to complement other techniques such as differential thermal analysis and thermogravimetric analysis will be investigated. Other uses will be research in the analysis of pesticides, analysis of the constituents of the flavors of a variety of foods, and analysis of air pollution problems. Application received by Commissioner of Customs: June 22, 1967.

CHARLEY M. DENTON,
*Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.*

[F.R. Doc. 67-8913; Filed, July 31, 1967; 8:48 a.m.]

### JEFFERSON MEDICAL COLLEGE ET AL.

#### Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration, Washington, D.C. 20230, within 20 calendar days after date on which this notice of application is published in the FEDERAL REGISTER.

Regulations issued under cited Act, published in the February 4, 1967, issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C.

A copy of each comment filed with the Director of the Office of Scientific and Technical Equipment must also be mailed or delivered to the applicant, or its authorized agent, if any, to whose application the comment pertains; and the comment filed with the Director must certify that such copy has been mailed or delivered to the applicant.

Docket No. 68-00015-33-46040. Applicant: Jefferson Medical College, 1025 Walnut Street, Philadelphia, Pa. 19107. Article: Electron microscope Hitachi Perkin-Elmer model HU-11C and associated equipment. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: Applicant states:

The Hitachi Model HU-11C-1 electron microscope will be used in a research project dealing with electron microscopy of cancer of the cervix and purified preparations of bacteriophages. A major part of this project will be concerned with bacteria-bacriophage interactions and the DNA content of phages.

Application received by Commissioner of Customs: July 10, 1967.

Docket No. 68-00023-33-46040. Applicant: The Presbyterian Hospital, Black Research Building, Room 1014, Columbia University, 630 West 168th Street, New York, N.Y. 10032. Article: Electron microscope Hitachi Perkin Elmer model HU-11C. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article will be used to study cancer of the prostate and the effects of various forms of treatment and its ability to destroy these cancer cells. Cell fractions will be obtained from the surgical specimens and these also will be studied from an electron microscopy point of view with negative staining. Application received by Commissioner of Customs: July 12, 1967.

Docket No. 68-00024-33-46040. Applicant: The Presbyterian Hospital, Black Research Building, Room 1014, Columbia University, 630 West 168th Street, New York, N.Y. 10032. Article: Electron Microscope Hitachi Perkin-Elmer model HS/7S. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article will be used to study the ultrastructure of cancer of the prostate both in its active and inactive forms, as well as the effect of various forms of treatment and its ability to destroy these cancer cells. The biopsies that are obtained periodically from patients who had therapy will be studied for ultrastructural changes. There will also be cell fractions that will be obtained from the surgical specimens and these also will be studied from an electron microscopy point of view with negative staining. Application received by Commissioner of Customs: July 12, 1967.

Docket No. 68-00025-33-46040. Applicant: Baylor University Medical Center, 3500 Gaston Avenue, Dallas, Tex. 75246. Article: Electron microscope Philips model EM 75-C with sensitimer. Manufacturer: Philips Electronics Corp., The Netherlands. Intended use of article: Applicant states:

> Teaching and research in the area of Electron Microscopy in Surgical Pathology and especially in kidney and muscle biopsy and tumor diagnosis.

Application received by Commissioner of Customs: July 12, 1967.

Docket No. 68-00026-33-46040. Applicant: Mayo Foundation, 200 First Street Southwest, Rochester, Minn. 55901. Article: Electron microscope Norelco model EM-300, equipped with two 35 mm. and 70 mm. film cameras, desiccator and anticontamination device. Manufacturer: Philips Electronic and Pharmaceutical Corp., The Netherlands. Intended use of article: Applicant states:

> Electron microscopy of biologic specimens (muscle and nerve) and of isolated negatively stained subcellular particles, for medical research.

Application received by Commissioner of Customs: July 13, 1967.

CHARLEY M. DENTON,
*Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.*

[F.R. Doc. 67-8915; Filed, July 31, 1967; 8:48 a.m.]

## INSTITUTE OF MARINE SCIENCE, UNIVERSITY OF MIAMI

### Notice of Decision on Application for Duty-Free Entry of Scientific Articles

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 67-00033-55-83500. Applicant: Institute of Marine Science, University of Miami, 1 Rickenbacker Causeway, Virginia Key, Miami, Fla. 33149. Article: Deep Sea Reversing Thermometers, Type I—Protected, Type II—Unprotected. Manufacturer: Watanabe Keiki Manufacturing Co., Ltd., Tokyo, Japan. Intended use of article: Research studies to determine the properties of the environmental features of the ocean will be conducted with this article.

Comments: No comments have been received with respect to this application.

Decision: Application denied. An instrument of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: Applicant acknowledges that there are two domestic manufacturers of deep sea reversing thermometers—Walter H. Kessler Co., Inc. and Kahl Scientific Instrument Co. (See attachment number 6 to application.) The sole basis for the applicant's belief that no instruments of equivalent scientific value are being manufactured in the United States is that the foreign article is more reliable than the domestic instruments. The claim for superior reliability of the foreign article is based on the relative rate of rejects experienced with the domestic and foreign deep sea reversing thermometers. (See attachment number 7 to application.)

However, there are differences of opinion as to the merits of thermometers of various manufacturers in regard to the question of reliability. In order to establish the superiority of either instrument over the other in this respect, it is necessary to have performance data obtained under carefully controlled conditions which are validly representative of the conditions of the intended use and are derived from statistically valid samples certified by the manufacturers to be representative of their production. We find that neither the data submitted by the applicant nor other available data is sufficient to support a scientifically valid finding of the superior reliability of thermometers of one manufacturer over those manufactured by other firms.

A comparison between the other pertinent characteristics and pertinent specifications of the instruments offered by the aforementioned domestic manufacturers and the similar pertinent characteristics and pertinent specifications of the foreign article, warrants the conclusion that the domestic instruments are scientifically equivalent to the foreign article for the purposes for which such article is intended to be used.

We have also ascertained that at least one domestic manufacturer—Walter H. Kessler Co., Inc.—can deliver the required deep sea reversing thermometers within a reasonable time following the placement of a firm order with the company.

CHARLEY M. DENTON,
*Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.*

[F.R. Doc. 67-8914; Filed, July 31, 1967; 8:48 a.m.]

## UNIVERSITY OF SOUTH FLORIDA

### Notice of Decision on Application for Duty-Free Entry of Scientific Articles

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 67-00044-55-83500. Applicant: University of South Florida, 4202 Fowler Avenue, Tampa, Fla. 33620. Article: Deep Sea Reversing Thermometers. Manufacturer: Watanabe Keiki Manufacturing Co., Ltd., Japan. Intended use of article: Applicant states:

> Deep sea water temperature oceanography research program. Measurement of thermometric depth during hydrocasts, i.e., accurate measurement of effects of pressure (depth) on thermometer readings.

Comments: No comments were received with respect to this application.

Decision: Application denied. An instrument of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: Although the applicant states that to its knowledge no deep sea reversing thermometers are being made in the United States (See answer to question 13 on application), there are two known U.S. manufacturers of such instruments: (1) Kahl Scientific Instrument Corp., and (2) Walter H. Kessler Co., Inc. The domestic instruments, when compared with the foreign article with respect to the characteristics and specifications that are pertinent to the purposes for which such article is intended to be used, are considered to be scientifically equivalent to the foreign article. We have also ascertained that Walter H. Kessler Co., Inc., can supply up to 20 of the deep sea reversing thermometers within 3 months, which is considered to be reasonably normal industry delivery time for these instruments.

CHARLEY M. DENTON,
*Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.*

[F.R. Doc. 67-8916; Filed, July 31, 1967; 8:49 a.m.]

## Maritime Administration

## AMERICAN MAIL LINE, LTD.

### Application for Increase in Sailings

Notice is hereby given that American Mail Line, Ltd. has applied for an increase in the maximum number of subsidized sailings on its freight ship service on Trade Route No. 29 U.S. Pacific/Far East (as Extended) from 42 sailings to 60 sailings per annum, and an increase in the number of subsidized ships from 9 ships to 10 ships. The requested maximum of 60 sailings per annum includes the increase of 4 sailings per annum requested in American Mail Line's previous application, notice of which application was published in the FEDERAL REGISTER of July 11, 1967 (32 F.R. 10220).

Any person, firm, or corporation having any interest in such application and desiring a hearing on issues pertinent to section 605(c) of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1175, should by the close of business on August 14, 1967, notify the Secretary, Maritime Subsidy Board in writing, in triplicate, and file petition for leave to intervene in accordance with the rules of practice and procedure of the Maritime Subsidy Board.

In the event a hearing is ordered to be held on the application under section 605(c), the purpose thereof will be to receive evidence relevant to (1) whether the application is one with respect to a vessel to be operated on a service, route or line served by citizens of the United States which would be in addition to the existing service, or services, and if so, whether the service already provided by vessels of U.S. registry in such service, route or line is inadequate, and (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Maritime Subsidy Board determines that petitions to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Maritime Subsidy Board will take such action as may be deemed appropriate.

Dated: July 27, 1967.

By order of the Maritime Subsidy Board.

JAMES S. DAWSON, Jr.,
*Secretary.*

[F.R. Doc. 67-8946; Filed, July 31, 1967; 8:51 a.m.]

## LYKES BROS. STEAMSHIP CO., INC.

### Notice of Application

Notice is hereby given that Lykes Bros. Steamship Co., Inc., has applied for permission for its ships operating on the Trade Route No. 22—Freight Service (Line D—Orient Line) to call at ports in Sarawak and Sabah (North Borneo), Malaysia.

Any person, firm, or corporation having any interest in such application and desiring a hearing on issues pertinent to section 605(c) of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1175, should by the close of business on August 14, 1967, notify the Secretary, Maritime Subsidy Board in writing, in triplicate, and file petition for leave to intervene in accordance with the rules of practice and procedure of the Maritime Subsidy Board/Maritime Administration.

In the event a section 605(c) hearing is ordered to be held, the purpose thereof will be to receive evidence relevant to (1) whether the application is one with respect to a vessel to be operated on a service, route or line served by citizens of the United States which would be in addition to the existing service, or services, and if so, whether the service already provided by vessels of U.S. registry in such service, route or line is inadequate, and (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Maritime Subsidy Board determines that petitions to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Maritime Subsidy Board will take such action as may be deemed appropriate.

Dated: July 28, 1967.

By order of the Maritime Subsidy Board.

JAMES S. DAWSON, Jr.,
*Secretary.*

[F.R. Doc. 67-8980; Filed, July 31, 1967; 8:51 a.m.]

## LYKES BROS. STEAMSHIP CO., INC.

### Notice of Application

Notice is hereby given that Lykes Bros. Steamship Co., Inc., has applied for a maximum of 18 subsidized sailings outbound from U.S. Pacific ports in the range from San Francisco to the Mexican border to ports in the United Kingdom, Republic of Ireland, Continental Europe (Germany to the Northern border of Portugal), and the Baltic-Scandinavian area. These sailings are to be operated as an extension to the Company's existing service on Trade Route No. 21 (U.S. Gulf/United Kingdom and Continental Europe).

Any person, firm or corporation having any interest in such application and desiring a hearing on issues pertinent to section 605(c) of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1175, should by the close of business on August 14, 1967, notify the Secretary, Maritime Subsidy Board in writing in triplicate, and file petition for leave to intervene in accordance with the rules of practice and procedure of the Maritime Subsidy Board.

In the event a section 605(c) hearing is ordered to be held, the purpose thereof will be to receive evidence relevant to (1) whether the application is one with respect to a vessel to be operated on a service, route or line served by citizens of the United States which would be in addition to the existing service, or services, and if so, whether the service already provided by vessels of U.S. registry in such service, route or line is inadequate, and (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Maritime Subsidy Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Maritime Subsidy Board will take such action as may be deemed appropriate.

Dated: July 28, 1967.

By order of the Maritime Subsidy Board.

JAMES S. DAWSON, Jr.,
*Secretary.*

[F.R. Doc. 67-8981; Filed, July 31, 1967; 8:51 a.m.]

# DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

[OE Docket No. 66-CE-8]

## TELEVISION ANTENNA STRUCTURES NEAR ST. PAUL, MINN.

### Grant of Petition for Discretionary Review, Opinion and Order

On February 3, 1967, the Federal Aviation Administration (FAA) issued a Notice of Grant of Petition for Discretionary Review, Opinion and Order relative to a proposal by WTCN-TV, Inc., United TV Inc., and Midwest Radio TV, Inc., to construct two guyed television towers in an area near Shoreview, Minn., that is considered to be an antenna farm.

By letter dated June 9, 1967, United Television, Inc. (KMSP-TV) advised that because of zoning problems it was necessary to locate the tower proposed for site No. 2 approximately 700 feet southwest of its original location. It is proposed that site No. 2 be changed from latitude 45°03'34'', longitude 93°07'20'', to latitude 45°03'29'5'', longitude 93°-07'27''.

At the new location the structure will remain within the area the FAA considers to be an antenna farm with a height not to exceed 2,375 feet above mean sea level. Therefore, the new site is also acceptable from an aviation standpoint.

*Order.* The Grant of Petition for Discretionary Review, Opinion and Order issued in Washington, D.C., on February 3, 1967, is hereby revised to conform to the above decision.

Issued in Washington, D.C., on July 24, 1967.

C. W. WALKER,
*Acting Associate Administrator for Programs.*

[F.R. Doc. 67-8891; Filed, July 31, 1967; 8:46 a.m.]

# CIVIL AERONAUTICS BOARD

[Docket No. 18552]

## ANCHORAGE-FAIRBANKS SERVICE CASE

### Notice of Postponement of Prehearing Conference

Notice is hereby given that the prehearing conference to be held in the above-entitled matter on August 1, 1967, is postponed to August 28, 1967, at 10 a.m., e.d.s.t., in Room 726, Universal Building, Connecticut and Florida Avenue NW., Washington, D.C., before the undersigned examiner.

Dated at Washington, D.C., July 26, 1967.

[SEAL] JOSEPH L. FITZMAURICE,
*Hearing Examiner.*

[F.R. Doc. 67-8907; Filed, July 31, 1967; 8:48 a.m.]

# FEDERAL COMMUNICATIONS COMMISSION

[Supp. 8]

## VHF TELEVISION BROADCAST STATIONS

### Allocation Under Canadian-U.S.A. Agreement

JULY 25, 1967.

Amendment of Table A of the 1961 working arrangement for allocation of VHF Television Broadcast Stations under the Canadian-U.S.A. Television Agreement of 1952.

Pursuant to an exchange of correspondence between the Department of Transport of Canada and the Federal Communications Commission, Table A, Annex 1 of the Television Working Arrangement under the Canadian-U.S.A. Television Agreement has been amended as follows:

| City | Channel No. | |
|---|---|---|
| | Delete | Add |
| Haliburton, Ontario | ---------- | [1]4L |

[1] Limitation to protect CBOT, Ottawa, Ontario and a cochannel allocation at Sudbury, Ontario, and WBEN-TV, Buffalo, N.Y. To be located no less than 170 miles from WBEN-TV, Buffalo, N.Y.

Further amendments to Table A will be issued as public notices in the form of numbered supplements.

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

[F.R. Doc. 67-8926; Filed, July 31, 1967; 8:49 a.m.]

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[Docket Nos. 17470, 17471; FCC 67M-1247]

## COMMUNITY BROADCASTERS, INC., AND WEST-STATE BROADCASTING CO.

### Order Regarding Procedural Dates

In re applications of Community Broadcasters, Inc., Grand Haven, Mich., Docket No. 17470, File No. BPH-5650; West-State Broadcasting Co., Grand Haven, Mich., Docket No. 17471, File No. BPH-5697; for construction permits.

Under consideration is a consent motion for extension of procedural dates filed on July 14 jointly by the applicants; and

It appearing, that applicants have reached agreement whereby West-State would dismiss its application and hearing would, accordingly, become unnecessary and that the Broadcast Bureau, the only other party to the proceeding, has no objection to grant of the motion nor to its early consideration:

*Accordingly, it is ordered*, That the consent motion for extension of procedural dates filed by Community Broadcasters, Inc. and West-State Broadcasting Co. on July 14, 1967 is granted and the dates governing future procedural steps are extended as follows:

Preliminary exchange of engineering data extended from July 31 to August 4, 1967;

Final exchange of engineering data extended from August 15 to August 29, 1967;

Further prehearing conference continued from August 21 to September 5, 1967 at 9 a.m. at which conference a hearing would be scheduled.

Issued: July 21, 1967.

Released: July 26, 1967.

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

[F.R. Doc. 67-8927; Filed, July 31, 1967; 8:49 a.m.]

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[Docket Nos. 16965, 16966; FCC 67R-314]

## DU PAGE COUNTY BROADCASTING, INC., AND CENTRAL DU PAGE COUNTY BROADCASTING CO.

### Memorandum Opinion and Order Enlarging Issues

In re applications of Du Page County Broadcasting, Inc., Elmhurst, Ill., Docket No. 16965, File No. BP-16292; Howard L. Enstrom and Stanley G. Enstrom, doing business as Central Du Page County Broadcasting Co., Wheaton, Ill., Docket No. 16966, File No. BP-16465; for construction permits.

1. This proceeding involves the application of Du Page County Broadcasting, Inc. (Du Page County) for a new standard broadcast station at Elmhurst, Ill.; and the mutually exclusive application of Central Du Page County Broadcasting Co. (Central Du Page) for a new standard broadcast station at Wheaton, Ill. The applications were designated for hearing by Memorandum Opinion and Order (FCC 66-958), 31 F.R. 14465, published on November 10, 1966. Presently before the Review Board is a petition to enlarge issues by Du Page County on May 23, 1967, requesting the addition of eight issues against Central Du Page relating to character qualifications, transmitter site, compliance with § 73.30 of the rules, and financial qualifications.[1]

2. The subject petition was filed approximately 6 months after the expiration of the time for filing specified in § 1.229 of the rules. To show good cause for this tardiness, Du Page County merely states that "the facts presented have only recently come to the attention of the petitioner." The Board does not regard this statement as adequate to establish good cause for the delay; therefore, under the test set forth by the Board in The Edgefield-Saluda Radio Co.,[2] the Board has examined the pleadings to determine whether (a) serious public interest questions are presented, and (b) the likelihood of proving the respective allegations is so substantial as to outweigh the public interest benefits inherent in the orderly and fair administration of the Commission's business. Based upon this examination, we find that, except for the matter discussed in the paragraph next below, Du Page County's allegations do not meet these standards. The requested character issues are based primarily on allegations that Howard Enstrom, one of Central Du Page's principals, attempted to jeopardize the availability of Du Page County's proposed transmitter site by offering to purchase that site; and that Central Du Page's representations to the Commission concerning the location of its proposed studio conflict with representations made to local zoning authorities. Central Du Page has adequately explained the alleged inconsistent statements regarding the location of its proposed studio; and, although there is some conflict between the affidavit from the owner of Du Page County's proposed site and the affidavit submitted by Enstrom, we do not believe that an attempt to resolve this conflict at a hearing would be productive of evidence of decisional value, particularly in light of the fact that in a second affidavit submitted with the reply pleading, the owner of the site equivocates from the position taken in the original affidavit.[3] The requested § 73.30 issue is overcome by material submitted with the opposition, and the requested financial issue, as pointed out by the Broadcast Bureau, is premature until such time as it appears that Central Du Page must acquire additional land for its transmitter site and that this acquisition will affect its financial qualifications.

3. The requested issues pertaining to Central Du Page's proposed transmitter site are supported by the allegation that Central Du Page's amended application reflects that its proposed tower would be constructed on land it now owns and land on property adjacent to that which it owns; and an affidavit, executed on May 4, 1967, of Mrs. Katharine Cline, president of the organization which owns the adjacent property, stating that she has not given permission to utilize this property for the construction of a radio

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[1] The following related pleadings are also before the Board: (a) Opposition, filed on June 16, 1967, by Central Du Page; (b) Broadcast Bureau's comments, filed on June 16, 1967; and (c) reply to (a), filed on July 10, 1967, by Du Page County.

[2] 5 FCC 2d 148, 4 RR 2d 611 (1966). Also see Rovan Television, Inc., FCC 67R-291, released July 12, 1967.

[3] In her original affidavit, the owner of the site stated that Enstrom "had a definite desire to obtain that property," and "offered us a premium price over and above that which was contained in our agreement with (Du Page County)." In reply to the opposition (in which Enstrom stated, among other things, that he did not know the price agreed upon) the owner in another affidavit states that Enstrom "said he was interested in building on the property" and "gave me to understand that he could pay more for the property than our existing contract."

tower, and that at present she "has no plans" to permit such a use. In opposition, Central Du Page submits an affidavit from Enstrom, who states that he had several conversations with Mrs. Cline (and her husband) concerning an exchange of property which would have permitted the utilization of the adjacent land as proposed, and that these discussions led him to believe that the land would be available. Regardless of what Mrs. Cline appeared to have been willing to do regarding the disputed property in the past, it is clear from her May 4 affidavit that she does not now intend to permit Central Du Page to use the property. We are therefore constrained to add an issue to determine whether Central Du Page has sufficient land available to build its tower as proposed.[4]

*Accordingly, it is ordered*, That the petition to enlarge issues, filed on May 23, 1967, by Du Page County Broadcasting, Inc., is granted to the extent indicated herein, and denied in all other respects; and

*It is further ordered*, That the issues in this proceeding are enlarged by the addition of the following issue: To determine what land is available to Central Du Page County Broadcasting, Inc., for a transmitter site, and whether the land available is sufficient to effectuate its proposal.

Adopted: July 24, 1967.

Released: July 26, 1967.

FEDERAL COMMUNICATIONS COMMISSION,[5]
[SEAL] BEN F. WAPLE,
*Secretary*.

[F.R. Doc. 67-8928; Filed, July 31, 1967; 8:50 a.m.]

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[Docket Nos. 17316, 17317; FCC 67M-1251]

## ROVAN TELEVISION, INC., AND ROMAC MACON CORP.

### Order Scheduling Hearing

In re applications of Rovan Television, Inc., Macon, Ga., Docket No. 17316, File No. BPCT-3571; Romac Macon Corp., Macon, Ga., Docket No. 17317, File No. BPCT-3684; for construction permit for new television broadcast station.

The Hearing Examiner having under consideration the "Statement of Rovan Television, Inc.," filed July 17, 1967, in the above-captioned proceeding, stating that this applicant elects to participate in the consolidated proceedings (Dockets Nos. 17005, 17517, and 17518) with respect to the § 1.65 issues applicable to the Romac Baton Rouge Corp. applications therein and the Romac Macon Corp. application herein, and that Rovan is agreeable to the heretofore scheduled dates, in the Baton Rouge hearings, of July 21, 1967, for exchange of exhibits re Issues 1 and 2 herein and September 11, 1967, for the hearing on these issues:

*Accordingly, it is ordered*, That the proposed exhibits of Romac Macon Corp. on Issues 1 and 2 herein shall be exchanged by July 21, 1967, and that the hearing on said issues will commence on September 11, 1967.

Issued: July 24, 1967.

Released: July 26, 1967.

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

[F.R. Doc. 67-8929; Filed, July 31, 1967; 8:50 a.m.]

[4] Du Page County also requests an issue to determine whether Central Du Page will be able to adjust and maintain its directional antenna system, but this request is not supported by factual allegations sufficient to permit the addition of the issue at this time and will be denied.

[5] Board members Berkemeyer and Slone absent.

# FEDERAL MARITIME COMMISSION

## STOCKARD SHIPPING & TERMINAL CORP. AND ATLANTIC & GULF STEVEDORES, INC.

### Notice of Agreement Filed for Approval

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

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 609; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter), and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. Francis A. Scanlan, Kelly, Deasey, and Scanlan, 926 Four Penn Center Plaza, Philadelphia, Pa. 19103.

Agreement No. T-2055 between Stockard Shipping & Terminal Corp. (Stockard) and Atlantic & Gulf Stevedores, Inc. (Atlantic & Gulf), is an agreement covering the operation of Pier 8, Locust Point Marine Terminal (Baltimore, Md.). Under the terms of the Agreement, Stockard will perform clerking, checking, and billing for certain services and Atlantic & Gulf will perform all the stevedoring controlled by Stockyard for vessels berthing at Pier 8. The parties agree to jointly provide certain equipment and to share equally the profits and losses for terminal and stevedoring operations.

Dated: July 27, 1967.

By order of the Federal Maritime Commission.

THOMAS LISI,
*Secretary*.

[F.R. Doc. 67-8944; Filed, July 31, 1967; 8:51 a.m.]

# FEDERAL TRADE COMMISSION

## CIGARETTES

### Testing for Tar and Nicotine Content

The Federal Trade Commission, having been advised by the staff that the cigarette testing laboratory has satisfactorily completed its trial tests, hereby issues directions to its staff to commence the first formal test, under the following conditons:

1. Smoke cigarettes to a 23 mm. butt length, or to the length of the filter and overwrap plus 3 mm. if in excess of 23 mm.,

2. Base results on a test of 100 cigarettes per brand, or type,

3. Cigarettes to be tested will be selected on a random basis, as opposed to "weight selection",

4. Determine particulate matter on a "dry" basis employing the gas chromatography method published by C. H. Sloan and B. J. Sublett in Tobacco Science 9, page 70, 1965, as modified by F. J. Schultz' and A. W. Spears' report published in Tobacco Vol. 162, No. 24, page 32, dated June 17, 1966, to determine the moisture content,

5. Determine and report the "tar" content after subtracting moisture and alkaloids as nicotine) from particulate matter,

6. Report tar content to the nearest whole milligram and nicotine content to the nearest $\frac{1}{10}$ milligrams.

The Commission directs that the test cover approximately 50 of the major brands and types (many brands are sold as regular, and king size, or filter, etc.) and all brands for which any tar or nicotine statement appears on the label or in the advertising. With respect to the latter, one purpose of the test will be to determine the accuracy of such statement. Cigarettes for testing will be purchased on the open market in 50 localities throughout the United States.[1]

Issued: July 31, 1967.

By the Commission.

JOSEPH W. SHEA,
*Secretary*.

[F.R. Doc. 67-8978; Filed, July 31, 1967; 8:51 a.m.]

[1] A statement of considerations (Commissioner MacIntyre not participating) and the separate statement of Chairman Dixon filed as part of the original document. Copies of these statements may be obtained from the Federal Trade Commission, Washington, D.C. 20580.

# FEDERAL POWER COMMISSION

[Docket No. G-11181, etc.]

## GAS GATHERING CORP. ET AL.

### Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates[1]

JULY 21, 1967.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service heretofore authorized as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

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 August 10, 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 all applications in which no protest or petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a protest or petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given: *Provided, however*, That pursuant to § 2.56, Part 2, Statement of General Policy and Interpretations, Chapter I of Title 18 of the Code of Federal Regulations, as amended, all permanent certificates of public convenience and necessity granting applications, filed after April 15, 1965, without further notice, will contain a condition precluding any filing of an increased rate at a price in excess of that designated for the particular area of production for the period prescribed therein unless at the time of filing such certificate application, or within the time fixed herein for the filing of protests or petitions to intervene the Applicant indicates in writing that it is unwilling to accept such a condition. In the event Applicant is unwilling to accept such condition the application will be set for formal hearing.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

GORDON M. GRANT,
*Secretary*.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein, nor should it be so construed.

| Docket No. and date filed | Applicant | Purchaser, field, and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| G-11181 C 7-3-67 | Gas Gathering Corp., Post Office Box 519, Hammond, La. 70401. | Transcontinental Gas Pipe Line Corp., Lake LaRose Area, Pointe Coupee Parish, La. | 21.25 | 15.025 |
| G-16218 D 6-29-67 | Gulf Oil Corp. (Operator) et al., Post Office Box 1589, Tulsa, Okla. 74102. | Transwestern Pipeline Co., acreage in Beaver County, Okla. | Uneconomical | -------- |
| G-18548 E 7-5-67 | C. J. Pinner (Operator) et al. (successor to Harry L. Martin (Operator) et al.), 1517 Bank of the Southwest Bldg., Houston, Tex. 77002. | South Texas Natural Gas Gathering Co., Jay Simmons Field, Starr County, Tex. | [2] 14.0 | 14.65 |
| CI60-829 E 6-21-67 | Robert L. Wharton (successor to Queen Gas Co.) Route No. 3, Burgettstown, Pa. 15021. | Consolidated Gas Supply Corp., Collins Settlement District, Lewis County, W. Va. | 25.0 | 15.325 |
| CI61-235 C 7-3-67 | Eason Oil Co., Post Office Box 18755, Shartel Station, Oklahoma City, Okla. 73118. | Michigan Wisconsin Pipe Line Co., Laverne Field, Harper County, Okla. | [3] 17.0 | 14.65 |
| CI61-853 E 6-21-67 | Robert L. Wharton (successor to Queen Gas Co.). | Consolidated Gas Supply Corp., Collins Settlement District, Lewis County, W. Va. | 25.0 | 15.325 |
| CI61-1102 C 7-5-67 | Sun Oil Co. (Mid-Continent Division), 1608 Walnut St., Philadelphia, Pa. 19103. | Michigan Wisconsin Pipe Line Co., Woodward Area, Major, Dewey, and Woodward Counties, Okla. | [3] 17.61 | 14.65 |
| CI61-1281 C 6-28-67 | Mobil Oil Corp. (Operator) et al.,[4] Post Office Box 2444, Houston, Tex. 77001. | Michigan Wisconsin Pipe Line Co., Northwest Putnam Field, Dewey County, Okla. | 15.0 | 14.65 |
| CI63-445 E 6-22-67 | Jack E. and Dorothea Webber (successor to James F. Scott et al.), Route No. 1, Morgansville, W. Va. 26406. | Consolidated Gas Supply Corp., Sardis District, Harrison County, W. Va. | 20.0 | 15.325 |
| CI64-33 D 7-3-67 | Sunray DX Oil Co., Post Office Box 2039, Tulsa, Okla. 74102. | Arkansas Louisiana Gas Co., Lacy Field, Kingfisher County, Okla. | Uneconomical | -------- |
| CI66-30 C 7-3-67 | Criner Processing, Operator, c/o Gene P. Morrell, attorney, Lincoln Center, Ardmore, Okla. 73401. | Lone Star Gas Co., Southwest Ardmore Field, Carter and Love Counties, Okla. | 15.0 | 14.65 |
| CI66-250 E 6-22-67 | M & H Oil & Gas Co. (successor to Joseph H. Cutlip, agent for C & C Wells, Ltd.), c/o Ed H. Smith, agent, Box 1678, Parkersburg, W. Va. 26101. | Consolidated Gas Supply Corp., Central District, Doddridge County, W. Va. | 25.0 | 15.325 |
| CI66-470 C 7-3-67 | Sunray DX Oil Co. | Arkansas Louisiana Gas Co., Arkoma Area, Le Flore, Latimer, and Pittsburg Counties, Okla. | 15.0 | 14.65 |
| CI66-502 C 6-28-67 | Jack H. Choate, 116 South Main, Hennessey, Okla. 73742. | Cities Service Gas Co., Bishop Area, Roger Mills County, Okla. | 15.0 | 14.65 |
| CI66-941 E 6-5-67 | W. C. Perryman (successor to W. R. Hughey Operating Co. (Operator) et al.), Post Office Box 667, Athens, Tex. 75751. | Texas Gas Transmission Corp., acreage in Webster Parish, La. | 16.5 | 15.025 |
| CI66-1328 C 6-30-67 | Sunray DX Oil Co. | Panhandle Eastern Pipe Line Co., Tangier Area, Ellis and Woodward Counties, Okla. | 17.0 | 14.65 |
| CI67-66 C 7-10-67 | Amerada Petroleum Corp., Post Office Box 2040, Tulsa, Okla. 74102. | Panhandle Eastern Pipe Line Co., South Peek Field, Ellis County, Okla. | [5] 17.0 | 14.65 |
| CI67-191 C 7-5-67 | An-Son Corp. et al., 3814 North Santa Fe, Oklahoma City, Okla. 73118. | Arkansas Louisiana Gas Co., Carterville-Kinta Field, Le Flore County, Okla. | [5] 14.25 | 14.65 |
| CI67-470 C 6-29-67 | William M. Wiseman and Alfred T. White (Operator) et al., 603 San Jacinto Bldg., Houston, Tex. 77002. | Lone Star Gathering Co., Southeast Nursery Field, Victoria County, Tex. | 15.0 | 14.65 |
| CI67-1836 (G-10272) F 6-26-67 | May Petroleum, Inc. (successor to Union Oil Co. of California), 1435 Republic National Bank Bldg., Dallas, Tex. 75201. | Colorado Interstate Gas Co., Mocane Field, Beaver County, Okla. | [5,6] 17.0 | 14.65 |
| CI67-1837 A 6-26-67 | Alex N. Campbell, 607 South Hobart Blvd., Los Angeles, Calif. 90005. | El Paso Natural Gas Co., Basin Dakota Field, San Juan County, N. Mex. | 13.0 | 15.025 |
| CI67-1838 (G-11612) F 6-26-67 | Clinton Oil Co. (successor to Continental Oil Co.), Donald C. Tinker, Jr., attorney, Gamelson, Hiebsch, Robbins & Tinker, 502 Union Center, Bldg., Wichita, Kans. 67202. | Cities Service Gas Co., Rhodes Field, Barber County, Kans. | 13.0 | 14.65 |
| CI67-1839 A 6-30-67 | A. T. Skaer, 924 Patterson Bldg., 555, 17th St., Denver, Colo. 80202. | Kansas-Nebraska Natural Gas Co., Inc., North Minto Field, Logan County, Colo. | [7] 10.0 | 16.4 |
| CI67-1841 A 6-30-67 | T. Harry Kaplyn, d.b.a. Kayco Petroleum Co., 711 Pere Marquette Bldg., New Orleans, La. 70112. | United Gas Pipe Line Co., acreage in Calcasieu Parish, La. | 13.0 | 15.025 |
| CI67-1842 A 6-30-67 | A. T. Skaer | Kansas-Nebraska Natural Gas Co., Inc., North Minto Field, Logan County, Colo. | [7] 10.0 | 16.4 |
| CI67-1843 A 6-23-67 | C. D. Jacobs, 1100 South Lakeside Dr., Lake Worth, Fla. 33460. | United Fuel Gas Co., acreage in Pike County, Ky. | 16.0 | 15.325 |
| CI67-1844 A 6-23-67 | B. L. Burge et al., Post Office Box 1874, Parkersburg, W. Va. 26102. | Consolidated Gas Supply Corp., Washington District, Calhoun County, W. Va. | 20.0 | 15.325 |
| CI67-1845 A 6-26-67 | J. R. Welch et al., d.b.a. Devil Hole Oil & Gas Co., 333 West High St., Harrisville, W. Va. 26362. | Pennzoil Co., Grant District, Ritchie County, W. Va. | 12.0 | 15.325 |

Filing code:
A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

See footnotes at end of table.

| Docket No. and date filed | Applicant | Purchaser, field, and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| CI67-1846, A 6-27-67 | Ralph Morris & Everett Burns, c/o Ralph Morris, agent, 120 Plost Ave., Ripley, W. Va. 25271. | Equitable Gas Co., Otter District, Braxton County, W. Va. | 16.0 | 15.325 |
| CI67-1848, A 6-28-67 | George O. Folk, 3629 Treadwell Dr., Oklahoma City, Okla. 73112. | Wunderlich Development Co., acreage in Kay County, Okla. | 6.2 | 14.65 |
| CI67-1849, A 6-29-67 | Phillips Petroleum Co., Bartlesville, Okla. 74003. | United Gas Pipe Line Co., Merit Field, Simpson County, Miss. | [3] 19.0 | 15.025 |
| CI67-1851, A 6-30-67 | William V. Montin, [1] First National Bldg., Oklahoma City, Okla. 73102. | Panhandle Eastern Pipe Line Co., North Hopeton Field, Woods County, Okla. | [2] 15.0 | 14.65 |
| CI67-1852, A 6-30-67 | Gulf Oil Corp., Post Office Box 1589, Tulsa, Okla. 74102. | Arkansas Louisiana Gas Co., Ames Area, Major County, Okla. | Depleted | -------- |
| CI67-1853, B 6-30-67 | Micoa, Inc., c/o Jerry Masoner, vice president, Post Office Box 105, Weston, W. Va. 26452. | Equitable Gas Co., Salt Lick District, Braxton County, W. Va. | 25.0 | 15.325 |
| CI67-1854, A 6-30-67 | Larry E. Kerr, 712 Northwest 39th St., Oklahoma City, Okla. 73118. | Panhandle Eastern Pipe Line Co., Northwest Fargo Field, Ellis County, Okla. | [3] 17.0 | 14.65 |
| CI67-1855, A 6-30-67 | Champlin Petroleum Co., Post Office Box 9365, Fort Worth, Tex. 76107. | Northern Natural Gas Co., East Postle Field, Texas County, Okla. | 15.0 | 14.65 |
| CI67-1857, A 6-30-67 | W. J. Coppinger (Operator) et al., 1207 Union National Bldg., Wichita, Kans. 67202. | Northern Natural Gas Co., Wide Awake Field, Seward County, Kans. | 14.0 | 14.65 |
| CI67-1858, A 6-30-67 | Roy Furr (Operator) et al., Post Office Box 1650, Lubbock, Tex. 77008. | Northern Natural Gas Co., acreage in Roberts County, Tex. | [3] 17.0 | 14.65 |
| CI67-1859, A 6-30-67 | do | Northern Natural Gas Co., Acreage in Hutchinson County, Tex. | [3] 17.0 | 14.65 |
| CI67-1860 (G-17025), F 5-15-67 | Investors Royalty Co., Inc. (successor to J. G. Catlett Co.), 1309 Thompson Bldg., Tulsa, Okla. 74103. | Mississippi River Transmission Corp., North Ruston Field, Lincoln Parish, La. | [9] 13.253 | 15.025 |
| CI67-1861, A 6-30-67 | A. N. Spanel, c/o Erich F. Klein, Jr., 14th Floor, Adolphus Tower, Dallas, Tex. 75202. | Mountain Fuel Supply Co., Powder Wash Field, Moffat County, Colo. | 13.0 | 15.025 |
| CI68-1, A 7-3-67 | Independent Gas & Oil producers, Inc., Knox Bldg., Enid, Okla. 73701. | National Fuels Corp. and Oklahoma Natural Gas Gathering Corp., Ringwood Field, Major County, Okla. | 12.0 | 14.65 |
| CI68-2, A 7-3-67 | Kewanee Oil Co. (Operator) et al., Post Office Box 2239, Tulsa, Okla. 74101. | United Gas Pipe Line Co., Cypress Island Field, St. Martin Parish, La. | 21.25 | 15.025 |
| CI68-3, B 7-3-67 | James B. Colpitt, 518 Kennedy Bldg., Tulsa, Okla. 74103. | Cities Service Gas Co., North Schlegel Field, Payne County, Okla. | (10) | -------- |
| CI68-4 (G-11150), F 7-3-67 | Eason Oil Co (successors to Champlin Petroleum Co.), Post Office Box 18755, Shartel Station, Oklahoma City, Okla. 73118. | Colorado Interstate Gas Co., Laverne Field, Harper County, Okla. | [3] 17.0 | 14.65 |
| CI68-5, B 7-3-67 | Gulf Oil Corp. | United Fuel Gas Co., Valentine Field, Lafourche Parish, La. | Depleted | -------- |
| CI68-6, B 7-3-67 | Flournoy Production Co. (Operator) et al., Post Office Box 1578, Alice, Tex. 78332. | United Gas Pipe Line Co., Blanconia Field, Bee County, Tex. | (10) | -------- |
| CI68-7, B 7-5-67 | Jones-O'Brien, Inc., Post Office Box 5152, Shreveport La. 71105. | Arkansas Louisiana Gas Co., Ivan Field, Bossier Parish, La. | Depleted | -------- |
| CI68-8, A 7-5-67 | Tidewater Oil Co., Post Office Box 1404, Houston, Tex. 77001. | Arkansas Louisiana Gas Co., Okeene Field, Blaine County, Okla. | 15.0 | 14.65 |
| CI68-9, A 7-6-67 | Anadarko Production Co., Post Office Box 3917, Fort Worth, Tex. 76107. | Michigan Wisconsin Pipe Line Co., North King's Bayou Field, Cameron Parish, La. | 20.625 | 15.025 |
| CI68-10, A 7-6-67 | Roy M. Huffington, Inc., 2210 Tennessee Bldg., Houston, Tex. 77002. | do | 20.625 | 15.025 |
| CI68-11, A 7-7-67 | Texaco, Inc., Post Office Box 52332, Houston, Tex. 77052. | Trunkline Gas Co., Rotherwood (Wilcox) Field, Harris County, Tex. | [12] 14.0 | 14.65 |

See footnotes at end of table.

| Docket No. and date filed | Applicant | Purchaser, field, and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| CI68-12 (CI66-10), F 7-10-67 | Cabot Corp. (SW) (successor to Calvert Mid-America, Inc.), Post Office Box 1101, Pampa, Tex. 79065. | Michigan Wisconsin Pipe Line Co., Laverne Field, Harper County, Okla. | [3] 17.0 | 14.65 |
| CI68-13, A 7-10-67 | J. H. Bander & Pete Couch, 308 Petroleum Bldg., Abilene, Tex. 79496. | Kansas-Nebraska Natural Gas Co., Inc., acreage in Logan County, Colo. | 14.0 | 16.4 |
| CI68-14, A 7-10-67 | Hall-Jones Oil Corp., 1704 Liberty Bank Bldg., Oklahoma City, Okla. 73102. | Colorado Interstate Gas Co., Keyes Field, Cimarron County, Okla. | [3] 17.0 | 14.65 |
| CI68-15, A 7-10-67 | Kewanee Oil Co., Post Office Box 2239, Tulsa, Okla. 74101. | Equitable Gas Co., Troy District, Gilmer County, W. Va. | 25.0 | 15.325 |
| CI68-16, B 7-7-67 | Lone Star Producing Co., 301 South Harwood St., Dallas, Tex. 75201. | Humble Oil & Refining Co. (Monterey Division), Kelly-Snyder Gasoline Plant, Scurry County, Tex. | (13) | -------- |
| CI68-17, B 7-7-67 | Texas Oil & Gas Corp., 2520 Fidelity Union Tower, Dallas, Tex. 75201. | Coastal States Gas Producing Co., Appling Field, Calhoun County, Tex. | Depleted | -------- |
| CI68-18, B 7-10-67 | L. D. Crumly, Jr., 503 Oil & Gas Bldg., Midland, Tex. 79701. | El Paso Natural Gas Co., acreage in Pecos County, Tex. | Depleted | -------- |
| CI68-19, B 7-10-67 | H. D. Bruns (Operator) et al., 1122 Jefferson Bldg., Houston, Tex. 77002. | Lone Star Gathering Co., Speary Field Area, Karnes County, Tex. | (10) | -------- |
| CI68-20, B 7-10-67 | Bruns Production Co., Inc. (Operator), et al., 1122 Jefferson Bldg., Houston, Tex. 77002. | do | (10) | -------- |
| CI68-21, B 7-10-67 | H. D. Bruns (Operator) et al | do | (10) | -------- |
| CI68-22, B 7-10-67 | do | do | (10) | -------- |
| CI68-23, A 7-10-67 | Jake L. Hamon (Operator) et al., Post Office Box 663, Dallas, Tex. 75221. | Texas Eastern Transmission Corp., Taft Area, San Patricio County, Tex. | 15.0 | 14.65 |
| CI68-24, A 7-10-67 | General Petroleum Corp., 1700 Broadway, Denver, Colo. 80202. | El Paso Natural Gas Co., Basin Dakota Field, San Juan County, N. Mex. | 12.0 | 15.025 |
| CI68-25, B 7-7-67 | Texas Oil & Gas Corp. | Coastal States Gas Producing Co., Appling Field, Calhoun County, Tex. | Depleted | -------- |
| CI68-26, A 7-11-67 | Humble Oil & Refining Co., Post Office Box 2180, Houston, Tex. 77001. | Texas Eastern Transmission Corp., Tenaha Lield, Shelby County, Tex. | 15.0 | 14.65 |
| CI68-27, A 7-10-67 | Whitestone Petroleum Corp., 300 Pere Marquette Bldg., New Orleans, La. 70112. | Southern Natural Gas Co., Diamond Field, Plaquemines Parish, La. | 19.5 | 15.025 |
| CI68-28, A 7-11-67 | Chaparral Production Co., Post Office Box 1344, Marshall, Tex. 75670. | Mississippi River Transmission Corp., acreage in Harrison County, Tex. | 15.0 | 14.65 |
| CI68-29, B 7-10-67 | George W. Graham, Inc., et al., 400 First-Wichita National Bank Bldg., Wichita Falls, Tex. 76304. | Texas Eastern Transmission Corp., East Bishop Field, Nueces County, Tex. | Uneconomical | -------- |
| CI68-30, A 7-11-67 | George P. Post, d.b.a. Post Petroleum Co., 1732 United Founders Tower, Oklahoma City, Okla. 73112. | Colorado Interstate Gas Co., Mocane-Laverne Field, Harper County, Okla. | 17.0 | 14.65 |

[1] An increase in rate to 15.0 cents per Mcf was concurrently filed with application.
[2] Subject to upward and downward B.t.u. adjustment.
[3] Subject to upward B.t.u. adjustment.
[4] Applicant states its willingness to accept authorization at 15.0 cents per Mcf, plus B.t.u. adjustment.
[5] Base price of 15.0 cents per Mcf less 0.75 cent compression charge.
[6] Rate in effect subject to refund in Docket No. RI66-316.
[7] Subject to retention by Purchaser of 7.0 cents per Mcf until recovery of total investment in facilities constructed by it.
[8] Applicant states its willingness to accept permanent certificate on the same terms specified by the Commission's order issued Mar. 30, 1964, in Docket Nos. G-19417, et al.
[9] Includes 1.333 cents per Mcf tax reimbursement.
[10] Well is no longer capable of producing gas in commercial quantities.
[11] Wells on leases covered by subject contract have been plugged, and the leases surrendered and restored to landowners.
[12] Includes 0.25 cent dehydration charge.
[13] Gas will no longer be sold or transported in interstate commerce.

[F.R. Doc. 67-8769; Filed, July 31, 1967; 8:45 a.m.]

[Docket No. RI68-11, etc.]

## GULF OIL CORP. ET AL.

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

JULY 21, 1967.

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

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

[1] Does not consolidate for hearing or dispose of the several matters herein.

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

The Commission orders:

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

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

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

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before September 15, 1967.

By the Commission.

[SEAL]

GORDON M. GRANT,
*Secretary.*

APPENDIX A

| Docket No. | Respondent | Rate schedule No. | Supplement No. | Purchaser and producing area | Amount of annual increase | Date filing tendered | Effective date unless suspended | Date suspended until— | Cents per Mcf | | Rate in effect subject to refund in docket Nos. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | Rate in effect | Proposed increased rate | |
| RI68-11 | Gulf Oil Corp., Post Office Box 1589, Tulsa, Okla. 74102. | 49 | 5 | Northern Natural Gas Co. (North Hansford Field, Hansford County, Tex.) (RR. District No. 10). | 20,000 | 6-28-67 | [2] 8-1-67 | 1-1-68 | [4][6] 15.5 | [3][4][5] 17.5 | |
| | ......do | 123 | 5 | | 2,600 | 6-28-67 | [2] 8-1-67 | 1-1-68 | [4][6] 15.5 | [3][4][5] 17.5 | |
| | ......do | 133 | 5 | Northern Natural Gas Co. (South Glenwood Field, Beaver County, Okla.) (Panhandle Area). | 585 | 6-28-67 | [2] 8-1-67 | 1-1-68 | [4][7] 16.94 | [3][4][7] 19.19 | |
| | ......do | 141 | 7 | Northern Natural Gas Co. (Northwest Dower Field, Beaver County, Okla.) (Panhandle Area). | 3,300 | 6-28-67 | [2] 8-1-67 | 1-1-68 | [4][6] 15.5 | [3][4][5] 17.5 | |
| | ......do | 142 | 2 | Northern Natural Gas Co. (North Hutchinson Field, Hansford County, Tex.) (RR. District No. 10). | 900 | 6-28-67 | [2] 8-1-67 | 1-1-68 | [4][6] 16.5 | [4][5][8] 17.5 | |
| RI68-12 | A. A. Cameron, d.b.a. Cameron Oil Co. (Operator) et al., c/o Smith, Leaming, and Swan, 907 City National Bldg., Oklahoma City, Okla. 73102. | 2 | [10] 7 | Cities Service Gas Co. (Kirk No. 3 Well, Stephens County, Okla.) (Oklahoma "Other" Area). | 7,200 | 6-28-67 | [9] 7-29-67 | 12-29-67 | [4][10] 15.0 | [4][5][8][10] 16.0 | |
| RI68-13 | Sinclair Oil & Gas Co. (Operator) et al., Post Office Box 521, Tulsa, Okla. 74102, Attn: Mr. P. T. Davis. | 201 | 4 | Florida Gas Transmission Co. (Palacios Field, Matagorda County, Tex.) (RR. District No. 3). | 4,221 | 6-28-67 | [9] 7-29-67 | 12-29-67 | [4][12] 16.0 | [4][8][11] 19.5 | |

[2] The stated effective date is the effective date requested by Respondent.
[3] Two-step periodic rate increase.
[4] Pressure base is 14.65 p.s.i.a.
[5] Subject to a downward B.t.u. adjustment.
[6] Initial certificated rate and settlement rate in Gulf's company-wide settlement. Settlement order issued Apr. 25, 1963, in Docket Nos. G-9520 et al. Moratorium period expired Apr. 1, 1965.
[7] Includes base rate of 15.0 cents plus upward B.t.u. adjustment before increase and base rate of 17.0 cents plus upward B.t.u. adjustment after increase. Base rates subject to upward and downward B.t.u. adjustment.
[8] Periodic rate increase.
[9] The stated effective date is the first day after expiration of the statutory notice.
[10] Applicable to Kirk No. 3 Well.
[11] From settlement rate to contractually provided for periodic rate.
[12] Settlement rate as approved by Commission order issued July 1, 1963, in Docket Nos. G-9291 et al., as amended. Moratorium on filing rate increases expired Sept. 1, 1965.

A. A. Cameron doing business as Cameron Oil Co. (Operator), et al. (Cameron), request waiver of the statutory notice to permit a retroactive effective date of January 10, 1967, the date of first production from the Kirk No. 3 Well. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit an earlier effective date for Cameron's rate filing and such request is denied.

All of the producers' proposed rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's Statement of General Policy No. 61-1, as amended (18 CFR 2.56).

[F.R. Doc. 67-8772; Filed, July 31, 1967; 8:45 a.m.]

[Docket No. CP68-21]

## LONE STAR GAS CO.

### Notice of Application

JULY 25, 1967.

Take notice that on July 19, 1967, Lone Star Gas Co. (Applicant), 301 South Harwood Street, Dallas, Tex. 75201, filed in Docket No. CP68-21 an application pursuant to subsection (b) of section 7 of the Natural Gas Act for permission and approval of the Commission to abandon certain natural gas 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 permission and approval to abandon the operation of its 1,020 horsepower Fox Compressor Station No. 1 located in Carter County, Okla., consisting of six 170 horsepower compressor units together with dehydrator, buildings, piping, valves, headers, fittings, and other appurtenances.

Applicant states that said compressor facilities, installed in 1921 and 1922, have not been in operation for approximately 3 years and are no longer needed because of diminished natural gas supplies and operational changes in this area. Applicant further states that the proposed abandonment would not affect the service now being rendered to any customer in any way as its Fox Compressor Station No. 2 will continue in operation and has sufficient capacity to handle the volumes of natural gas in that portion of its pipeline system.

Applicant estimates the total cost of removal of the facilities proposed to be abandoned at approximately $11,500. Applicant further estimates the salvage value of said facilities at approximately $18,000.

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 August 21, 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 permission and approval for the proposed abandonment 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.

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 67-8873; Filed, July 31, 1967; 8:45 a.m.]

[Docket No. RI68-10]

## TAMARACK PETROLEUM CO., INC.

### Order Accepting Contract and Agreements, Providing for Hearing on and Suspension of Proposed Change in Rate

JULY 21, 1967.

On June 26, 1967, Tamarack Petroleum Co., Inc. (Tamarack)[1] tendered for filing a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Comission. The proposed change, which constitutes an increased rate and charge, is designated as follows:

[1] Address is: 413 First Savings and Loan Building, Midland, Tex. 79704.

| Docket No. | Respondent | Rate schedule No. | Supplement No. | Purchaser and producing area | Amount of annual increase | Date filing tendered | Effective date unless suspended | Date suspended until— | Cents per Mcf | | Rate in effect subject to refund in docket Nos. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | Rate in effect | Proposed increased rate | |
| RI68-10 | Tamarack Petroleum Co., Inc., 413 First Savings and Loan Bldg., Midland, Tex. 79704. | 13 | [2] 4 | Northern Natural Gas Co. (Buckhorn (Ellenburger) Field, Crockett County, Tex.) (RR. District No. 7-C) (Permian Basin Area). | | 6-26-67 | [3] 7-25-67 | (Accepted) | | | |
| | | 13 | [4] 5 | | | 6-26-67 | [3] 7-25-67 | (Accepted) | | | |
| | | 16 | [5] 6 | | | 6-26-67 | [3] 7-25-67 | (Accepted) | | | |
| | | 16 | [6] 7 | | $660 | 6-26-67 | [3] 7-25-67 | 12-25-67 | 11.0 | [6 7 8 9] 16.5 | RI64-666. |

[2] Supplemental Agreement dated May 23, 1967, which releases all dedicated acreage from basic contract dated Sept. 15, 1958, except acreage in section 16, Block AB which was the only proven productive acreage.

[3] The stated effective date is the effective date proposed by Respondent.

[4] Contract dated May 24, 1967. Renegotiated contract which covers acreage released from Sept. 15, 1958, contract, plus additional acreage. Rate under renegotiated contract is 16.0 cents per Mcf.

[5] Interim Agreement date May 25, 1967, provides for lower rate-of-take from Smith 1-15 Unit until completion of Northern's facilities, and a deduction of ¾ cent per Mcf for treating gas from such unit.

[6] Applies only to acreage released from Sept. 15, 1958, contract.

[7] Renegotiated rate increase.

[8] Pressure base is 14.65 p.s.i.a.

[9] Rate provided for in renegotiated contract dated May 24, 1967 (Supplement No. 5).

Tamarack Petroleum Co., Inc. (Tamarack) proposes a renegotiated rate increase from 11.0 cents to 16.5 cents per Mcf, amounting to $660 annually, for a sale of gas to Northern Natural Gas Co. (Northern Natural) from the Buckhorn (Ellenburger) Field, Crockett County, Tex. (Railroad District No. 7-C) (Permian Basin Area). The proposed increased rate exceeds the applicable area base rate of 14.5 cents per Mcf prescribed by Opinion Nos. 468 and 468-A. Tamarack has not submitted a quality statement establishing the applicable area ceiling rate for the subject sale. Under the circumstances, we believe that Tamarack's proposed rate increase to 16.5 cents per Mcf should be suspended for 5 months from July 25, 1967, the proposed effective date, as herein ordered.

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

Concurrently with the filing of its notice of change in rate, Tamarack submitted a supplemental agreement dated May 23, 1967, which releases all dedicated acreage, except that in Section 16,[10] from a previous contract with Northern Natural dated September 15, 1958,[11] and a renegotiated contract dated May 24, 1967, which covers the acreage released from the 1958 contract and provides for the proposed rate increase from 11.0 cents to 16.5 cents per Mcf.[12] Tamarack also filed an interim agreement dated May 25, 1967, covering the Smith 1-15 Unit. The interim agreement provides for a lower rate-of-take from this unit until completion of Northern Natural's related facilities, and a deduction of 0.75 cent per Mcf for treating gas from such unit.[13] We believe that it would be in the public interest to accept for filing Tamarack's aforementioned contract and agreements to become effective on July 25, 1967, the proposed effective date, but not the proposed rate contained therein which will be suspended as indicated below.

Except for the stay of the moratorium in Opinion No. 468, Tamarack's proposed rate increase would be rejectable because it is in excess of the applicable area ceiling determined in Opinion No. 468. If the moratorium is ultimately upheld upon judicial review, Tamarack rate increase will be rejected ab initio.

The Commission finds:

(1) Good cause has been shown for accepting for filing Tamarack's proposed contract and agreements, designated as Supplement Nos. 4, 5, and 6 to Tamarack's FPC Gas Rate Schedule No. 13, and for permitting such supplements to become effective on July 25, 1967, the proposed effective date.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed change, and that Supplement No. 7 to Tamarack's FPC Gas Rate Schedule No. 13 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Tamarack's proposed contract and agreements, designated as Supplement Nos. 4, 5, and 6 to Tamarack's FPC Gas Rate Schedule No. 13 are accepted for filing and permitted to become effective on July 25, 1967.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 7 to Tamarack's FPC Gas Rate Schedule No. 13.

(C) Pending a hearing and decision thereon, the above-designated rate supplement is hereby suspended and the use thereof deferred until December 25, 1967, and thereafter until such further time as

[10] This acreage will remain dedicated to the September 15, 1958, contract at the 11.0 cents per Mcf rate.

[11] Designated as Supplement No. 4 to Tamarack's FPC Gas Rate Schedule No. 13.

[12] Designated as Supplement No. 5 to Tamarack's FPC Gas Rate Schedule No. 13.

[13] Designated as Supplement No. 6 to Tamarack's FPC Gas Rate Schedule No. 13.

it is made effective in the manner prescribed by the Natural Gas Act.

(D) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(E) Tamarack shall file with the Commission as a condition of this order within 45 days of the date of issuance of this order a statement setting forth either that the old gas-well gas sold under the subject rate schedule accords with all pipeline quality standards established in Opinion No. 468 and 468-A, or in which respects the old gas-well gas deviates from such standards; the agreed cost to the purchaser to bring it to the pipeline quality standards established there with respect to each quality deviation; any upward and downward B.t.u. adjustment; and the resulting applicable area rate for the gas. Such statement shall be signed by both the seller and the purchaser. If the seller and the purchaser are unable to agree upon any or all of the particulars entering into the computation of the applicable area rate, the seller shall file the statement herein required which shall indicate the absence of agreement and supply the information required to compute the applicable area rate as well as the contentions of the parties with respect to the quality and amount of the adjustment for any item in dispute. The purchaser may file a separate statement setting forth its views within the period herein provided.

(F) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37 (f)) on or before September 6, 1967.

By the Commision.

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

[F.R. Doc. 67-8773; Filed, July 31, 1967; 8:45 a.m.]

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[Project No. 2640]

## KANSAS CITY STAR CO.

### Notice of Application for License for Constructed Project

JULY 24, 1967.

Public notice is hereby given that application for license has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by The Kansas City Star Co., Flambeau Paper Division (correspondence to: Norman C. Hoefferle, General Manager, The Kansas City Star Co., Flambeau Paper Division, Park Falls, Wis. 54552) for constructed Project No. 2640, known as Upper Hydro-Electric Project, located on North Fork of Flambeau River in the City of Park Falls in Price County, Wis.

The existing project consists of: (1) A reinforced concrete gravity dam approximately 100 feet long and 15 feet high; (2) four steel tainter gates, each 20.5 feet long; (3) a needle (log) dam approximately 44 feet long; (4) a reservoir with a maximum operating head of 19.3 feet at elevation 1487.4 feet (U.S.G.S.); (5) a 1,300-foot long power canal; (6) three short open reinforced concrete flumes with steel headgates; (7) a powerhouse containing three 650 horsepower turbines and two 450 kw generators (one turbine not in use); and (8) 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 September 6, 1967. The application is on file with the Commission for public inspection.

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 67-8872; Filed, July 31, 1967; 8:45 a.m.]

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[Docket No. E-7363]

## NORTHWESTERN PUBLIC SERVICE CO.

### Notice of Application

JULY 25, 1967.

Take notice that on July 13, 1967, Northwestern Public Service Co. (Applicant) filed an application seeking an order pursuant to section 204 of the Federal Power Act authorizing the issuance of $2 million in short term promissory notes.

Applicant is incorporated under the laws of the State of Delaware with its principal business office at Huron, S. Dak., and is engaged in the electric utility business in the States of North Dakota and South Dakota.

The notes will be issued on or before December 31, 1967, and the maturity dates thereof will not be later than 360 days from their date of issuance. The notes will be issued to a commercial bank or banks and the interest rate is expected to be the prime commercial rate of the Chase Manhattan Bank as in effect from time to time when the notes are outstanding.

The proceeds will be used to finance in part Applicant's 1967 construction program which is expected to cost approximately $5.5 million. This program includes $1.1 million for some 85 miles of transmission line and $1 million for three substations.

Any person desiring to be heard or to make any protest with reference to the application should, on or before August 17, 1967, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and is available for public inspection.

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 67-8874; Filed, July 31, 1967; 8:45 a.m.]

# FEDERAL RADIATION COUNCIL

## RADIATION PROTECTION GUIDANCE FOR FEDERAL AGENCIES

### Memorandum for the President

JULY 21, 1967.

Pursuant to Executive Order 10831 and Public Law 86-373 the Federal Radiation Council transmits to you its findings and recommendations for the guidance of Federal agencies in the conduct of their radiation protection activities as they apply to the underground mining of uranium ore.

In prior memorandums and reports the Council has expressed the philosophy that guidance for radiation protection involves achieving a balance between the risk of radiation-induced injury and the benefits derived from the practice causing the exposure to radiation. An implicit part of such a balance is a necessity for considering the relation between the difficulties involved in reducing radiation exposures by a given amount and the risk that might be associated with that amount of exposure.

*Assessment of radiation hazards in underground uranium mines.* The Council has reviewed available information on the radiological factors involved in the underground mining of uranium ore. The findings of immediate interest for establishing radiation protection guidance for this activity are:

1. It has been observed that underground uranium miners have a higher incidence of lung cancer than is found in the male population in the same geographic area. Continued exposure to the radioactive decay products of the naturally occurring gas radon 222 has been implicated as an important cause of this increased incidence. The decay products of radon 222 (radon daughters) of interest are: Polonium 218, lead 214, bismuth 214, and polonium 214. For purposes of this memorandum, the radiation dose from radon itself is not considered.

2. The principal radiation hazard is associated with the inhalation of mine air containing radionuclides that irradiate lung tissue nonuniformly. The most serious result is the development of lung cancer, which generally does not appear for 10 to 20 years after the individual started uranium mining.

3. In most domestic underground uranium mines the measurement of radon daughter concentration is obtained by using a specific field method. The results are then compared to the "Working Level" (WL), a unit which is defined as any combination of radon daughters in one liter of air that will result in the ultimate emission of $1.3 \times 10^5$ MeV of potential alpha energy. The concentration of radon daughters in the air of unventilated underground uranium mines ranges from a fraction of a WL to several hundred WL. Exposure to radon daughters over a period of time may be expressed in terms of cumulative "Working Level Months" (WLM). Inhalation of air containing a radon

daughter concentration of 1 WL for 170 working hours results in an exposure of 1 WLM.

4. Observations on U.S. uranium miners who started underground mining before 1955 clearly demonstrate that an association exists between exposure to radon daughters and a higher than expected incidence of lung cancer when the cumulative exposures are more than about 1,000 WLM. The degree of risk at lower levels of cumulative exposure cannot be determined from currently available epidemiological data. It is prudent to assume that some degree of risk exists at any level of exposure, even though possible effects may not now be evident at the lower levels of cumulative exposure.

5. The highest incidence of lung cancer is occurring now in the group of miners: (1) Who worked in mines in which the average concentration of radon daughters was usually higher than 10 WL; (2) whose total cumulative exposures were estimated to range upward from about a thousand WLM; (3) who started mining uranium ore more than 10 years ago; and (4) who were moderate to heavy cigarette smokers. These observations suggest that additional cases of lung cancer can be expected to develop, even in individuals who may have already left underground mining.

*Factors related to the evaluation of benefit or control capability.* The Council has also reviewed available information on the benefits to be derived from the mining of uranium ores; on the difficulties that have been encountered in reducing radon daughter concentrations from previous levels to current levels, and the additional difficulties that can be anticipated if further reductions are required. The findings of immediate interest to the derivation of guidance for radiation protection in uranium mining are as follows:

1. Uranium is currently the basic fuel needed for the development of nuclear energy, and all projections point to an increasingly important role for nuclear energy in meeting national electric power requirements.

2. Uranium mining is an important economic asset to the states in which the ore is mined. In addition to the value of the ore, mining provides important opportunities for employment. It is estimated that the work-force will vary between 2,000–5,000 men in the next decade.

3. A significant reduction in the concentrations of radon daughters in the air of underground mines has been achieved by the industry since 1960. Estimates of probable exposures of 2,177 miners in a five-state area during the third quarter of 1966 indicate that about 31 percent of the miners were exposed to levels of 1 WL or less; 55 percent were being exposed to the range of 1–3 WL; and about 14 percent were exposed to levels higher than 3 WL.

4. Ventilation with fresh air is presently considered the most feasible technique for controlling the concentrations of radon daughters in mine air. The highest concentrations are usually found in the stope areas where some work must be done before ventilation can be brought directly to the miner's working area. This suggests that there are practical limits to the degree by which radon daughter concentrations in mine air can be controlled by ventilation alone. Information made available to the Council indicates that it will probably be physically impossible to maintain the radon daughter concentration in all parts of the mines to as low as 1 WL at all times.

5. Research studies have been made on possible procedures that might be used to block the diffusion of radon from the rock into mine air. The use of positive pressure ventilation can be useful if the rock is porous enough to permit air to flow into it. Coating the rock surface might be useful if it is capable of blocking the diffusion of radon.

6. The effectiveness, feasibility, and safety of various types of auxiliary respiratory protection equipment, as they might be used in underground uranium mining, deserve the most thorough study.

7. It is common practice to limit the highest radon daughter concentrations in which normal mining operations are allowed without determining the radiation exposure at lower concentrations. This procedure makes it possible to estimate the maximum exposure rate, but does not provide the information necessary for estimating the true average exposure, and hence radiation risk for any one individual or group.

*Guidance for radiation protection in underground mines.* On the basis of the preceding findings, the Federal Radiation Council has concluded that radon and its radioactive daughter products occur in sufficient concentrations in underground uranium mines to require actions to control the potential radiation exposure associated with working in such environments. Although primary emphasis has been placed on underground uranium mining, the guidance contained in this memorandum may be applied, as necessary, to any type of mine where similar concentrations of radon daughter products may be found.

In reaching its recommendations the Council has considered: (1) The apparent relationship between cumulative exposure to radon daughters and the risk of subsequent development of lung cancer as shown by presently available epidemiological data; (2) the range of annual exposures received by various categories of miners now engaged in uranium mining; (3) the technological problems involved in achieving control to various levels of annual exposure, and the ability of present technology as practiced by the industry to reduce radon concentrations to different levels; (4) improvements that might be introduced by the application of a more advanced technology, and the length of time such improvements might take; and (5) the magnitude of the radiation risk in the light of the other risks that are faced in underground mining, and the impact the Council's recommendations might have on efforts to reduce these risks simultaneously. In balancing these considerations, it is recommended that:

1. Occupational exposure to radon daughters in underground uranium mines be controlled so that no individual miner will receive an exposure of more than six WLM in any consecutive 3-month period and no more than 12 WLM in any consecutive 12-month period. Actual exposures should be kept as far below these values as practicable.

2. Areas in underground uranium mines, whether normally or occasionally occupied, be monitored for the concentration of radon daughters in mine air. The location and frequency of taking samples should be determined in relation to compliance with recommendation number 1.

3. Appropriate records of the exposure from radon daughters in the mine air received by individuals working in uranium mines be established and maintained.

The Federal Radiation Council recognizes that current mining conditions are much better than those prevailing 10 years ago. However, it also considers that more improvement is needed to provide proper control of exposure to radon daughters. Steps to make improvements should be initiated immediately and made operational as soon as possible.

The practical determination of what is needed to implement the recommendations should take cognizance of the following reasons for making the necessary measurements and the compilation of appropriate records: (1) Data needed to indicate compliance with recommendation number 1, (2) the evidentiary record needed to support or deny claims for occupational disability, (3) permit future evaluation of possible causal relationships between exposure to radon daughters and respiratory cancer at the lower cumulative exposure levels, and (4) to develop a basis for estimating the cumulative occupational exposure that the average miner might receive in the future under this guidance.

The control of an airborne hazardous agent, such as radon and its radioactive daughters, can be achieved either by controlling the environment by appropriate ventilation or by providing auxiliary procedures and equipment to offset exposure from the environment. Examples of such procedures are limiting the time individuals are allowed to work in the environment, or the use of respiratory protection devices capable of removing most of the radon daughters present in the mine air.

These procedures should also be accompanied by an educational program under the direction of mine management so that the miner may be advised on the necessity for taking these precautionary measures and to emphasize the miner's responsibility in reducing his exposure to radioactive materials.

The Council urges the appropriate Federal agencies to cooperate fully with the states and the uranium mining industry in providing realistic and coordinated programs in the following areas:

1. The development of technology directed to the control and more reliable estimates of individual exposures to radon daughters.

2. The registration and compilation of individual exposure records.

3. Research on causal relationships involving varying exposure to radon daughters and the subsequent development of disability.

4. Research and development directed toward better mining practices.

5. Development of adequate compensation procedures.

6. Educational opportunities and training programs wherever needed.

In approximately 1 year the Federal Radiation Council intends to review its guidance for radiation protection in uranium mining. At that time, if it is indicated, the recommendations in this memorandum will be changed accordingly.

If the foregoing recommendations are approved by you for the guidance of Federal agencies in the conduct of their radiation protection activities, it is further recommended that this memorandum be published in the FEDERAL REGISTER.

JOHN W. GARDNER,
*Chairman.*

Recommendations 1, 2, and 3 in the preceding memorandum are approved for the guidance of Federal agencies, and the memorandum shall be published in the FEDERAL REGISTER.

LYNDON B. JOHNSON.

JULY 27, 1967.

[F.R. Doc. 67-9037; Filed, July 31, 1967; 10:40 a.m.]

# FEDERAL RESERVE SYSTEM

## COMMERCIAL ASSOCIATES, INC.

### Notice of Applications for Approval of Acquisition of Shares of Banks

Notice is hereby given that applications have been made to the Board of Governors of the Federal Reserve System pursuant to section 3(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)), by Commercial Associates, Inc., which is a bank holding company located in Pensacola, Fla., for the prior approval of the Board of the acquisitions by Applicant of 80 percent or more of the voting shares of First National Bank in Milton, Milton, Fla., and 90 percent or more of the voting shares of The State Bank of Jacksonville, Jacksonville, Fla.

Section 3(c) of the Act provides that the Board shall not approve (1) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or (2) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that in every case, the Board shall take into consideration, the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisitions may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Dated at Washington, D.C., this 25th day of July 1967.

By order of the Board of Governors.

[SEAL] MERRITT SHERMAN,
*Secretary.*

[F.R. Doc. 67-8875; Filed, July 31, 1967; 8:45 a.m.]

# SECURITIES AND EXCHANGE COMMISSION

[812-2113]

## CAL-WESTERN SEPARATE ACCOUNT A AND CALIFORNIA-WESTERN STATES LIFE INSURANCE CO.

### Notice of Application for Exemptions

JULY 25, 1967.

Notice is hereby given that California-Western States Life Insurance Co. ("Insurance Company") 2020 L Street, Sacramento, Calif. 95814, and Cal-Western Separate Account A ("Separate Account") (herein collectively called "Applicants") have filed an application pursuant to section 6(c) of the Investment Company Act of 1940, 15 U.S.C. sec. 80a-l, et seq., ("Act") for an order exempting Applicant from the provisions of sections 14(a), 15(a), 16(a), 17(f), 22(d), 22(e), 27(a)(4), 27(c)(1), 27(c)(2), and 32(a) of the Act. Separate Account is an open-end diversified management investment company registered under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations which are summarized below.

Insurance Company established Separate Account in order to offer contracts designed for annuity purchase plans adopted by public school systems and certain tax-exempt organizations. The contracts qualify as tax-deferred annuities under section 403(b) of the Internal Revenue Code of 1954, as amended ("Code").

Section 14(a)(1) provides, in pertinent part, that no registered investment company shall make a public offering of a security of which such company is the issuer, unless such company has a net worth of at least $100,000.

Applicants state that the only contracts which will be offered initially are tax-sheltered variable annuity contracts which initially meet the requirements of section 403(b) of the Code. Applicants declare that since Separate Account will only hold assets of tax sheltered contracts, it is not feasible to raise the minimum capital requirement through a non-public offering because the limitations under the Code on tax deferred contributions on behalf of a single participant make it unlikely that $100,000 could be raised from fewer than 75 persons which would involve several hundred offers.

Applicants further state, among other things, that it is not feasible to raise the minimum capital requirement through the sale of nontax sheltered contracts since to combine in a single separate account assets pertaining to tax sheltered contracts and assets pertaining to nontax sheltered contracts could result in the imposition of tax liabilities which might not otherwise be incurred or in the misallocation of tax benefits.

Finally, Applicants state that under California insurance law Separate Account is an integral part of Insurance Company (which has over $347 million of admitted assets and has capital stock and surplus of over $48 million) and the contractual obligations of Insurance Company under the variable annuity contracts cannot be abandoned by it until such obligations are discharged.

Sections 15(a), 16(a), and 32(a), in substance, require shareholder approval of the investment advisory agreement, the election of directors by shareholders, and shareholder ratification of the selection of an independent public accountant, respectively. Applicants state that since there will be no contract owners, hence no holders of voting securities, until after the registration statement under the Securities Act of 1933 becomes effective, the requirements of the aforesaid sections cannot be complied with. Applicants represent, however, that the first meeting of contract owners will take place on the fourth Tuesday of March of 1968. Applicants state that by that time it is expected that some variable annuity contracts will have been sold so that the participants therein can then vote on such matters. The Applicants request a temporary exemption from the requirements of sections 15(a), 16(a), and 32(a) to allow Separate Account to operate until the first annual meeting of contract owners, at which time the requirements of those sections can be met.

Section 17(f)(3) provides, in pertinent part, that a registered management investment company may maintain its securities and investments in its own custody in accordance with such rules, regulations, and orders as may be adopted by the Commission in the interests of investors. Rule 17f-2 under the Act requires, among other things, that such assets be placed in a bank subject to the other requirements of the rule. One of such other requirements limits the persons who shall have access to such assets to only certain specified individuals.

Applicants request an exemption from the provisions of section 17(f)(3) and rule 17f-2 to the extent necessary to permit not more than five officers or responsible employees of Insurance Company as well as duly authorized representatives of the Insurance Commissioner of California to have access to the assets of Separate Account. Such assets will be deposited by Insurance Company with Wells Fargo Bank, Sacramento, Calif. Insurance Company is subject to supervision and inspection by the Insurance Commission of California. Further, all officers and employees having access to the securities will be covered by a bond in the face amount of $250,000.

Section 22(d) provides, in pertinent part, that no registered investment company shall sell any redeemable security of which it is the issuer except at a current public offering price described in the prospectus. The contracts which will be issued by Applicants provide for a combined 5.25 percent charge for sales and administrative services. The combined charge is appropriate because of the impossibility of determining in advance of the sale of the contract the proportions of such combined charge which will be incurred by the Insurance Company for each type of expense. Such proportions will vary from case to case depending on the amount of assistance provided by the employer-purchaser of the contract in connection with the sale and administration of such contract. Since on the basis of actual experience the proportions of sales charges and accordingly the current public offering price will vary from contract to contract for the reasons referred to above, Applicants request an exemption from the requirements of section 22(d).

Applicants request a further exemption to permit the allocation of an experience rating provision for the tax sheltered contracts initially meeting the requirements of section 403(b) of the Code. The combined sales and administrative expenses applicable to each contract will be determined annually. If the actual expenses exceed the amount previously deducted for such expenses, no additional deduction will be made. On the other hand, if the actual expenses are less than the amount deducted, Insurance Company, in its discretion, may allocate all, a portion, or none of such excess as an experience rating credit to the participants in the Separate Account. Any excess so allocated will be applied in one of two ways: (a) By a reduction in the amount deducted from subsequent contributions for sales and administrative services; or (b) by the crediting to participants under the group policy of a number of additional accumulation units or annuity units, as applicable, without deduction of any amount for sales or administrative expenses.

Sections 22(e) and 27(c)(1) provide, in pertinent part, that (1) a registered investment company may not suspend the right of redemption or postpone the date of payment upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security for redemption and (2) a registered investment company issuing periodic payment plan certificates may not sell such certificates unless such certificates are redeemable securities. Applicants represent that prior to their maturity dates the contracts are redeemable and satisfy the redemption provisions of the Act. However, on their respective maturity dates, the then value of the contracts is determined and applied to provide for lifetime annuity payments of either fixed or variable amounts. Applicants state that because the amount of annuity payments under the variable option are calculated actuarially, based upon the life expectancies of the purchasers of the contracts, if a purchaser were permitted to redeem his contract after the maturity date, it would upset the actuarial computations made with respect to the remaining purchasers. Applicants request exemption from sections 22(e) and 27(c)(1) to the extent that once a purchaser begins to receive annuity payments he cannot redeem the value credited to his contract. Such prohibitions shall only apply after annuity payments to the purchaser commence.

Section 27(a)(4) provides, in pertinent part, that the first payment on a periodic payment plan certificate be not less than $20. In order to minimize the administrative and accounting burdens involved for employers in making payroll deductions, Applicants request an exemption to permit the first payment to be in an amount of not less than $10 in the case of its group variable annuity contracts meeting the requirements of section 403(b) of the Code.

Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than the sales load, are deposited with a bank as trustee or custodian and held under an indenture or agreement containing, in substance, the provisions required by sections 26(a) (2) and (3) for a unit investment trust. Section 26(a)(2) requires that the trustee or custodian segregate and hold in trust all securities and cash of the trust and places certain restrictions on charges which may be made against the trust income and corpus and excludes from expenses which the trustee or custodian may charge against the trust any payments to the depositor or principal underwriter, other than a fee not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services delegated to them by the trustee or custodian. Section 26(a)(3) governs the circumstances under which the trustee or custodian may resign.

Applicants state that Insurance Company functions as a regulated insurance company and is subject to extensive and detailed supervision and inspection by the Insurance Commissioner of California in all of its dealings with the contract purchasers. Insurance Company states that such control provides ample assurance against misfeasance and adequately protects the interest of the contract purchasers. Accordingly, Applicants state that such authority and jurisdiction affords the essential protection which the trusteeship or custodianship under section 26(a)(2) is designed to provide. Moreover, in addition to the supervision and inspection by the Insurance Commissioner, Insurance Company states that it will undertake binding commitments to contract owners which it may not legally abrogate. Such supervision, inspection and undertakings will effectively prevent orphanage of separate Account by Insurance Company which the trusteeship under section 27(c)(2) is designed to protect against.

Applicants have consented to the requested exemptions being subject to the condition that the charges under the contracts for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, and that the Commission shall reserve jurisdiction for such purpose.

Section 6(c) authorizes the Commission to exempt any person, security or transaction, or any class or classes or persons, securities, or transactions, from the provisions of the Act and Rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than August 11, 1967, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

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

[F.R. Doc. 67-8900; Filed, July 31, 1967; 8:47 a.m.]

[70-4512]

## LOUISIANA POWER & LIGHT CO.

### Notice of Proposed Issue and Sale of Bonds and Increase in Authorized Shares of Preferred Stock

JULY 25, 1967.

Notice is hereby given that Louisiana Power & Light Co. ("Louisiana"), 142 Delaronde Street, New Orleans, La. 70114, a registered holding company and an electric utility subsidiary company of Middle South Utilities, Inc., also a registered holding company, has filed a declaration, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a) and 7 of the Act and rule 50 thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Louisiana proposes to issue and sell, subject to the competitive bidding requirements of rule 50 under the Act, $18 million principal amount of First Mortgage Bonds, ____ percent Series due 1997 ("new bonds"). The interest rate of the new bonds (which will be a multiple of ⅛ of 1 percent) and the price, exclusive of accrued interested to be paid to Louisiana (which will be not less than 100 percent nor more than 102¾ percent of the principal amount thereof) will be determined by competitive bidding. The new bonds will be issued under Louisiana's Mortgage and Deed of Trust dated as of April 1, 1944, to The Chase Manhattan Bank ("National Association"), successor to The Chase National Bank of the City of New York and Milton J. Redlich, successor to Carl E. Buckley, as Trustees, as heretofore supplemented by various indentures and as to be further supplemented by a Tenth Supplemental Indenture to be dated September 1, 1967.

Louisiana also proposes to amend its charter so as to authorize 80,000 shares of a new series of cumulative preferred stock, $100 par value ("new preferred stock"), and to issue and sell such shares subject to the competitive bidding requirements of Rule 50 under the Act. The dividend rate of the new preferred stock (which will be a multiple of 1/25 of 1 percent) and the price to be paid to Louisiana (which will be not less than $100 nor more than $102.75 per share) will be determined by competitive bidding.

Louisiana will apply the net proceeds derived from the issue and sale of the new bonds and new perferred stock to the payment of short-term bank loans outstanding prior to the issue and sale of such bonds and preferred stock and to its 1967 construction program. Louisiana expects to provide for the balance needed for such 1967 construction by using funds on hand and to be generated internally.

It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. Fees and expenses to be incurred by Louisiana in connection with the new bonds are estimated at $70,000, including legal fees of $19,000 and auditor's fees of $2,500. Fees and expenses in connection with the new preferred stock are estimated at $30,000, including legal fees of $15,000 and auditor's fees of $1,000. The fees of counsel for the underwriters, to be paid by the successful bidders, are estimated at $6,000 in connection with the new bonds and at $5,000 in connection with the new preferred stock.

Notice is further given that any interested person may, not later than August 25, 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 declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be granted 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. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

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

[F.R. Doc. 67-8901; Filed, July 31, 1967; 8:47 a.m.]

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[File No. 1-4078]

## TEL-A-SIGN, INC.

### Order Suspending Trading

JULY 26, 1967.

The common stock of Tel-A-Sign, Inc., being listed and registered on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such Exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

*It is ordered,* Pursuant to sections 15 (c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such security on the American Stock Exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period July 26, 1967, through August 4, 1967, both dates inclusive.

By the Commission.

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

[F.R. Doc. 67-8877; Filed, July 31, 1967; 8:45 a.m.]

# INTERSTATE COMMERCE COMMISSION

## FOURTH SECTION APPLICATION FOR RELIEF

JULY 27, 1967.

Protest to the granting of an application must be prepared in accordance with rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 41081—*Ferro Alloys from Calvert, Ky.* Filed by O. W. South. Jr., agent (No. A5048), for interested rail carriers. Rates on ferro-manganese, ferro-silicon, silico-managnese, ferro-chrome, ferro-chrome-silicon or ferro-aluminum-manganese-silicon, in carloads, minimum 120,000 pounds, from Calvert, Ky., to Graham, Weirton, W. Va., Marietta, Mingo Jct., and Steubenville, Ohio.

Grounds for relief—Rate relationship.

Tariff—Supplement 102 to Southern Freight Association, agent, tariff ICC S-308.

By the Commission.

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

[F.R. Doc. 67-8906; Filed, July 31, 1967; 8:48 a.m.]

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[Notice 427]

## MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JULY 27, 1967.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC 67, 49 CFR Part 340) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protest must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protest must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 52579 (Sub-No. 78 TA), filed July 24, 1967. Applicant: GILBERT CARRIER CORP., 441 Ninth Avenue, New York, N.Y. 10001. Applicant's representative: Aaron Hoffman (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel and materials and supplies used in the manufacture thereof*, between Little Falls and Oneonta, N.Y., on the one hand, and, on the other, Garfield, N.J.; for 150 days. Supporting shipper: Wendy-Carr, Inc., 100 Outwater Lane, Garfield, N.J. Send protests to: Paul W. Assenza, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 346 Broadway, New York, N.Y.

No. MC 103654 (Sub-No. 128 TA), filed July 24, 1967. Applicant: SCHIRMER TRANSPORTATION COMPANY, INCORPORATED, 1145 Homer Street, St. Paul, Minn. 55116. Applicant's representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lecithin*, in bulk, in tank vehicles, from Mankato, Minn., to Cincinnati, Ohio; for 150 days. Supporting shipper: Honeymead Products Co., Mankato, Minn., 56001. Send protests to: A. E. Rathert, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 448 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minn. 55401.

No. MC 109435 (Sub-No. 48 TA), filed July 24, 1967. Applicant: ELLSWORTH BROS. TRUCK LINE, INC., 116 North Allied Road, Post Office Drawer J, Stroud, Okla. 74079. Applicant's representative: LeVoy C. Ellsworth (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry cement*, in bulk, in hopper type vehicles, from rail heads near Scott and North Little Rock, Ark., to Lock Dam No. 6 on the Arkansas River, on traffic having a prior out-of-State movement by rail; for 150 days. Supporting shipper: Oklahoma Cement Co., First National Building, Tulsa, Okla. 74103. Send protests to: C. L. Phillips, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 350, American General Building, 210 Northwest Sixth, Oklahoma City, Okla. 73102.

No. MC 111302 (Sub-No. 40 TA), filed July 24, 1967. Applicant: HIGHWAY TRANSPORT, INC., Post Office Box 79, Powell, Tenn. 37849. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chocolate syrup*, in bulk, in tank vehicles, from the facilities of the Van Leer Chocolate Corp. at Jersey City, N.J., to Hamlet, N.C.; for 150 days. Supporting shipper: Van Leer Chocolate Corp., 110 Hoboken Avenue, Jersey City, N.J. 07302. Send protests to: J. E. Gamble, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 706 U.S. Courthouse, Nashville, Tenn. 37203.

No. MC 112547 (Sub-No. 5 TA), filed July 24, 1967. Applicant: J. T. GERKEN TRUCKING, INC., Eighth and Harmon Streets, Portsmouth, Ohio 45662. Applicant's representative: Lawrence Gerken (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Proprietary antifreeze or engine coolant preparations or proprietary deicing preparations*, from New Kensington, Pa., to Akron, Bethel, Canton, Christiansburg, Cincinnati, Columbus, Dayton, Dupont, East Liverpool, Elyria, Fremont, Frazeysburg, Marietta, Ney, Niles, and Zanesville, Ohio; and (2) *such equipment, materials, and supplies as are usually dealt in by garages and gasoline and oil service stations* (except liquid commodities, in bulk), and *empty shipper-owned trailers*, between Lima, Ohio, on the one hand, and, on the other, points in Delaware, Maryland, New Jersey, Pennsylvania, Virginia, and West Virginia; limited to a transportation service to be performed under a continuing contract, or contracts, with The Standard Oil Co. (Ohio) and its wholly owned subsidiaries, restricted to shipments transported in trailers owned by The Standard Oil Co. (Ohio) and its wholly owned subsidiaries; for 180 days. Supporting shipper: The Standard Oil Co., Midland Building, Cleveland, Ohio 44115. Send protests to: Emil P. Schwab, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 1010 Federal Building, 550 Main Street, Cincinnati, Ohio 45202.

No. MC 112750 (Sub-No. 247 TA), filed July 25, 1967. Applicant: AMERICAN COURIER CORPORATION, 222-17 Northern Boulevard, DeBevoise Building, Bayside, N.Y. 11361. Applicant's representative: J. K. Murphy (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commercial papers, documents, written instruments, and business records* (except coin, currency and negotiable securities), as are used in the business of banks and banking institutions, between Jacksonville, Fla., on the one hand, and, on the other, Atlanta, Ga., and points in Georgia lying on a line west and south beginning in Savannah, Ga., and going over U.S. Highway 80 to Blitchton, thence west and south on a line over U.S. Highway 280 to junction Interstate Highway 75, thence south and east on a line over Interstate Highway 75 to the Florida State line; for 180 days. Supporting shippers: There are 9 shippers' supporting statements attached to application, which may be examined at the Interstate Commerce Commission, in Washington, D.C., or at the field office named below. Send protests to: Anthony Chiusano, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 346 Broadway, New York, N.Y. 10013.

No. MC 115876 (Sub-No. 14 TA), filed July 24, 1967. Applicant: ERWIN HURNER, 2605 South River Shore Drive, Moorhead, Minn. 56560. Applicant's representative: Alan Foss, 502 First National Bank Building, Fargo, N. Dak. 58102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and articles dealt in by wholesale beverage distributors*, from La Crosse, Wis., to Moorhead, Minn., and Fargo, N. Dak.; for 150 days. Supporting shipper: Persellin Distributing Co., 1821 Second Avenue North, Moorhead, Minn. 56561. Send protests to: Joseph H. Ambs, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 1621 South University Drive, Room 213, Fargo, N. Dak. 58102.

No. MC 116763 (Sub-No. 117 TA), filed July 24, 1967. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, Ohio 45380. Applicant's representative: Carl Subler (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, not frozen, from Paris, Tex., to points in Alabama, Florida, and Georgia; for 180 days. Supporting shipper: Campbell Soup Co., 375 Memorial Avenue, Camden, N.J. 08101. Send protests to: Emil P. Schwab, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 1010 Federal Building, 550 Main Street, Cincinnati, Ohio 45202.

No. MC 117439 (Sub-No. 30 TA), filed July 25, 1967. Applicant: BULK TRANSPORT, INC., Post Office Box 89, Port Allen, La. 70767. Applicant's representative: John Schwab, 617 North Boulevard, Baton Rouge, La. 70802. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime*, in bulk, from New Orleans, La., to points in Bowie, Chambers, Harris, Jefferson, Liberty, and Orange Counties, Tex.; for 180 days. Supporting shipper: United States Gypsum Co., 3098 Piedmont Road Northeast, Atlanta, Ga. 30305 (H. Lee Huffman, Traffic Manager—Southern Division). Send protests to: W. R. Atkins, District Supervisor, Bureau of Operations, Interstate Commerce Commission, T-4009 Federal Office Building, 701 Loyola Avenue, New Orleans, La. 70113.

No. MC 119182 (Sub-No. 3 TA), filed July 25, 1967. Applicant: McGUIRE LUMBER AND SUPPLY, INC., Wylliesburg, Va. 23976. Applicant's representative: John C. Goddin, 10 South 10th Street, Insurance Building, Richmond, Va. 23219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wooden pallets and skids*, from points in Amelia County, Va., to points in North Carolina, West Virginia, Maryland, Delaware, Pennsylvania, Ohio, New Jersey, and New York, and the District of Columbia; for 150 days. Supporting shipper: Scott Pallets, Inc., Amelia, Va. 23002. Send protests to: George S. Hales, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 215 Campbell Avenue Southwest, Roanoke, Va. 24011.

No. MC 123407 (Sub-No. 33 TA), filed July 25, 1967. Applicant: SAWYER TRANSPORT, INC., 2424 Minnehaha Avenue, Minneapolis, Minn. 55404. Applicant's representative: Michael E. Miller, 502 First National Bank Building, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Composition building board (including ceiling tile) and supplies and accessories* used in the installation thereof, from International Falls, Minn., to points in Indiana, Michigan, and Ohio; for 180 days. Supporting shipper: Boise Cascade Corp., 800 Northstar Center, Minneapolis, Minn. 55402. Send protests to: C. H. Bergquist, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 448 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minn. 55401.

No. MC 123415 (Sub-No. 11 TA), filed July 24, 1967. Applicant: JAMES STUFFO, INC., Post Office Box 1061, Merchantville, N.J. 08109. Applicant's representative: Raymond A. Thistle, Jr., Suite 1710, 1500 Walnut Street, Philadelphia, Pa. 19102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper boxes*, set up and knocked down, from the plantsite of George H. Snyder, Warrington Township, Bucks County, Pa., to Philadelphia, Pa.; (2) *drugs, medicinal and toilet preparations*, in paper-kit boxes, from the plantsite of George H. Snyder, Warrington Township, Bucks County, Pa., to New Brunswick, N.J.; and (3) *drugs, medicinal and toilet preparations*, from New Brunswick, N.J., to the plantsite of George H. Snyder, Warrington Township, Bucks County, Pa.; for 180 days. NOTE: Applicant states that it intends to tack authority sought with that under MC 123415, in which it is authorized to operate in the States of Pennsylvania, New York, New Jersey, Delaware, and Maryland. Supporting shipper: George H. Snyder, Inc., 3631-47 North Smedley Street, Philadelphia, Pa. 19140. Send protests to: Raymond T. Jones, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 410 Post Office Building, 402 East State Street, Trenton, N.J. 08608.

No. MC 124078 (Sub-No. 286 TA), filed July 24, 1967. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, Wis., 53215. Applicant's representative: Richard H. Prevette (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bulk and in bags, from Castle Hayne, N.C., to points in South Carolina; for 150 days. Supporting shipper: Ideal Cement Co., 821 17th Street, Denver, Colo. 80202 (Paul S. Barnett, General Traffic Manager and Registered Practitioner). Send protests to: William F. Sibbald, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 126266 (Sub-No. 4 TA), filed July 24, 1967. Applicant: MAX L. DUDLEY, doing business as DUDLEY BOAT & TRAILER TRANSPORT, 2945 17th Street Southeast, Auburn, Wash. 98002. Applicant's representative: Joseph O. Earp, 411 Lyon Building, Seattle, Wash. 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Boats*, from Bellingham, Wash., to Seattle, Wash.; for 180 days. Supporting shipper: United Boatbuilders, Inc., Post Office Box 1095, Bellingham, Wash. 98225. Send protests to: E. J. Casey, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 6130 Arcade Building, Seattle, Wash. 98101.

No. MC 127557 (Sub-No. 6 TA), filed July 24, 1967. Applicant: COMMERCIAL TRANSPORTATION, INC., 833 Warner Street SW., Atlanta, Ga. 30310. Applicant's representative: Virgil H. Smith, Suite 431, Title Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Peoria, Ill., and Milwaukee, Wis., to Atlanta, Ga.; for 150 days. Supporting shipper: General Wholesale Beer Co., Atlanta, Ga. Send protests to: William L. Scroggs, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 300, 680 West Peachtree Street NW., Atlanta, Ga. 30308.

No. MC 128521 (Sub-No. 1 TA), filed July 24, 1967. Applicant: BIRMINGHAM-NASHVILLE EXPRESS, INC., 515 Nashville Bank & Trust Building, Nashville, Tenn. 37201. Applicant's representative: Walter Harwood (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except household goods, classes A and B explosives, commodities in bulk, and articles requiring special equipment), between Nashville, Tenn., and Birmingham, Ala., over U.S. Highway 31 and Interstate Highway 65, serving all intermediate points in Alabama, using any and all segments of said routes in conjunction with each other, and serving the plantsite of the Tennessee Valley Authority, known as Brown Ferry Project, located at or near Brown's Ferry, near Athens, Ala., as an off-route point; for 180 days. Supporting shippers: There are 46 shippers' supporting statements attached to application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or at the field office named below. Send protests to: J. E. Gamble, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 706 U.S. Courthouse, Nashville, Tenn. 37203.

No. MC 129260 (Sub-No. 1 TA), filed July 24, 1967. Applicant: DATA TRANSPORTATION CO., INC., 1544 North Knowles Avenue, Los Angeles, Calif. 90063. Applicant's representative: Alan F. Wohlstetter, 1 Farragut Square South, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Los Angeles, Orange, Sacramento, Yolo, San Francisco, Solano, San Mateo, Santa Clara, Alameda, and Contra Costa Counties, Calif. restricted to shipments having a prior or subsequent line-haul movement beyond said counties by rail, motor, air, or water; for 180 days. Supporting shippers: International Business Machines Corp., 1000 Westchester Avenue, White Plains, N.Y. 10604; Burnham World Forwarders, Inc., 1632 Second Avenue, Columbus, Ga. 31901; Radio Corporation of America, 3900 Monet Road, Palm Beach Gardens, West Palm Beach, Fla. 33403; and Varian Associates, 611 Hansen Way, Palo Alto, Calif. Send protests to: John E. Nance, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 7708 Federal Building, 300 North Los Angeles Street, Los Angeles, Calif. 90012.

No. MC 129266 (Sub-No. 1 TA), filed July 24, 1967. Applicant: BALLANTYNE TRUCKING COMPANY, 3030 East Fourth Street, Pueblo, Colo. 81001. Applicant's representative: John Ballantyne (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meat and packinghouse products*, between plants of the American Stores Packing Co., division of Acme Markets, located at Pueblo, Colo., and Lincoln and McCook, Nebr.; under a continuing contract with American Stores Packing Co.; for 180 days. Supporting shipper: Acme Markets, Inc., 124 North 15th Street, Philadelphia, Pa. 19102. Send protests to: Herbert C. Ruoff, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2022 Federal Building, Denver, Colo. 80202.

No. MC 129267 TA, filed July 24, 1967. Applicant: H & S TRANSFER COMPANY, INC., 1001 Fenwick Street, Augusta, Ga. 30901. Applicant's representative: Paul F. Sullivan, Colorado Building, 1341 G Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Burke, Emanuel, Jefferson, Lincoln, Richmond, Taliaferro, Wilkes, Columbia, Glascock, Jenkins, McDuffie, Screven, and Warren Counties, Ga.; and Aiken, Barnwell, Hampton, Allendale, Edgefield, and McCormick Counties, S.C.; restricted to shipments moving in containers, and having an immediately prior or subsequent movement by rail, motor, water, or air and moving on through bills of lading of forwarders operating under the section 402(b)(2) exemption; for 180 days. Supporting shippers: Sunpak International, Sunpak Movers, Inc., 1621 Queen Anne Avenue North, Seattle, Wash. 98109; Garrett Freightlines, Inc., Post Office Box 4048, Pocatello, Idaho 83201; Burnham World Forwarders, Inc., 1632 Second Avenue, Columbus, Ga. 31901; and Interstate System, General Offices, 134 Grandville Avenue SW., Grand Rapids, Mich. Send protests to: William L. Scroggs, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 300, 680 West Peachtree Street NW., Atlanta, Ga. 30308.

MOTOR CARRIER OF PASSENGERS

No. MC 1800 (Sub-No. 30 TA), filed July 25, 1967. Applicant: ALEXANDRIA, BARCROFT & WASHINGTON TRANSIT COMPANY, doing business as A. B. & W. TRANSIT CO., 600 North Royal Street, Alexandria, Va. 22314. Applicant's representative: S. Harrison Kahn, Suite 733, Investment Building, Washington, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers*, in special operations, in round-trip movements beginning and ending at the U.S. Marine Base, Quantico, Va., and extending to the District of Columbia; for 150 days. Restriction: The service authorized herein shall be conducted on Saturdays and Sundays only, at such times as may be designated by the U.S. Marine Base, Quantico, Va. Supporting shippers: W. F. Fry, Chief Staff, Marine Corps Schools, Quantico, Va. 22134; and Eastern Greyhound Lines, 1400 West Third St., Cleveland, Ohio 44113. Send protests to: Robert D. Caldwell, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1220, 12th and Constitution Avenue NW., Washington, D.C. 20423.

By the Commission.

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

[F.R. Doc. 67-8909; Filed, July 31, 1967; 8:48 a.m.]

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[Notice 14]

## MOTOR CARRIER TRANSFER PROCEEDINGS

JULY 27, 1967.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 279), 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-69750. By order of July 26, 1967, the Transfer Board approved the transfer to Edwin Robinson, Foster, Nebr., of certificate No. MC-10790, issued May 15, 1941, to John Petsche, Osmond, Nebr., authorizing the transportation of household goods, livestock, farm machinery, agricultural commodities, and feed, over a regular route between Osmond, Nebr., and Sioux City, Iowa, serving intermediate and off-route points within 20 miles of Osmond, and grain, over irregular routes, from points in Iowa to Osmond, Nebr., and points within 20 miles of Osmond.

No. MC-FC-69756. By order of July 26, 1967, the Transfer Board approved the transfer to Seaway Coach Lines, Inc., Erie, Pa. 16507, of the operating rights of M. I. Loker and Pauline Loker, a partnership, doing business as Seaway Coach Lines, Erie, Pa. 16507 in certificates Nos. MC-125066, MC-125066 (Sub-No. 2), MC-125066 (Sub-No. 4), and MC-125066 (Sub-No. 5), issued May 8, 1964, June 3, 1965, October 12, and September 13, 1966, respectively, authorizing the transportation, over regular routes, of passengers and their baggage, and express and newspapers in the same vehicle with passengers, between Erie, Pa.; and Scranton, Pa.; and between U.S. Highway 6 and Pennsylvania Highway 59, approximately 3 miles southeast of Warren, Pa., and junction U.S. Highway 6 and Pennsylvania Highway 46 one-half mile east of Smethport, Pa.; between Meadville, Pa., and Pittsfield, Pa.; between North East, Pa., and West Springfield, Pa.; and between Union City, Pa., and West Springfield, Pa.; and between junction Pennsylvania Highway 5 and U.S. Highway 20, and junction U.S. Highway 20 and Interstate Highway 90; between junction Pennsylvania Highway 5 and U.S. Highway 20; between junction U.S. Highway 20 and 6N, and junction Pennsylvania Highway 18 and U.S. Highway 20; and over irregular routes of passengers and their baggage, in charter operations, originating and terminating at all points in Erie County, Pa. (except Corry, Pa.) and extending to points in Cattaraugus, Chautauqua, Erie and Niagara Counties, N.Y., and nine specified counties in Ohio, and the District of Columbia; and of the operating rights of E. G. Pifer and David Pifer, a Partnership, doing business as LeBoeuf Bus Lines, Mill Village, Erie County, Pa. 16427, in certificate No. MC-113039, issued December 5, 1952, authorizing the transportation, over irregular routes, of passengers and their baggage, in round-trip charter operations, beginning and ending at points in Erie County, Pa., and those points in Cambridge Township, Crawford County, Pa., and extending to points in Ohio on and north of U.S. Highway 40 and those in New York on and west of U.S. Highway 15. William W. Knox, 23 West 10th Street, Erie, Pa. 16501, attorney for applicants.

No. MC-FC-69785. By order of July 24, 1967, the Transfer Board approved the transfer to V. C. Trucking Services, Inc., Brooklyn, N.Y. of the operating rights in certificate No. MC-17585 issued March 21, 1960, to Albert P. Reale, doing business as P. Reale Trucking, Irvington, N.Y., authorizing the transportation of: Heating and air conditioning equipment, and parts for such commodities, and plumbing equipment and supplies, between specified points in New York, New Jersey, and Connecticut. William D. Traub, 10 East 40th Street, New York, N.Y. 10016, representative for applicants.

No. MC-FC-69792. By order of July 26, 1967, the Transfer Board approved the transfer to Lloyd Wilson Porsborg, doing business as Porsborg Truck Line, 1405 Sixth Avenue NW, Great Falls, Mont., of the operating rights in certificate No. MC-126432 issued October 21, 1965, to Paul E. Haigh, doing business as Paul Haigh Trucking, 261 Ash Street SW., Lewistown, Mont. 59457 authorizing the transportation of: Malt beverages, from St. Paul, Minn., to Glendive, Mont.

No. MC-FC-69803. By order of July 26, 1967, the Transfer Board approved the transfer to D. M. Davis, Inc., Kansas City, Mo., of certificate No. MC-3790 (Sub-No. 5), issued October 18, 1956, to Williams Transfer, Inc., North Kansas City, Mo., authorizing the transportation of livestock, from Arley, Mo., over specified routes, to Kansas City, Kans., serving the intermediate point of Kansas City, Mo., restricted to delivery only, and intermediate and off-route points within 10 miles of Arley, Mo., restricted to pickup only, and general commodities, with usual exceptions from Kansas City, Kans., to Arley, Mo., over specified regular routes, serving the intermediate point of Kansas City, Mo., restricted to pickup only, and intermediate and off-route points within 10 miles of Arley, Mo., restricted to delivery only. Charles A. Darby, 1215 Commerce Building, Kansas City, Mo. 64106, attorney for applicants.

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

[F.R. Doc. 67-8910; Filed, July 31, 1967; 8:48 a.m.]

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## EUGENE S. ROOT

### Statement of Changes in Financial Interests

Pursuant to subsection 302(c), Part III, Executive Order 10647 (20 F.R. 8769) "Providing for the appointment of certain persons under the Defense Production Act of 1950, as amended," I hereby furnish for filing with the Office of the Federal Register for publication in the FEDERAL REGISTER the following information showing any changes in my financial interests and business connections as heretofore reported and published (20 F.R. 10086; 21 F.R. 3475, 21 F.R. 9198, 22 F.R. 3777, 22 F.R. 9450, 23 F.R. 3798, 23 F.R. 9501, 24 F.R. 4187, 24 F.R. 9502, 25 F.R. 102, 26 F.R. 1693, 26 F.R. 6405, 27 F.R. 648, 27 F.R. 6409, 28 F.R. 197, 28 F.R. 7060, 29 F.R. 1675, 29 F.R. 981, 30 F.R. 1073, 30 F.R. 9342, 31 F.R. 592, 31 F.R. 9432, and 32 F.R. 2404, for the period from January 1, 1967, through June 30, 1967.

No change.

E. S. ROOT.

JULY 20, 1967.

[F.R. Doc. 67-8902; Filed, July 31, 1967; 8:47 a.m.]

# FEDERAL REGISTER

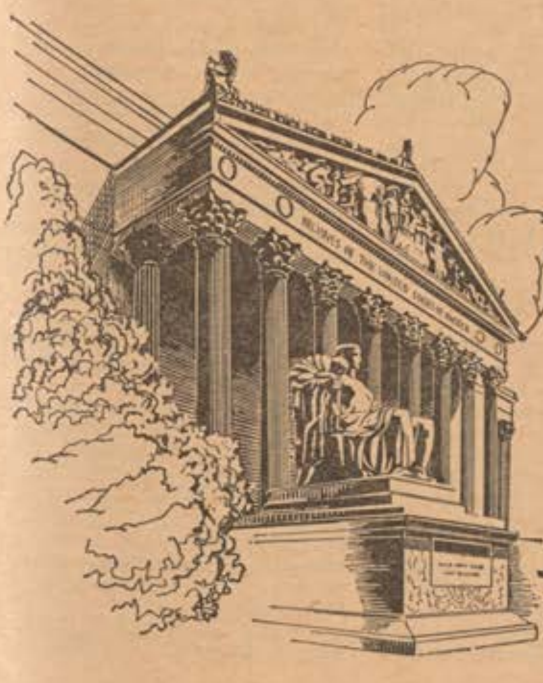
VOLUME 32 • NUMBER 147

Tuesday, August 1, 1967 • Washington, D.C.

PART II

Department of the Interior

Bureau of Land Management



## Grazing Regulations for Public Lands

Notice of Proposed Rule Making

# DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## [ 43 CFR Part 4120 ]

## GRAZING REGULATIONS FOR PUBLIC LANDS

### Notice of Proposed Rule Making

*Basis and purpose.* Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the Act of June 28, 1934 (48 Stat. 1270; 43 U.S.C. 315a), as amended and supplemented, it is proposed to amend and revise the regulations as set forth below governing Grazing Administration (Outside Grazing Districts and Exclusive of Alaska). The purpose of this revision is to incorporate and combine existing regulations 43 CFR 4121—Grazing Leases (O&C and CBWR) and 43 CFR 4122—Grazing Leases (sec. 15 Taylor Grazing Act). The combination of the existing regulations into one regulation will greatly facilitate administration and provide for the proper and orderly management of the resources of these lands.

It is the policy of the Department, whenever practicable, to afford the public an opportunity to participate in the rule-making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed regulations to the Bureau of Land Management, Washington, D.C. 20240, within 120 days of publication of this notice in the FEDERAL REGISTER.

Part 4120 is amended to read as follows:



AUTHORITY: The provisions of this Part 4120 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 351a, R.S. 2478, 43 U.S.C. 1201.

## Subpart 4120—Grazing Administration (Outside Grazing Districts and Exclusive of Alaska); General

### § 4120.1 Authority.

(a) Section 15 of the Act of June 28, 1934 (48 Stat. 1275) 43 U.S.C. 315m, as amended, hereafter referred to as the Taylor Act authorizes the Secretary of the Interior in his discretion to lease for grazing purposes vacant, unappropriated, and unreserved public lands outside of established grazing districts in the continental United States, exclusive of Alaska.

(b) Section 4 of the Act of August 28, 1937 (50 Stat. 875) 43 U.S.C. 1181a–1181f hereafter referred as the O&C Act, authorizes the Secretary of the Interior in his discretion to lease for grazing purposes any revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in the State of Oregon, hereafter referred to as O&C lands, which may be so used without interfering with the production of timber or other purposes specified in section 1 of the Act, and to formulate rules and regulations for the use, protection, improvement, and rehabilitation of such grazing lands.

(c) Section 1 of the Classification and Multiple Use Act of September 19, 1964, (78 Stat 986; 43 U.S.C. 1411) hereafter referred to as the Multiple Use Act, directs the Secretary of the Interior to determine which of the lands exclusively administered by him through the Bureau of Land Management are suitable for transfer and which for retention and interim management. Section 3 of the Act directs that lands proper for retention be managed under the principles of multiple use and sustained yield. Section 5 of the Act defines multiple use and sustained yield.

### § 4120.2 Definitions.

(a) "Secretary" means Secretary of the Interior or his authorized agent.

(b) "Director" means Director, Bureau of Land Management of his authorized agent.

(c) "State Director" means the supervisory Bureau of Land Management official for the State in which the particular range lies, or his authorized agent.

(d) "Authorized Officer" means an employee of the Bureau of Land Management, to whom has been delegated the authority to take action.

(e) "District Office" means the office of the Bureau of Land Management having direct management responsibility and administrative jurisdiction over the specific public lands involved.

(f) "Animal-unit month" means the amount of forage necessary for the sustenance of one cow, or its equivalent for a period of one month.

(g) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period without inducing damage to vegetation or related resources.

(h) "Lease land" or "public land" means the land administered by the Bureau of Land Management for grazing purposes under the regulations in this Part 4120 including the vacant, unappropriated, and unreserved public land of the United States; withdrawn public lands wherein the administration by the BLM of grazing use is not precluded by the terms of the withdrawal order; State, county, and privately owned lands leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land; and the O&C lands. Not included are public lands in Alaska (see Part 4130) and lands within established grazing districts (see Part 4110).

(i) "Management area" means a designated tract or geographic area of land capable of being properly managed as a unit for multiple use by one or more lessees to ensure a sustained yield of forage without jeopardy to other resources or uses of the land.

(j) "Preference lands" means the privately-owned or controlled lands upon which a preference to the issuance of a grazing lease is based.

(k) "Contiguous lands" means non-Federal lands that border upon or touch upon public lands.

(l) "Cornering lands" means non-Federal lands having a common survey corner with public lands but not common boundary.

## Subpart 4121—Awards of Grazing Leases

### § 4121.1 Qualifications of applicants.

### § 4121.1-1 Minimum qualification requirements.

An applicant for a grazing lease is qualified if:

(a) He is a person engaged in the livestock business, has a continuing need for the grazing use of the land, and is a citizen of the United States or has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or;

(b) It is a group or association authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, all members of which are qualified under paragraph (a) of this section, provided that the agreement or articles of association under which the association has been formed are approved by the State Director, or;

(c) It is a corporation, the controlling interest in which is vested in persons qualified under paragraph (a) of this section and which is authorized to do business under the laws of the State in which grazing privileges sought are to be exercised: *Provided*, That the articles of incorporation have been approved by the Authorized Officer.

**§ 4121.2 Adjudication of application for grazing leases.**

**§ 4121.2–1 Minimum requirements, rating and classification of lease land.**

(a) *Land resource consideration*. The Authorized Officer will determine the availability of public land for grazing leases and the amount of forage available for use by livestock after considering reservations for watershed protection, wildlife, and other multiple use demands.

(b) *Grazing capacity, seasons of use, and maximum annual period of use*. The Authorized Officer will establish the grazing capacity, determine the kind and class of livestock use to be proper for each management area and classify each area for the proper seasons of use and for the maximum period of time for which the lessee will be allowed to use the lease land therein during any one year, except that where the lease land consists chiefly of isolated or fragmented tracts of land which are not proposed for long-term retention and management, Authorized Officer may establish the grazing capacity only.

(c) *Applicants*. Grazing leases may be issued to qualified applicants to the extent that public land is available in the following order and amounts:

(1) To applicants who are the owners, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit proper use of such contiguous lands. When the public lands consists of isolated or disconnected tracts embracing 760 arces or less, owners, lessees, or other lawful occupants of lands contiguous thereto or cornering thereon shall have a preference-right to lease the whole of such tract, upon terms and conditions prescribed by the Secretary: *Provided*, The preference-right is asserted during a period of 90 days after such tract is initially offered for lease.[1]

(2) To applicants owning, leasing, or lawfully occupying noncontiguous lands to the extent necessary to permit the proper livestock use of such noncontiguous lands.

(d) *Conflicting applications*. When more than one qualified applicant applies for the same public land and:

(1) It appears that a division of the area may be made and will not result in improper land use, the Authorized Officer will allow the applicants an opportunity, within a specified time limit which he shall set, to agree to a division of the lands. A division of the lands may be made either by agreement between the conflicting applicants which is acceptable to the Authorized Officer, or by determination of the Authorized Officer where no acceptable agreement is submitted; or

(2) It appears that a division of the land would result in improper land use or where proper land use management will be advanced thereby, the Authorized Officer may require that joint use be made of a management area.

(3) The Authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (i) historical use, (ii) proper range management, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands, and (vii) other land use requirements.

**§ 4121.2–2 Leases of withdrawn or reserved lands; preference right leases for lands restored from withdrawal.**

(a) The Authorized Officer may issue grazing leases for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[2] if the use of the land for grazing is consistent with the purposes of the withdrawal. Lands included in stock driveway and public water reserve withdrawals may be leased in accordance with § 2321.-3–2(c) of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed for the protection and use of the land for the purpose for which it was withdrawn or reserved.

(b) Where public lands are restored from a withdrawal and the Authorized Officer determines that a grazing lease for the lands may be issued, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the land immediately prior to their restoration, shall have a superior preference right to lease the restored public lands previously used by him. The preference right must be asserted by an application for a grazing lease on a form approved by the Director (see § 4125.1–1(a)(1)), and must be filed within 90 days after the date of signing of the order of revocation of the withdrawal, or within 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior grazing lease, license, permit or other authority upon which the superior preference claim is based.

**§ 4121.3 Adjustments of grazing use.**

**§ 4121.3–1 Increases.**

Increases in grazing capacity, when determined by the Authorized Officer will be apportioned in a manner that will assist in the stabilization of the livestock operations after consideration of other land uses.

**§ 4121.3–2 Decreases.**

(a) Downward adjustments in authorized grazing use may be imposed during the term of a grazing lease when the lease has been improperly issued, or to the extent to which it authorizes use in excess of the grazing capacity of the lease land, or if so required to facilitate other proper multiple uses on the area.

(b) Adjustments to balance authorized use with the proper stocking rate of the management area will be apportioned equitably or as agreed to among the lessees and the Authorized Officer. Such adjustments may be made either by authorizing fewer livestock or a shorter grazing season or by both methods as determined by the Authorized Officer.

(c) The Authorized Officer will notify each affected lessee by certified mail of his decision to make an adjustment in authorized use to reach the proper stocking rate of any lease area and of the manner in which the adjustment is to be made, and will allow 30 days from receipt thereof in which the lessee may file an appeal in accordance with § 4125.1–3. If no appeal is filed within the 30-day period, the adjustment will be made in accordance with the decision and no further appeal will be allowed. If a timely appeal is filed, the adjustment for the leased land in the entire management area under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the final decision will be applied to its full extent for the next grazing season immediately following the effective date of the decision.

(d) Public lands under a grazing lease are subject to classification, withdrawal, or other disposal under the Taylor Act, the O&C Act, or other public land laws. Reasonable notice of a pending or proposed classification, withdrawal, or other disposal which might result in a diminution of the available public land will be given to the lessee, consistent with Subpart 2411 of this chapter and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Part 1840 of this chapter.

## Subpart 4122—Management Practices

**§ 4122.1 Management considerations.**

**§ 4122.1–1 Multiple use.**

All use and management practices, including grazing and the issuance of

[1] The Taylor Grazing Act of June 28, 1934, afforded a special preference for the leasing of tracts embracing 760 acres or less for a period of 90 days after such tracts were offered for lease. By Departmental notice of July 31, 1937, all vacant, unreserved and unappropriated public lands, exclusive of Alaska, not included in an established grazing district, were as of that date offered for lease under section 15; all lands not then subject to lease under section 15 because of their appropriation or reservation, were offered for lease as of the date any such lands first became subject to lease.

[2] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of February 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with principles of section 15 leases, under authority of subsection (I) of section 4, Act of Dec. 5, 1924 (43 Stat. 703, 43 U.S.C. Sec. 501). Those lands withdrawn for reclamation purposes which are not subject to the cooperative agreement of Feb. 28, 1945, will upon restoration from the reclamation withdrawal, become subject to the provisions of paragraph (b) of this section.

grazing leases shall be in conformance with the concepts of multiple use and sustained yield.

§ 4122.1–2 Allotment management plans.

The Authorized Officer before or after the grazing lease is issued may, pursuant to these regulations or where leases provide for the issuance of management plans, establish a grazing management plan as a condition of the lease, to provide for the proper use, conservation, and protection of the public lands. The Authorized Officer will consult the lease applicant or lessee during the development of the management plan.

§ 4122.2 Designations of grazing areas for exclusive use by specified classes of animals.

Prior to issuance of a lease or a renewal thereof, the Authorized Officer may designate certain areas for use exclusively by a certain kind or class of livestock, for wildlife or both when necessary for the proper use or orderly administration of the lease area.

§ 4122.3 General rules of the range.

The acts prohibited and rules of fair range practice as detailed in §§ 4112.3–1 and 4112.3–2 of this chapter shall apply to all leases issued under the regulations in Part 4120.

## Subpart 4123—Supervision and Inspection

§ 4123.1 Procedures for enforcement of rules and regulations.

A grazing lease may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the grazing lease, or for a violation of the Taylor Act as amended, or of the O&C Act as amended, or of any of the provisions of this part. (See §§ 9239.3–1, 9239.3–2(e), (f) and (h) of this chapter for detailed trespass regulations.) The lease of public lands for livestock grazing under these regulations in no way limits the Bureau's trespass authority for both leased and unleased lands.

## Subpart 4124—Local Associations

§ 4124.1 Local Associations of stockmen.

Grazing associations formed by lessees will be recognized in accordance with regulations detailed in § 4114.4.

## Subpart 4125—Records and Administrative Procedures

§ 4125.1 Procedures.

§ 4125.1–1 Leasing procedures; requirements and conditions.

(a) *Filing and action on lease applications.* (1) An application for a grazing lease shall be executed on a form approved by the Director and filed in the district office of the Bureau of Land Management having management responsibility over the public lands applied for in the application.[5] Proof of ownership or control of contiguous or cornering lands may be required by the Authorized Officer.

(2) A service fee of $10 will be charged for each application to lease public lands including initial applications and those pursuant to assignments and consolidations with the exception that no fee will be charged for consolidations requested by the Authorized Officer.

(3) An application to lease lands included in an existing grazing lease, including lease renewals, must be filed not less than 30 days nor more than 90 days prior to the expiration of the current lease. An application not filed within this period may be rejected by the Authorized Officer as not timely filed. Applications for land not under lease may be filed at any time.

(4) A timely filed application for renewal of an existing grazing lease does not confer on the lessee any preference right to a renewal but will authorize the continued grazing use of the lands by the lessee in accordance with the provisions of the existing lease, pending final action on the application for renewal. The fee for such extended use shall be consistent with the then current fee schedule.

(5) An application for a grazing lease must describe the proposed lease land by legal subdivision or where unsurveyed by a natural or artificial grazing boundary, or by a clear and concise metes and bounds description.

(6) An application for a grazing lease may include O&C lands or public lands or combinations thereof.

(b) *No right is conferred by application prior to lease.* Since the issuance of a grazing lease is discretionary, the filing of an application for lands not then under lease will not create any right in the applicant to use the lands applied for pending the issuance of a grazing lease. Any such unauthorized use constitutes a trespass.

(c) *Action on defective and nonallowable applications.* (1) The Authorized Officer may require any defects in an application be corrected or additional information be furnished. The Authorized Officer may reject any application if the applicant fails to correct defects in the application or fails to provide the additional information within the time allowed, which period shall be not less than fifteen (15) days from the date of receipt by the applicant of notice of such defects or required information.

(2) The Authorized Officer shall reject the application if the land applied for is in an allowed entry, is otherwise appropriated or reserved and not subject to lease under the Taylor Act or the O&C Act, is not public land, or is under existing grazing lease, or the Authorized Officer has determined that livestock grazing would be determental to the resources or other uses of the land.

(d) *Consolidations.* A consolidation of leases held by the lessee may be requested by the lessee on a renewal application or may be initiated by the Authorized Officer. The term of the consolidated lease shall not exceed the date of the earliest expiration date of the leases involved.

(e) *Protests and appeals*—(1) *Protests.* Protests against the approval of an application for a lease should be filed in the same office where the application for a grazing lease is filed; it should describe the lands involved in such protests; contain a complete disclosure of all facts upon which the protest is based; and be accompanied by evidence of service of a copy of the protests on the applicant. The Authorized Officer will consider the protest, and will serve a copy of his decision on the affected parties in person or by certified mail, and in accordance with § 4125.2–3 will advise the protestant or other parties of their privilege to appeal to the Director.

(2) *Appeal by Applicant.* The lease will be executed by the Authorized Officer and transmitted to the lessee only after final action is taken on any protest or timely appeals which may have been filed. The applicant's signature to the application shall also constitute his signature to, and his acceptance of the lease when executed by the Authorized Officer, without prejudice, however, to the applicant's right to appeal any adverse action taken against his application.

(f) *Additional requirements and stipulations.* In addition to the provisions set forth in the standard Grazing lease form, the lease will provide for the multiple use requirements of the area, the number of livestock to be grazed, proper grazing seasons, reservation for authorized trailing, and any other conditions or requirements which the Authorized Officer may deem necessary and proper, except as provided under 4121.2–1(b).

(g) *Sublease.* No part of the lease land may be subleased by the lessee. The grazing on the lease area of livestock not owned or controlled by the lessee with or without the lessee's consent is prohibited.

(h) *Cancellation or reduction of leases; show cause, appeal to Director.* Leases are subject to cancellation or reduction for failure to comply with the terms of the lease or any provision or regulation of this part or to the extent that they have been improperly issued or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of § 4121.1, § 4122.1–2, § 4125.1–1(i), § 4125.1–1m, or § 4125.1–4(a) (2), (5), (6), and (7). In any such case or in any case that a lease confers grazing use in excess of that properly allowable, the Authorized Officer will notify the lessee that the lease is thereby held for cancellation or reduction in whole or in part, and will allow the lessee fifteen (15) days from receipt of the notice within which to show cause why such action should not

[5] 18 U.S.C. 1001 makes it a crime for any person knowingly and willfully to make any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of this part, and will be served on the lessee by certified mail or in person. The Authorized Officer will consider any cause shown and, if not satisfied as to its sufficiency, or if no cause is shown, he will notify the lessee in person or by certified mail that the cancellation or reduction will become final. Such decision is subject to appeal to the Director in accordance with § 4125.1–3.

(i) *Terms and conditions*. The issuance and continued effectiveness of all grazing leases will be subject to the following terms and conditions.

(1) A grazing lease will authorize grazing use not in excess of the grazing capacity available for use by livestock as determined by the Authorized Officer in accordance with § 4121.2–1(a).

(2) Grazing leases will provide for the grazing of livestock on the lease land only during that part or parts of the year for which the area has been classified as proper for use, except as provided under § 4121.2–1(b).

(3) Upon the diminution of the public land used under any grazing lease, due to withdrawal, appropriation, selection, or otherwise, the lease will be adjusted proportionately to the reduction of the grazing capacity caused by the loss of such lease land and the grazing fee will be adjusted accordingly commencing with the ensuing lease year.

(4) The grazing lease will be terminated in whole or in part because of loss of control by the lessee of non-Federal lands that have been recognized as the basis for a grazing lease.

(5) The lease land may be reduced if it is determined that such area is required for the protection of forest plantations or sources of water supply to communities, or for recreation facilities, wildlife habitat, stock driveways, roads, trails, town sites, or for other public purposes. When it is determined by the Authorized Officer that the lease land is excessive to the lessee's need or that the lessee is not making substantial use of the lease land, the Authorized Officer may cancel the grazing lease in whole or in part in accordance with the provision of § 4125.1–1(h). In the case of any such reduction or adjustment, a proportionate fee adjustment will be made commencing with the ensuing lease year. If the entire grazing lease is canceled, the Director, as provided for under § 4125.1–1(m)(4), may refund any portion of the lease year grazing fees paid for any lease year commencing subsequent to the cancellation.

(6) The Authorized Officer may establish the size and boundaries of a grazing lease area to facilitate the proper and effective management of the resources. He may determine that two or more applicants shall be authorized to use the public land within a management area. He will give consideration to seasons of use, topography, and establishment of systems of grazing and any other pertinent factors.

(7) The Authorized Officer may make adjustments in grazing leases at any time when necessary to comply with these regulations for the public lands.

(8) If necessary to rehabilitate the vegetative resources on the public land, the Authorized Officer may temporarily close the lease land to grazing or reduce livestock use whenever vegetal cover is depleted due to drought, epidemic, fire, or any other cause, or for rehabilitation of the area. Such action will not exclude the closed area from the grazing lease.

(9) Authorized grazing use of the lease land may be adjusted by the Authorized Officer after a grazing lease has been issued to conform to needed refinements in the management plan as a result of more accurate determinations of grazing capacity, season and area of use, class of livestock, etc. Proportionate adjustment will be made in the annual grazing fee for the subsequent grazing season.

(10) The issuance of a grazing lease does not alter or restrict the authorized public use of the lease land including, but not limited to, hunting, fishing, camping, or hiking on such lands in accordance with the laws of the United States or of the State in which the lands are located, nor may the lessee interfere in any manner with the proper exercise of such rights. Neither shall the lessee maintain locked gates, signs, or other devices on the public lands which prevent or interfere with public use of the lease land. Nor shall such grazing lease restrict or limit prospecting, locating, developing, mining, or patenting the mineral resources in the public lands; miners, prospectors, and mineral lessees of the United States and all other authorized persons shall be entitled to enter the lease land for all lawful purposes.

(11) The Authorized Officer may require the lessee, as a condition to the granting and continued effectiveness of grazing leases, to fence or to contribute an equitable share to the cost of fencing the allotted areas and of maintenance of such fences.

(j) *Change in grazing seasons*. Any lessee who desires to use the lease area for a period or periods other than as authorized by his existing grazing lease may, upon written approval of the Authorized Officer and prior to his annual billing notice, be allowed to use the amount of his authorized grazing use during any period of time for which the lease area is classified as proper for use: *Provided:*

(1) Adjustments in season time or numbers does not result in an increase in the number of animal unit months utilized;

(2) Such use will not be detrimental to the resources of the lease area; and

(3) Such use will not adversely affect other leases.

(k) *Interest of members of Congress prohibited*. No member of or delegate to Congress shall be admitted to any share or part of any grazing lease issued or to derive any benefit to arise therefrom (41 U.S.C. sec. 22; 18 U.S.C. sec. 431–433).

(l) *Exchange of use agreements*. The Authorized Officer may enter into an exchange-of-use agreement with any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding public land. The grazing use authorized, without payment of fees, will not exceed the grazing capacity of such non-Federal land. During the term of the agreement, the Bureau shall have the management and control of such non-Federal land for grazing purposes.

(m) *Fees for grazing leases and crossing permits*—(1) *Lease rates.*[5] Each holder of a grazing lease will be charged annually grazing fees for the animal-unit months (AUM's) authorized by the grazing lease, at a rate per animal-unit month (AUM). All grazing fee billings shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock six (6) months of age or over allowed on the lease area will be considered as a part of the total number for which a lease has been issued. No fees will be charged for livestock under 6 months of age.

(i) A minimum annual charge of $10 will be made on all leases.

(ii) The rate or rates per AUM for the fee year, beginning March 1 and ending the last day of February, will be established by the Director, and notice thereof shall be published in the FEDERAL REGISTER. The grazing fee or fees will become effective upon publication and applied to all billing notices issued during the fee year.

(2) *Crossing permits*. Upon application filed with the Authorized Officer by any person showing the necessity for crossing the public lands with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of 1 cent per head per day for cattle, 2 cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit.

(3) *Payment of rental fees and effect of failure to pay*. No grazing lease shall be issued or renewed until payment of all fees due the United States under the Regulations in this part has been made. The first grazing rental fee payment shall be made within 15 days of receipt of the billing form; if not paid within that time, the lease shall not be issued by the Authorized Officer and all rights of the proposed lessee thereunder or under the application upon which it is based shall be considered as terminated. Upon timely payment of the grazing rental fee, the lessee will be executed and forwarded to the lessee. Subsequent annual grazing rental fee payments are due the United States upon issuance of the billing notice and are payable in advance of the first grazing period and for the full amount as indicated on the fee notice. No lease shall be effective to authorize grazing use thereunder until such advance payment has been made. A lease may be cancelled pursuant to § 4125.1–1(h) for failure to pay the grazing fee in accordance with the fee notice.

(4) *Refunds*. No refund of grazing fees properly paid in accordance with the

[5] This section will be effective March 1, following approval of these Regulations.

regulations in this part and the terms of the grazing lease will be made because of a failure to make grazing use, either in whole or in part, authorized by the lease, except that during periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of livestock disease during the life of the grazing lease, the Director on proper application may remit, refund, reduce in whole or in part, or postpone the payment of grazing fees for such period of depletion or general epidemic as he may determine. No part of the grazing fee paid will be refunded because of cancellation, relinquishment, or assignment, except as provided in § 4125.1-1 (i) (3), (5), (8), and (9), § 4125.1-4(a) (8) (ii).

(n) *Period of lease.* A grazing lease or lease renewal may be issued for any period, not to exceed 10 years and may be limited by the Authorized Officer to the term of a lease or control of lands that have been recognized as the basis for the grazing lease.

### § 4125.1-2 Assignment and relinquishment of grazing lease.

(a) *Assignment of grazing lease.* The lessee may assign a grazing lease only with the consent of the Authorized Officer, providing the assignee has control of the preference lands upon which the grazing lease is based. The Authorized Officer will require the assignee to furnish proof of ownership or control of the lands. The proposed assignment will be made on a form approved by the Director and must be filed with the Authorized Officer within 90 days from date of its execution. It shall contain all terms and conditions agreed upon between the parties. The assignment properly executed and signed by the assignor and the new application signed by the assignee, will constitute the assignee's acceptance of the terms of the grazing lease. No assignment will be recognized or confer on the assignee any privilege to use the leased area until approved by the Authorized Officer. Advance grazing fees paid by the assignor may be credited to the assignee. All cooperative agreements and permits to construct or maintain range improvements on the lease land must be assigned at the time of the grazing lease assignment.

(b) *Relinquishment of grazing lease.* Upon written request, the Authorized Officer may accept a grazing lease relinquishment in whole or in part: *Provided,* All fees and charges then due have been paid.

### § 4125.1-3 Appeals.

Any applicant or lessee whose interest is adversely affected by a final decision of the Authorized Officer may appeal to the Director, and from the Director to the Secretary, in accordance with the procedure for appeals and contests (Part 1840 of this chapter). The original appeal shall be filed with the Authorized Officer who rendered the decision.

### § 4125.1-4 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the lease lands*—(1) *Qualifications of applicant for range improvement permit.* An applicant for a permit to construct or maintain range improvement or to use and maintain range improvements constructed and owned by a prior occupant, of the lease land, must be qualified under § 4121.1-1 and hold a valid lease.

(2) *Applications.* Applications for permits shall be approved, prior to construction. Applications for permits shall be filed with the Authorized Officer on a form approved by the Director. Construction of range improvements without an approved permit may result in cancellation of the grazing lease as provided in § 4125.1-1(h).

(3) *Appeals.* The Authorized Officer will act on the application and such action shall be final unless the applicant or any interested party appeals in accordance with § 4125.1-3.

(4) *Assignments.* Assignment of range improvement permits shall be filed with the Authorized Officer on a form approved by the Director and shall not be effective until approved by the Authorized Officer.

(5) *Permit standards.* The Authorized Officer will specify the minimum Bureau of Land Management standards and design for all range improvements. Failure to comply with the standards and design may result in cancellation of the range improvement permit and the grazing lease as provided in § 4125.1-1(h).

(6) *Cooperative agreements.* A lessee may enter into a cooperative agreement with the Authorized Officer to construct and maintain range improvements upon the lease land. Failure to comply with the terms of such an agreement within a reasonable time, as allowed by the Authorized Officer, may result in the cancellation of the agreement and the grazing lease as provided in § 4125.1-1(h). A cooperative agreement for range improvements shall be made on a form approved by the Director.

(7) *Removal of improvements; compensation for loss of improvements.* (i) When a grazing lease expires or is terminated, the Authorized Officer may require a proposed subsequent lessee to compensate the prior lessee for the current value of his share of the cost authorized permanent improvements placed on the lease land. The following conditions are required: (*a*) The lessee shall file a written application for compensation within 30 days after date of termination or expiration or date of final decision; (*b*) The improvements shall have been properly authorized; (*c*) Amount of compensation shall be determined in accordance with § 4125.1-4(a) (8) (i). The failure of the new lessee to pay the prior lessee in accordance with such agreement shall be just cause for cancellation of the new grazing lease.

(ii) The lessee will be allowed ninety (90) days from the date of expiration or termination of the grazing lease within which to remove such improvements not disposed of in the manner set forth in (i) above; if not removed or otherwise disposed of within the said period or any extension thereof granted by the Authorized Officer, such improvements shall become the property of the United States. No improvements may be removed if the lessee is in default with respect to the grazing lease.

(8) *Lease land subject to disposition; compensation for loss of improvements.* (i) Lands embraced in a grazing lease are subject to disposition under the provisions of the Act of June 28, 1934 (48 Stat. 1272, 1274), as amended, or other public land laws. Before an application for such disposition is allowed, evidence must be furnished that the applicant has agreed to compensate the lessee, other cooperators and the United States for any range improvements placed on the lands under the authority of the lease, permit, or cooperative agreement. If the parties are unable to agree to the amount, manner, and time for compensation for such improvements, they shall be fixed by the Authorized Officer. The failure of the applicant to comply with the agreement or the conditions fixed by the Authorized Officer shall be cause for cancellation of any right or interest in the lands acquired by the applicant by reason of the allowance of the application. If improvements have been constructed in whole or in part with Federal funds, are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), the application may be allowed in the discretion of the Authorized Officer without compensation to the United States for its share of the value of the improvements. In such cases, the Authorized Officer shall determine whether the grazing improvements are needed by the United States and whether the probable salvage value is sufficient to warrant removal of the salvageable materials.

(ii) Where part of the lease land is disposed of, the subsequent annual grazing use and rental fee will be reduced proportionately to reflect the loss of the grazing capacity of the lease land.

(b) *Contributions for administration, protection, and improvement of public lands.* The Authorized Officer may accept contributions, made under section 9 of the Taylor Act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction.

(1) Any individual, association, corporation, State, or local body or private group, may enter into an agreement with the Authorized Officer with respect to such contribution.

### § 4125.1-5 Pledge of leases as security for loans.

(a) A grazing lease may be pledged as security for a loan from a lending agency if the loan is for a substantial amount for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may obtain from the Authorized Officer a written statement concerning the status of the grazing lease and related information. A service charge of $10 will be made for searching the records, except that Federal and State lending agencies shall be exempt from such charge.

(b) A borrower-lessee desiring an extension of the grazing lease term may file a request therefor, in writing, with the Authorized Officer, setting forth the name of the lending agency, purpose and amount of the loan, and the need for an extension of the grazing lease. If the Authorized Officer determines that an extension will not conflict with applicable laws and is not contrary to the public interest, he may issue a new grazing lease for a period up to 10 years from the date of the loan, but not to exceed the period of the loan. The new lease will be subject to such terms and conditions as are then provided by the regulations in this part, and by the Authorized Officer.

(c) If the preference land of the lessee is acquired by the lending agency through foreclosure, or otherwise, the agency or its authorized occupants of the property or a purchaser of the property from the agency, if qualified, may file a grazing lease application for the issuance of a new lease to be recognized as the new lessee. If, in selling the property, the lending agency takes back the mortgage on the property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files notice with the Authorized Officer that it has made a loan and has accepted a grazing lease as security, in conformity with the provisions of this section, such agency will be advised of any adverse action taken affecting the lease. The failure to give timely notice of such adverse action shall impose no legal liability or obligation on the Bureau or any of its employees.

HARRY R. ANDERSON,
*Assistant Secretary of the Interior.*

JULY 24, 1967.

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