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• PART I

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Title 3—THE PRESIDENT

Executive Order 11391

AMENDING THE SELECTIVE SERVICE REGULATIONS

By virtue of the authority vested in me by the Military Selective Service Act of 1967 (62 Stat. 604, as amended), I hereby prescribe the following amendments of the Selective Service Regulations prescribed by Executive Orders No. 10344 of April 17, 1952, No. 10594 of January 31, 1955, and No. 10837 of September 14, 1959, and constituting portions of Part 1655—*Registration of United States Citizens Outside of the United States and Classification of Such Registrants*, of Chapter XVI of Title 32 of the Code of Federal Regulations:

1. Subparagraph (4) of paragraph (b) of section 1655.6, *Records to be Completed by Local Board Receiving Registration Questionnaire—Foreign (SSS Form 50) and Assignment of Selective Service Number*, is amended to read as follows:

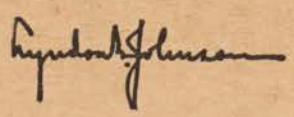
"(4) Mail the completed Registration Certificate (SSS Form 2) to the registrant at his present mailing address as given on line 5 of the Registration Questionnaire—Foreign (SSS Form 50) if such address is a military post office (APO or FPO), or Canada or Mexico; however, if such mailing address is outside the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, the Canal Zone, Canada, or Mexico, and a foreign mailing address is used, such form shall be mailed to the Director of Selective Service for transmittal to the registrant."

2. Paragraph (c) of section 1655.10, *Preparation for Classification*, is amended to read as follows:

"(c) If the registrant is outside the United States and is in a country other than Canada or Mexico and does not give a military post office (APO or FPO) as his address on line 5 of the Registration Questionnaire—Foreign (SSS Form 50), the Classification Questionnaire (SSS Form 100) shall be mailed by the local board to the Director of Selective Service for transmittal to the registrant, and, unless the local board grants an extension of time for its return, the registrant shall complete and return his Classification Questionnaire (SSS Form 100) through the Director of Selective Service within 60 days after the date the local board transmitted it to him."

3. Paragraph (b) of section 1655.11, *Classification*, is amended to read as follows:

"(b) The Notice of Classification (SSS Form 110) shall be mailed to the registrant at his present mailing address as given on line 5 of the Registration Questionnaire—Foreign (SSS Form 50) if such address is a military post office (APO or FPO), or Canada or Mexico; however, if such mailing address is outside the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, the Canal Zone, Canada, or Mexico, and a foreign mailing address is used, such form shall be mailed to the Director of Selective Service for transmittal to the registrant."



THE WHITE HOUSE,
January 24, 1968.

[F.R. Doc. 68-1105; Filed, Jan. 25, 1968; 12:09 p.m.]

Executive Order 11392

ORDERING CERTAIN UNITS OF THE READY RESERVE OF THE NAVAL RESERVE, AIR FORCE RESERVE AND AIR NATIONAL GUARD OF THE UNITED STATES TO ACTIVE DUTY

By virtue of the authority vested in me by paragraph (e) of title I of the Department of Defense Appropriation Act, 1967 (80 Stat. 981), and as President of the United States, I hereby order the following units of the Ready Reserve of the Naval Reserve, the Air Force Reserve and the Air National Guard of the United States to active duty for a period of not to exceed 24 months:

(1) 113th Tactical Fighter Wing, Air National Guard of the United States.

(2) 113th Tactical Fighter Group, Air National Guard of the United States.

(3) 177th Tactical Fighter Group, Air National Guard of the United States.

(4) 107th Tactical Fighter Group, Air National Guard of the United States.

(5) 121st Tactical Fighter Group, Air National Guard of the United States.

(6) 140th Tactical Fighter Wing, Air National Guard of the United States.

(7) 140th Tactical Fighter Group, Air National Guard of the United States.

(8) 184th Tactical Fighter Group, Air National Guard of the United States.

(9) 185th Tactical Fighter Group, Air National Guard of the United States.

(10) 150th Tactical Fighter Group, Air National Guard of the United States.

(11) 123rd Tactical Reconnaissance Wing, Air National Guard of the United States.

(12) 123rd Tactical Reconnaissance Group, Air National Guard of the United States.

(13) 189th Tactical Reconnaissance Group, Air National Guard of the United States.

(14) 152d Tactical Reconnaissance Group, Air National Guard of the United States.

(15) 445th Military Airlift Wing, Air Force Reserve.

(16) 918th Military Airlift Group, Air Force Reserve.

(17) 904th Military Airlift Group, Air Force Reserve.

(18) 305th Air Reserve Rescue Squadron, Air Force Reserve.

(19) 349th Military Airlift Wing, Air Force Reserve.

(20) 938th Military Airlift Group, Air Force Reserve.

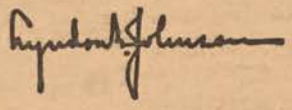
(21) 921st Military Airlift Group, Air Force Reserve.

(22) 941st Military Airlift Group, Air Force Reserve.

(23) Attack Squadron VA 776, Naval Reserve.

(24) Attack Squadron VA 831, Naval Reserve.

(25) Attack Squadron VA 873, Naval Reserve.
(26) Fighter Squadron VF 661, Naval Reserve.
(27) Fighter Squadron VF 703, Naval Reserve.
(28) Fighter Squadron VF 931, Naval Reserve.



THE WHITE HOUSE,
January 25, 1968.

[F.R. Doc. 68–1106; Filed, Jan. 25, 1968; 12:09 p.m.]

Rules and Regulations

Title 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture

PART 0—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Miscellaneous Amendments

Part 0 is amended as follows:

Section 0.735–11 (first paragraph) is amended to add an exception to prohibited acts; §§ 0.735–11(f), 0.735–12 (b) and (f), and 0.735–59 are amended for clarity; § 0.735–11 (b), (n), and (o), 0.735–20(a), 0.735–23(a), 0.735–26 (d), (g), (h), (j), (p), and (q) are amended to correct statutory reference made obsolete by the codification of Title 5, United States Code; § 0.735–11(s) is added to indicate the circumstances under which a voluntary gift to an official superior may be allowed; § 0.735–13(c) is deleted and the provisions thereof transferred to § 0.735–11(t) to make clear that these provisions apply to Subpart B in its entirety; § 0.735–13(d) is added to indicate that the exception in that section or in § 0.735–14 does not allow non-Government reimbursement for travel on official business under agency orders; § 0.735–15 is amended by adding a new first sentence to include a reference to 18 U.S.C. 219 which prohibits an employee from acting as the agent of a foreign principal registered under the Foreign Agents Registration Act; § 0.735–22(c) is revised to delete administratively confidential material; § 0.735–22(h) has been rewritten to make it consistent with 3 AR 50; § 0.735–51 is revised to restrict the requirement relative to reporting employment and financial interests to those employees in positions in which the possibility of conflicts-of-interest involvement is clear and to identify the form to be used; § 0.735–52 is revised to indicate the exclusion of certain employees from the requirements of § 0.735–51, and also to add the opportunity for employees to be afforded a review, through the Departmental grievance procedure, for settling questions concerning the applicability of the requirement for reporting employment and financial interests; § 0.735–54(b) is amended to eliminate the reporting requirement of certain employees; § 0.735–55(a) is amended to eliminate the quarterly submission of supplementary statements of employment and financial interests; § 0.735–59 has been rewritten for purposes of clarification; § 0.735–60, line 12, the word "in" is corrected to show "is"; § 0.735–61(a) is revised to identify the form to be used; § 0.735–62(a) is revised to identify persons with review authority; § 0.735–62(b) is revised to limit the procedure in resolving apparent conflicts; § 0.735–64(a) is amended to limit the use of statements of employment and financial interests; § 0.735–64(d) is added to instruct the means of transmission of statements of employment and financial interests.

Subpart B—Conduct and Responsibilities of Employees

§ 0.735–11 [Amended]

1. Section 0.735–11 is amended as follows:

a. The introductory text is revised to read as follows:

Except as provided in paragraph (s) of this section, employees are specifically prohibited from:

b. Paragraph (b) is hereby amended by substituting the citation "5 U.S.C. 7352" for the citation "5 U.S.C. 640" therein.

c. Paragraph (f) is revised to read as follows:

(f) Provoking other employees and making unwarranted criticism or accusations against other employees or supervisor.

d. Paragraph (n) is hereby amended by substituting the citation "5 U.S.C. 7351" for the citation "5 U.S.C. 113" therein.

e. Paragraph (o) is revised and new paragraphs (s) and (t) are added to read as follows:

(o) Accepting a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

* * * * *

(s) The restrictions set forth in paragraphs (l), (m), and (n) of this section shall not be interpreted as prohibiting activities incident to the voluntary giving or acceptance of gifts of nominal value made on special occasions such as marriage, illness, or retirement.

(t) And shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(1) Using public office for private gains;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

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

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

2. Section 0.735–12 (b) and (f) is revised to read as follows:

§ 0.735–12 Prohibitions upon employees serving abroad.

* * * * *

(b) May not receive a "profit" from the sale of his personal car or other property when such "profit" accrues from import privileges granted him by reason of his official status. "Profit" for the purposes of this paragraph is as defined in Department of State regulations or directives governing the post of assignment.

* * * * *

(f) Speculate in foreign real estate, bonds, shares, stocks, and currencies.

3. Paragraph (c) of § 0.735–13 is deleted and a new paragraph (d) is added to read as follows:

§ 0.735–13 Gifts, entertainment, and favors.

* * * * *

(c) [Deleted]

(d) Neither this section nor § 0.735–14 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 agency orders when reimbursement is proscribed by Decision B–128527 of the Comptroller General dated March 7, 1967.

4. Section 0.735–15 is amended by adding the following new first sentence preceding the existing first sentence:

§ 0.735–15 Employment by foreign interests.

Employees are specifically prohibited from acting as the agent of a foreign principal registered under the Foreign Agent's Registration Act (18 U.S.C. 219). * * *

§ 0.735–20 [Amended]

5. Paragraph (a) of § 0.735–20 *Political activity* is hereby amended by substituting the citation "5 U.S.C. 7324(d)" for the citation "section 9(a) of the Hatch Act."

6. Paragraphs (c) and (h) of § 0.735–22 are revised to read as follows:

§ 0.735–22 Safeguarding information.

* * * * *

(c) "For Official Use Only" material shall not be examined by, released to, nor discussed with any person except in the performance of official duties and as prescribed by Title 1, Chapter 9, Administrative Regulations, U.S. Department of Agriculture.

* * * * *

(h) It is prohibited to release lists of names of farmers, businessmen, persons,

organizations, or firms that may be available in the Department directly or indirectly to any person, firm or association if such lists will be used for solicitation purposes, or such lists directly or indirectly provide information which customarily would not be released to the public by the person from whom the Department obtained it. Exceptions shall not be made unless authorized by the Director of Information, and it is clear that the public interest will be served and there will be negligible public expense or interruption of work. A request for a Department list must state the purpose for which the list will be used. Lists of manufacturers, dealers, breeders, etc., should not be furnished so as to imply that the Department endorses certain firms to the possible detriment of others, or that the lists necessarily include all dealers of a certain line.

7. Paragraph (a) of § 0.735–23 *Use of vehicles* is hereby amended by substituting the citation "31 U.S.C. 638a(c)(2)" for the citation "5 U.S.C. 78(c)(2)" therein.

§ 0.735–26 [Amended]

8. Section 0.735–26 *Miscellaneous statutory provisions* is amended as follows:

a. Paragraph (d) is hereby amended by substituting the citation "5 U.S.C. 7311, 18 U.S.C. 1918" for the citation "5 U.S.C. 118p, 118r" therein.

b. Paragraph (g) is hereby amended by substituting the citation "5 U.S.C. 7352" for the citation "5 U.S.C. 640" therein.

c. Paragraph (h) is hereby amended by substituting the citation "31 U.S.C. 638a" for the citation "5 U.S.C. 78(c)" therein.

d. Paragraph (j) is hereby amended by substituting the citation "18 U.S.C. 1917" for the citation "5 U.S.C. 637" therein.

e. Paragraph (p) is hereby amended by substituting the citation "5 U.S.C. 7324" for the citation "The Hatch Act (5 U.S.C. 118i)" therein.

f. Paragraph (q) is hereby amended by substituting the citation "5 U.S.C. 7102" for the citation "5 U.S.C. 652d" therein.

Subpart E—Statements of Employment and Financial Interest

9. The introductory text and paragraphs (a) through (d) of § 0.735–51 are revised and paragraphs (e) through (h) are deleted as follows:

§ 0.735–51 Employees required to submit statements.

Except as provided in § 0.735–52 the following employees shall submit a statement of employment and financial interests on USDA Form AD–392 in accordance with this part:

(a) Employees paid at a level of the Executive Schedule in Subchapter II of Chapter 53 of Title 5, U.S.C.

(b) Employees classified at GS–13 or above under section 5332 of Title 5, United States Code, or at a comparable pay level under another authority, whose basic duties and responsibilities require the incumbents to exercise judgment in making a Government decision or in taking a Government action in regard to:

(1) Contracting or procurement, including the appraisal or selection of contractors; the negotiation or approval of contracts; the supervision of activities performed by contractors; the inspection of materials for acceptability; the procurement of materials, services, supplies, or equipment other than those common items available from the Department or GSA inventories; the proposal, acceptance, obligation, or settlement of payments or claims or negotiations in connection therewith;

(2) Administering or monitoring grants or subsidies;

(3) Regulating or auditing private or other non-Federal enterprise, such as inspectors and graders in regulatory and grading services, and auditors and investigators of the Office of the Inspector General;

(4) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise;

(5) Employees appointed as Hearing Examiners under section 3105 of Title 5 of the U.S. Code.

(c) Employees classified at GS–13, or above, under section 5332 of Title 5, United States Code, or at a comparable pay level under another authority, who are in positions which the agency has determined have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and carry out the purpose of law, Executive order and this part.

(d) The following positions classified below GS–13 under Section 5332 of Title 5, United States Code, are specifically required to submit statements of employment and financial interest: State Administrative Officers, GS–12, in the Soil Conservation Service when they have authority to approve construction and/or procurement contracts and Operating Loan Officers, Real Estate Loan Officers or Community Service Officers, GS–12, in the Farmers Home Administration when they serve as the top loan officer in the State Office Specialty position.

(e) [Deleted]

(f) [Deleted]

(g) [Deleted]

(h) [Deleted]

10. Section 0.735–52 is revised to read as follows:

§ 0.735–52 Exceptions.

(a) A statement of employment and financial interests is not required from a Presidential appointee covered by section 401(a) of the Executive order. Such appointees are subject to separate reporting requirements under section 401 of the Executive order.

(b) Employees in positions that meet the criteria in paragraph (b) of § 0.735–51 may be excluded from the reporting requirement when the Department Counselor determines that:

(1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote or;

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

(c) Exceptions will be considered by the Department Counselor at the request of the Agency Head.

(d) An employee shall be afforded the opportunity for a review, through the Departmental grievance procedure, as described in AG Chapter 771, of the designation of his position as one requiring the submission of a statement of employment and financial interests.

11. Paragraph (b) of § 0.735–54 is revised to read as follows:

§ 0.735–54 Time and place for submission of employees' statements.

* * * * * *

(b) Statements of employment and financial interests executed by officials of the immediate staff and offices of the Office of the Secretary, Agency heads and deputies, and Schedule C employees shall be referred directly to the Director of Personnel for his determination.

* * * * *

12. Section 0.735–55 is revised to read as follows:

§ 0.735–55 Supplementary statements.

(a) Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in an annual supplementary statement as of March 31 each year. If no changes or additions occur, a report so stating 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-interests provisions of section 208 of Title 18, United States Code, or Subpart B of this part.

13. Paragraphs (a) through (d) of § 0.735–59 are revised to read as follows:

§ 0.735–59 Types of interests to be reported.

* * * * *

(a) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations and educational or other institutions with which the employee is connected as an employee, officer, owner, director, trustee, partner, advisor, or consultant, or in which he has any continuing financial interest through a pension or retirement plan, shared income or otherwise as a result of any current or prior employment or business or professional associations, or in which he has any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts.

Shares in Credit Unions, Building and Loan Associations, social or religious organizations, or deposits in Savings and Loan Associations and banks need not be reported.

(b) A list of the names of his creditors other than those to whom he may be indebted by reason of a mortgage on property which he occupies as a personal residence or to whom he may be indebted for current and ordinary household and living expenses such as household furnishings, automobile, education, vacation, and similar expenses. Indebtedness on owner-occupied farms must be reported.

(c) A list of interests in real property or rights in land other than property which the employee occupies as a personal residence. Owner-occupied farms must be listed. Property acquired for the personal use of the employee and members of his family, such as beach lots and cemetery lots need not be listed.

(d) The interests and obligations as listed above of a spouse, minor child, or blood relations who are residents of the employee's household.

§ 0.735–60 [Amended]

14. In line 12 of § 0.735–60 *Effect of employees' statements,* correct typographical error: "is" instead of "in."

15. The introductory text of § 0.735–61 (a) is revised to read as follows:

§ 0.735–61 Specified provisions for special Government employees.

(a) Except as provided in paragraph (b) of this section, each special Government employee shall submit a statement of employment and financial interests on USDA Form AD–392A which reports:

* * * * *

16. Section 0.735–62 is revised to read as follows:

§ 0.735–62 Review of statements and determination of conflicting interests.

(a) The Agency Head, or the Deputy Counselors as described in § 0.735–31(b) shall promptly review each statement of employment and financial interests submitted under § 0.735–54(a) and supplementary statements for the purpose of disclosing a conflict of interest or apparent conflict of interest.

(b) In any case in which the review raises a question as to whether a conflict exists, the matter will be resolved promptly at the lowest possible level. The employee shall be provided an opportunity to explain the conflict or appearance of conflict of interest. When the conflict or appearance of conflict is not so resolved, the case shall be referred to the Director of Personnel for a ruling. The Director of Personnel shall seek the advice of the Office of the General Counsel prior to ruling on the case. Any case that cannot be resolved by the Director of Personnel shall be submitted to the Secretary through the Department Counselor for final determination.

17. Paragraph (a) of § 0.735–64 is revised and a new paragraph (d) is added to read as follows:

§ 0.735–64 Protection of reports.

* * * * *

(a) The statements of employment and financial interests, and supplements thereto, required by or pursuant to the regulations in this part shall be held in confidence and afforded adequate physical security. No information as to the contents thereof shall be disclosed except to the head of the employing agency and such other persons as may be designated custodians or reviewers of such reports unless specific authorization has been obtained from the Department Counselor. An official, custodian, reviewer, or other employee having possession of a statement of employment and financial interests shall not allow access to, or allow information to be disclosed from the statement except to carry out the purposes of this Part 0.

* * * * *

(d) Regardless of the means or manner of transmission, when these reports leave the physical custody of the employee or a designated reviewer, they shall be enclosed in a double sealed envelope. The inner envelope shall be marked: "For Official Use Only," "Contains AD–392 (or AD–392–A)," as appropriate, and "To Be Opened By Addressee Only."

These amendments were approved by the Civil Service Commission on January 2, 1968, and are effective on publication in the FEDERAL REGISTER.

JOSEPH M. ROBERTSON,
Assistant Secretary for Administration.

JANUARY 23, 1968.

[F.R. Doc. 68–1012; Filed, Jan. 25, 1968; 8:48 a.m.]

Title 12—BANKS AND BANKING

Chapter III—Federal Deposit Insurance Corporation

SUBCHAPTER B—REGULATIONS AND STATEMENTS OF GENERAL POLICY

PART 329—PAYMENT OF DEPOSITS AND INTEREST THEREON BY INSURED NONMEMBER BANKS

Foreign Time Deposits

1. Effective January 22, 1968, paragraph (a) of § 329.3 is amended to read as follows:

§ 329.3 Maximum rate of interest on time and savings deposits.

(a) *Maximum rate prescribed from time to time.* Except in accordance with the provisions of this part, no insured nonmember bank shall pay interest on any time deposit or savings deposit in any manner, directly or indirectly, or by any method, practice, or device whatsoever. No insured nonmember bank shall pay interest on any time deposit or savings deposit at a rate in excess of such applicable maximum rate as the Board of Directors of the Federal Deposit Insurance Corporation shall prescribe from time to time; and any rate or rates which may be so prescribed by the Board will be set forth in supplements to this part (see § 329.6), which will be issued in advance of the date upon which such rate or rates become effective. Under explicit provisions of the Federal Deposit Insurance Act, until October 15, 1968, the provisions of this paragraph do not apply to the rate of interest that may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member. The provisions of this paragraph shall likewise not apply to the rate of interest that may be paid by an insured nonmember bank after October 15, 1968, on such a deposit which is received, renewed, or extended, in the ordinary course of business and for a specified period not exceeding 2 years, prior to the expiration of the authority conferred upon the Board by the amendments to section 18(g) of the Federal Deposit Insurance Act enacted September 21, 1966.

* * * * *

2a. The purpose of this amendment is to implement the general authority conferred on the Board of Directors of the Federal Deposit Insurance Corporation in amendments to section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) made by Act of Congress approved September 21, 1966 (Public Law 89–597), as extended by Act of Congress approved September 21, 1967 (Public Law 90–87), so as to permit insured nonmember banks to agree to pay interest at rates higher than those specified in § 329.6 on certain foreign governmental time deposits maturing in 2 years or less and received, extended or renewed before expiration of the aforesaid authority of the Board of Directors, even though such interest may accrue after termination of the statutory exemption for such deposits in the amendment to said section 18 made by Act of Congress approved October 15, 1962 (Public Law 87–827), as extended by Act of Congress approved July 21, 1965 (Public Law 89–79).

b. The provisions of section 553 of Title 5, United States Code, relating to notice and public procedure and to deferred effective date with respect to changes in substantive rules were not followed in connection with this amendment because the Board of Directors found that such actions would result in delays that would have consequences contrary to the national interest.

Dated this 22d day of January 1968.

FEDERAL DEPOSIT INSURANCE CORPORATION,
[SEAL] E. F. DOWNEY,
Secretary.

[F.R. Doc. 68–980; Filed, Jan. 25, 1968; 8:45 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 7087; Amdts. 1-15, 27-2, 29-3]

SUBCHAPTER A—DEFINITIONS

PART 1—DEFINITIONS AND ABBREVIATIONS

SUBCHAPTER C—AIRCRAFT

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

Rotorcraft Type Certification Requirements

The purpose of these amendments is to improve the airworthiness requirements applicable to the type certification of rotorcraft.

These amendments are based on, and reflect comments from interested persons concerning, the notice of proposed rule making published in the FEDERAL REGISTER (30 F.R. 16129) on December 28, 1965, and circulated as Notice 65-42.

Numerous comments were received in response to Notice 65-42. Based upon these comments and upon review within the FAA, a number of changes have been made to the proposed rules. These changes to the proposals and the FAA's disposition of public comments are set forth hereinafter. Interested persons have been afforded an opportunity to participate in the making of this amendment, and due consideration has been given to all matter presented.

Flight. The notice proposed to add a new speed symbol "V_{FF}" (maximum speed for freedom from rotor flutter and vibration) to Part 1, and amend Parts 27 and 29 to accomodate the new speed V_{FF}. Analysis of comments indicates that incorporation of the new speed V_{FF} in Parts 27 and 29 requires further study. The proposals concerning speed V_{FF} are therefore withdrawn. The notice also proposed to amend the definition of V_H. One comment stated that the proposed definition should be changed by deleting the reference to engine speed since it is not essential in addition to the term "maximum continuous power." The FAA agrees. This amendment is therefore drafted as proposed with the exception of the reference to engine speed.

The notice proposed to broaden the center of gravity limits prescribed in §§ 27.27 and 29.27 to cover the entire envelope of lateral as well as longitudinal limits. One comment stated that determination of lateral center of gravity limits should be required only if laterally displaced external stores could result in extreme lateral loadings. The FAA agrees that an entire envelope of lateral and longitudinal limits need not be established in every case and that lateral limits should be established only if critical. However, if critical, it is not relevant whether those limits involve external or internal loading conditions. Amended §§ 27.27 and 29.27 therefore prescribe extreme lateral centers of gravity "where critical."

The notice proposed detailed amendments to the main rotor speed and pitch limit provisions of §§ 27.33 and 29.33. No adverse comments having been received, these amendments are drafted as proposed.

The notice proposed to amend § 29.67 (a) (2) to require that the currently prescribed rate of climb of 150 feet per minute for Category A rotorcraft be available, 1,000 feet above the takeoff surface, for each weight and temperature for which takeoff data are to be scheduled. One comment objected for several reasons: The commentator stated that the 1,000-foot figure is arbitrary and is not consistent with helicopter operations. The FAA disagrees. The purpose of the 1,000-foot requirement is to provide a margin of climb performance at all altitudes outside of ground effect, not only at the 1,000-foot altitude itself. This minimum margin is not arbitrarily determined since experience has shown that lesser margins can result in hazardously low rates of climb under conditions deviating from ideal conditions. Considered as increasing the margin of climb performance for all operations, the 1,000-foot requirement is in no way inconsistent with normal helicopter operations. The commentator stated that more climb performance to compensate for turbulence should not be necessary since the present 150-foot-per-minute climb rate was originally established for this purpose. The FAA disagrees. The climb performance margin created by the 150-foot-per-minute requirement has been shown to be insufficient to ensure adequate performance under expected conditions of turbulence. The commentator states that the 1,000-foot altitude requirement should be an operations requirement rather than a type certification requirement since circling altitude requirements are the concern of FAA operations inspectors rather than FAA type certification personnel. The FAA disagrees. The 1,000-foot altitude requirement is not intended to substantiate the rotorcraft for a particular altitude or to prescribe an operating altitude of any sort, but is rather intended to increase the climb performance margin of the rotorcraft, under less than ideal conditions, during operations at all altitudes. This is properly a type certification function. This amendment is therefore drafted as proposed, with one exception: The notice proposed to require that the climb performance be shown for each "weight and temperature" for which takeoff data are to be scheduled. The present rule requires that this be shown for each "weight, altitude, and temperature". It was not intended that the conditions of substantiation be changed from the former rule with respect to altitude as an aspect of takeoff data scheduling by the applicant. Section 29.51(a) requires that the takeoff data required by § 29.67(a) (2) must be determined at each "weight, altitude, and temperature" selected by the applicant. The applicant must thus in any case include his choice of altitude in his selection of conditions under which takeoff data are "to be scheduled" under § 29.67(a) (2). This being the case, no substantive change would result from including "altitude" in § 29.67(a) (2). This is therefore done to avoid an inference of intent to change the present rule with respect to altitude as a test condition that the applicant schedules as part of the established takeoff data.

The notice proposed to amend § 29.73 (b) (2) to require single engine turbine engine powered Category B helicopters to have a hovering ceiling of at least 2,500 feet, in standard atmosphere plus 40° F., at maximum weight. Standards for multiengine, turbine engine powered Category B helicopters were also proposed. One comment objected, stating that hovering performance should not be a criterion for helicopters, and stating that the proposed requirement for single engine turbine engine powered helicopters is more restrictive than the present 4,000-foot density altitude requirement at temperatures above 30° C. at sea level and certain lower temperatures at altitude. The FAA agrees that the value of hovering performance as a criterion should be reevaluated for helicopters generally throughout the regulations. However, until this is done, the hovering performance for turbine engine powered helicopters at high operating temperatures should be no less than that of reciprocating engine powered helicopters. This amendment accomplishes this result. It is recognized that, for turbine engine powered helicopters, compliance with the amendment may result in a hovering performance higher than that of piston engine powered helicopters at standard temperatures. The FAA believes, however, that increased hovering performance of turbine engine powered helicopters must be accepted at normal temperatures in order to ensure that, at high temperatures, such performance will not be less than that of a piston engine powered helicopter as a result of meeting the present 4,000-foot standard temperature requirement. This amendment is drafted as proposed.

The notice proposed to amend § 29.75 (b) (4) to specifically permit approach and landing paths to enter critical areas of the limiting height-speed envelope established under § 29.79. Where such an envelope is specifically limited to operations other than approach and landing, this proposal is not necessary. Where such an envelope is not so limited, further study is necessary to redefine the operating limitations to be derived from the envelope, under approach and landing conditions, under § 91.31(b) (9). This proposal is therefore withheld pending such study.

The notice proposed to delete § 29.75 (b) (6). No adverse comments having been received, this amendment is adopted as proposed. Consistent with this change, § 29.75(c) (2) (ii) is amended by deleting the cross reference to (b) (6).

The notice proposed to add a new section prescribing water landing capability for rotorcraft for which approval for overwater operation is requested. In the light of comments received, this proposal is withdrawn pending further study of the airworthiness and operations aspects of overwater operation.

The notice proposed to amend § 27.79 to require that no point on the low speed side of the limiting height-speed envelope may exceed V_Y. In the light of comments received, it is felt that the proposal could in some cases lead to unconservative envelopes being established, which may more than offset the advantages to be obtained by the proposal. Where the envelope has a satisfactory corridor, it is not clear that pilot tendency to climb within the critical area of the envelope must be assumed to exist merely because V_Y is within that area. The pilot has knowledge of the envelope as performance information. This proposal is therefore withdrawn pending further study of the operational consequences of the location of V_Y within the envelope.

The notice proposed to amend §§ 27.141 and 29.141 with respect to the provision that sudden powerplant failure must be assumed. This amendment, as explained in the notice, is based on the assumption that sudden, complete power failure is a probable operating condition for rotorcraft that do not meet Transport Category A engine isolation requirements and that sudden failure of one engine is a probable operating condition for rotorcraft that do meet those requirements. One comment objected, stating that turbine engines are less prone to sudden failure than are reciprocating engines and should therefore not be assumed to fail suddenly. The FAA disagrees with the commentator's conclusion. Sudden failure is a necessary assumption since such failure is possible and can lead to adverse flight or control characteristics regardless of the kind of engine. These amendments are drafted as proposed.

The notice proposed, in part, to replace a requirement for a demonstration of control at "maximum weight" in §§ 27.143 and 29.143 with a requirement for a demonstration at "critical weight." No adverse comments having been received, this proposal is drafted as proposed (§§ 27.143(b)(1) and 29.143(b)(1)). The notice also proposed to amend those sections to require a controllability demonstration in uncoordinated flight. This proposal is withdrawn in the light of comments received.

The notice proposed to amend §§ 27.143 and 29.143 with respect to controllability after power failure. No adverse comments having been received, these amendments are drafted as proposed.

The notice proposed to amend §§ 27.173 (b) and 29.173(b) to prohibit a negative stick position versus speed slope except for hovering and to restrict the negative stick travel in the hovering condition to not more than 1 inch measured at the top of the pilot's normal hand position. One comment objected for several reasons. The commentator stated that the hazards of negative stick stability should be determined on a case-by-case basis. The FAA disagrees. Except for the hovering condition, a negative stick slope is known to be undesirable regardless of the severity of the slope. This is particularly true with respect to the trend of current rotocraft to operate at higher speeds and under instrument flight conditions. This is also true with respect to pilot fatigue. Flight safety may be directly affected by negative static longitudinal stability in any rotorcraft in climb, cruise, and autorotation. It would therefore be inappropriate to require a detailed investigation of the results of such instability on each type design. This comment cannot, therefore, be accepted. The commentator stated that the permitted negative stick travel in the hovering condition should be 10 percent of total stick travel rather than 1 inch for all type designs. The FAA disagrees. Helicopters may vary widely in total stick travel. The amount of negative stick travel being a percentage, would thus also vary widely from helicopter to helicopter. This may adversely affect the piloting responses of a pilot who operates more than one type of rotorcraft. A fixed percentage may also result in large absolute values of negative stick travel that are potentially unsafe in the hovering condition. This comment cannot be accepted. The commentator stated that elimination of negative stick travel in climb and cruise may result in more aft longitudinal control at V_{NE}, which could permit the pilot to pull higher load factors and greater nose-up attitudes than would be possible at present. While possibly correct, this comment is not accepted since piloting response can safely deal with high speeds in a helicopter that has positive static longitudinal stability whereas the effects of permitting negative stability may be undesirable through a wide speed range. This amendment is drafted as proposed.

The notice proposed to amend §§ 27.175 and 29.175 to require that the static longitudinal stability of multiengine rotorcraft be shown with a rate of descent of 1,000 feet per minute rather than in autorotation as currently required. This proposal was in response to the fact that a 1,000 feet per minute rate of descent is a representative flight condition for multiengine rotorcraft whereas autorotation is not. This is correct. However, other regulations, such as § 29.75(b)(5) and (c)(1)(ii) require that complete power failure be accounted for in the case of multiengine rotorcraft in Category A and Category B. These regulations are based on the assumption that total power failure, while rare, must be regarded as a real possibility to be taken into account from a performance point of view. It would be inconsistent to require the substantiation of the performance of multiengine rotorcraft in autorotation because of the possibility of total power failure and at the same time dispense with substantiation of safe static longitudinal stability under the same conditions. This proposal is withdrawn pending further study of operating assumptions underlying the autorotation requirements for multiengine rotorcraft.

The notice proposed to amend the power requirement for demonstrating static longitudinal stability in the hovering condition under §§ 27.175 and 29.175. No adverse comments having been received, these amendments are drafted as proposed.

The notice proposed to amend the pilot compartment view requirement of § 29.773 with respect to the first pilot's position. No adverse comments having been received, this amendment is drafted as proposed.

The notice proposed to add new §§ 27.1322 and 29.1322 covering warning, caution and advisory lights. No adverse comments having been received, these amendments are drafted as proposed.

The notice proposed, in part, to delete the requirement in § 29.1323(b)(2) that the airspeed indicating system must be calibrated "in ground effect, during the accelerated takeoff run," and replace it with a requirement that the system be calibrated, "during takeoff," so as to provide indications that can ensure consistent realization of specified field lengths and ensure avoidance of the critical areas of the limiting height-speed envelope. One comment objected to this part of the proposal for the following reasons: The commentator states that system calibration should not be required "during takeoff" since this involves calibration in a flight realm that the explanation in the Notice states is difficult. The FAA disagrees. While it is true that this amendment involves calibration in flight, it was calibration in ground effect, not in all flight conditions, that was stated to be difficult. The commentator states that the calibration requirement should be discontinued and that only field length and height-speed safety should be considered during takeoff demonstrations conducted under § 29.51. The FAA disagrees. Calibration of the airspeed indicating system is the only means of ensuring repeatability of airspeed indications so as to obtain consistent realization of specified field lengths and avoidance of critical height-speed combinations. This part of the proposal is therefore drafted as proposed. The Notice proposed, in part, to change several speed references from miles per hour to knots. One comment stated that references to "five m.p.h." should be changed to an even "five knots" to avoid a fractional knot requirement, which would assume unrealistic airspeed indicating accuracy. This comment is accepted. Except for this change from the notice, this part of the proposal is drafted as proposed. The notice proposed, in part, to delete the words "including the airspeed indicator instrument calibration error" from the airspeed error provisions of § 29.1323 (c) and (d). One comment objected, stating that, unless the accuracy of the system includes indicator calibration error, it would not be possible to know the total error in the system. The FAA disagrees. Total error can be obtained by separately determining system error and indicator error. Further, this method of determining total error, by separately identifying the system and indicator errors, more adequately permits future determinations of total error when the

original indicator is replaced with another having a different instrument error. This part of the proposal is drafted as proposed. The notice also proposed to raise the low speed calibration speed in § 29.1323(c)(1) from 10 m.p.h. to 30 knots and that in § 29.1323(d) from 10 m.p.h. to 20 knots (including the change from miles per hour to knots) in order to ease the difficulty of low speed calibration while still obtaining a calibration speed allowing consistent avoidance of hazardous height-speed combinations during takeoff. One comment stated that raising the minimum calibration speeds would not assure avoidance of hazardous height-speed combinations during takeoff. This comment is not accepted. For takeoff, avoidance of the critical areas of the limiting height-speed envelope would be ensured under amended § 29.1323(b)(2), which requires that the airspeed indications for this flight condition be repeatable and readable. Experience in the type certification of multiengine transport category rotorcraft indicates that compliance with the airspeed accuracy requirements below 30 knots is not feasible. Further, for the forward flight conditions of § 29.1323(c)(1) and (d), calibration down to 30 knots and 20 knots, for multiengine and single engine rotorcraft, respectively, is sufficient to avoid hazardous height-speed combinations and will avoid unnecessarily difficult airspeed calibration down to 10 m.p.h. This part of the proposal is drafted as proposed. Several suggestions for further amendment of the airspeed calibration requirements were received. These suggestions are appreciated. However, they go beyond the scope of the notice and will be reserved for future consideration.

The notice proposed to amend § 29.1329(d) to allow autopilot malfunctions to create speeds up to 1.05 V_{NE} if the stability curve is positive to 1.1. V_{NE}. One comment requested that 1.1 V_{NE} be permitted. The speed V_{NE} is chosen to ensure a margin of safety between it and the highest speed shown to be safe. It is thus essential that the conditions under which V_{NE} may be exceeded be precisely described in the rules if such an allowance is to be given. The only controlling condition in § 29.1329(d) is that corrective action is assumed to begin within a "reasonable period of time." It is clear that the safety of any speed permitted above V_{NE} depends entirely upon the conservatism of the time administered under the language "reasonable period of time." This is true regardless of whether 1.05 V_{NE} or 1.1 V_{NE} is permitted. The time for pilot response may be particularly critical in the high altitude, low V_{NE} condition. This proposal is therefore withdrawn pending further study of the time delay aspects of automatic pilot system failures at high speeds.

The notice proposed to amend §§ 27.1505 and 29.1505 to provide for variations in V_{NE} with respect to altitude, r.p.m., temperature, and weight. No adverse comments having been received, these amendments are drafted as proposed.

The notice proposed to amend § 27.1519 to require that either (1) the limiting height-speed envelope be shown to be satisfactory, at each altitude, at the highest weight allowing hovering in ground effect at that altitude, or (2) if lesser weights are demonstrated for any altitudes, these lesser weights be established as operating weight limitations for those altitudes. One comment stated that since the envelope derived under Part 27 is performance information and is not an operating limitation, no information derived from the envelope should be an operating limitation. The FAA disagrees. The value of the envelope as performance information depends entirely upon whether the envelope information provides a basis for the pilot to adequately determine the limits of safe operation. For any given altitude, the envelope provides no firm basis for pilot decision making at weights above those at which the envelope is developed for that altitude. Section 27.79(a)(2) permits the applicant to select any weight for each altitude. This amendment does not alter this flexibility with respect to weight to be demonstrated. This should be left to the applicant. But the ability of a helicopter to operate at weights above the selected weight must be considered since there may be a significant incentive to operate a rotorcraft at the limits of its takeoff capability. This amendment is drafted as proposed except that cross-references to §§ 27.73 and 27.79 are added for clarity.

The notice proposed to delete empty weight items from the Rotorcraft Flight Manual provisions of §§ 27.1583(c) and 29.1583(c). No adverse comments having been received, these amendments are adopted as proposed.

Airframe. The notice proposed to include "design maximum altitude" as a "design limitation." One comment stated that altitude should not be treated as a "design limitation." The FAA agrees that the intent of the proposal (which is to ensure that the effect of altitude on rotorcraft fatigue strength will be accounted for) can be achieved by requiring that altitude effects be accounted for without designating a "design maximum altitude." This proposal is therefore withdrawn. The requirement to account for altitude effects has been reproposed, together with amendments proposed under airframe proposal 8 of Notice 65–42, in a separate notice of proposed rule making (Notice 67–44, published in the FEDERAL REGISTER (32 F.R. 14106)) on October 11, 1967.

The notice proposed to add a new § 29.473(c) concerning triggering of actuating devices for supplementary landing load absorption. No adverse comments having been received, this amendment is drafted as proposed. One comment requested that this amendment be considered for Part 27. This comment is accepted. An identical proposal for public comment will be considered for amendment of Part 27.

The notice proposed to amend § 27.473(a)(1) to allow a rotor lift of two-thirds of the design maximum weight in establishing limit ground loads. No adverse comments having been received, this amendment to § 27.473(a)(1) is drafted as proposed. The notice further proposed to limit the rotor lift to two-thirds of the design maximum weight under Parts 27 and 29 by eliminating the reference to "any greater lift proven to be appropriate" in §§ 27.473(a)(2) and 29.473(a)(2). One comment objected, stating that this change would inhibit certain benefits of advancing rotor technology. This is not the case. Section 21.21(b)(1) provides that any provision not complied with may be compensated by factors that provide an "equivalent level of safety." For rotorcraft for which such "equivalent level of safety" is shown for the specific technological advances mentioned by the commentator, this amendment causes no substantive change and (a)(2) is surplus. For rotorcraft for which such showings cannot be made, present (a)(2) is misleading, since it assumes that a greater fractional rotor lift may be "appropriate" even though an "equivalent level of safety" cannot be shown therefor. More than a decade of type certification programs conducted under the current rules indicates that two-thirds of design maximum weight is the highest rotor lift acceptable, as a general rule, for establishing limit ground loads. This amendment is therefore drafted as proposed. Editorially, these amendments result in the elimination of subparagraphs under paragraph (a) of §§ 27.473 and 29.473.

The notice proposed to delete the cross references to §§ 27.727 and 29.727 from §§ 27.473(b) and 29.473(b), respectively, since limit inertia load factors are not substantiated under those sections. No adverse comments having been received, this change is made as proposed.

The notice proposed to add a new § 29.501 providing standards for skid landing gear. No adverse comments having been received, this amendment is drafted as proposed.

The notice proposed to delete § 27.501(c)(2)(ii) which required that ground loads must pass through the center of gravity. No adverse comments having been received, this amendment is adopted as proposed.

The notice proposed to add a new § 29.511 covering unsymmetrical loads on multiple-wheel landing gear units. No adverse comments having been received, this amendment is drafted as proposed.

The notice proposed to add new §§ 29.519 and 29.757, and amend §§ 29.521, 29.755, and 29.803, all concerning substantiation of amphibian and limited amphibian rotorcraft. Comments objected to the inclusion of a flotation time requirement in § 29.755(b), stating that flotation time is entirely an operational problem. The FAA agrees that flotation time is an important operational consideration and must be responsive to different operating conditions. However, it is also clear that some minimum flotation time must be prescribed for all operations since a form of amphibian approval is involved. One half hour is believed to be a reasonable time, and should present no difficulty for any hull that meets the structural requirements in these amendments. Section 29.755(b)

therefore requires that the rotorcraft be able to remain afloat for one half hour.

The notice proposed to amend the fatigue evaluation provisions of Part 29 to permit manufacturers to adopt failsafe design practices on certain conditions. The proposal has been amplified and reproposed, together with appropriate operating rule changes, in Notice 67–44, published in the FEDERAL REGISTER (32 F.R. 14106) on October 11, 1967, for the reasons contained therein.

The notice proposed to require that each engine mount and adjacent structure to be designed to withstand the loads resulting from a limit torque equal to 1.25 times the mean torque for 2½-minute power combined with 1g. flight loads. One comment stated that a certain higher flight loading should be required. The FAA disagrees, since the 2½-minute rating is intended to take care of the relatively infrequent case of engine failure during takeoff and approach to landing. For this contingency, the proposed flight loading is adequate. This amendment is drafted as proposed.

The notice proposed to require dual locking devices on all fasteners whose function is necessary for safety. In response to comments received, this proposal is withdrawn. The material in this item has been reproposed in Notice 67–49, published (32 F.R. 15676) on November 14, 1967.

The notice proposed to amend §§ 27.653 and 29.653 to except certain sealed rotor blades. No adverse comments having been received, these amendments are drafted as proposed.

The notice proposed to amend §§ 27.653 through 27.661, and §§ 29.653 through 29.661 to cover all rotors, not just main rotors. No adverse comments having been received, these amendments are drafted as proposed.

The notice proposed to amend §§ 27.659 and 29.659 to require substantiation of the mass balance installation. No adverse comments having been received, these amendments are drafted as proposed.

The notice proposed to add new §§ 27.663 and 29.663 containing reliability and damping action investigation requirements for ground resonance prevention means and to require that specific maintenance standards for this means must be approved under §§ 27.1529 and 29.1529. One comment requested that the requirement in proposed paragraph (b) to consider the "probable" range of service variations should be changed to refer to the "allowable" range. This comment is not accepted since the objective is to establish the variations expected in service. The commentator also stated that the requirement in proposed paragraph (b) to investigate the range of probable variations "in flight" should be broadened to allow other testing. The FAA agrees. The words "in flight" are therefore omitted from §§ 27.663(b) and 29.663(b). One comment objected to the proposal to require approval of specific maintenance practices. The FAA agrees that the current requirement to place recommended maintenance procedures in the Maintenance Manual under §§ 27.1519 and 29.1519 is sufficient. Separate approval of those practices is not necessary for ground resonance prevention means.

The notice proposed to amend § 29.725 (a) to require only an 8-inch drop height with no contact velocity prescribed. No adverse comments having been received, this amendment is drafted as proposed.

The notice proposed to amend §§ 27.751 (b) and 29.751(b) to provide capsize protection for main floats. No adverse comments having been received, these amendments are drafted as proposed.

The notice proposed to amend the pilot compartment requirements of § 29.771 by deleting the requirement for a passageway between the pilot compartment and the passenger compartment (paragraph (e)) and the requirement for a means to prevent passengers from entering the pilot compartment without permission (paragraph (f)). No adverse comments having been received, these amendments are adopted as proposed.

The notice proposed to amend § 29.805 to require that the flight crew emergency exit rapid evacuation capability must be shown by test. No adverse comments having been received, this amendment is drafted as proposed.

The notice proposed to amend §§ 29.807 through 29.813 to update the emergency exit requirements. In response to one comment, the amended table in § 29.807 (b) contains the same headings as the current table. There was no intent to change the headings of the table, although no headings were included in the table in the notice. One comment objected to the allowance, in the table of one Type IV exit per side for passenger seating capacities of 1 through 10, stating that no exit should be smaller than a Type III exit. The FAA disagrees. Experience with airplanes has demonstrated that one Type IV exit per side is adequate for the prescribed seating capacity. The notice proposed to amend § 29.807 to allow the substitution of one Type I or Type II exit in the floor ramp of rear ramp rotorcraft, instead of in the sides of the fuselage, if the aft exit meets § 29.813. One comment stated that the rule should make it clear that only one exit may be substituted, even though that exit may be a Type I or Type II exit. This is in accord with the intent of the proposal. Amended § 29.807(d) is therefore limited to "one Type I exit only, or one Type II exit only". The notice proposed to add a new § 29.809(f)(1) requiring that evacuation ropes must have a specified diameter. It is now felt that the static load and attachment requirements also proposed for evacuation ropes (proposed (f) (2) and (3)) make any specified diameter unnecessary. Proposed (f) (1) is therefore withdrawn and the remaining subparagraphs are renumbered accordingly. Further, the FAA has determined that the prescribed evacuation assist means are not necessary for overwing exists since the wing (including stub wings to be expected on compound helicopter) itself provides a passageway to the ground. Section 29.809(f) is therefore changed from the notice to specifically except such exits.

Proposed § 29.811(h) referred to each exit "that is required to be openable from the outside." Since § 29.809(b) requires each emergency exit to have this characteristic, the quoted language is surplus and is deleted from amended § 29.811(h).

Proposed § 29.811(h)(1) specified that each exit must be outlined with 2-inch colored band. One comment suggested that this provision also include a requirement for a crash locator light visible outside of the window. This comment goes beyond the scope of the notice and therefore cannot be accepted. However, the proposal is changed in this amendment to cover only passenger emergency exits. It was not intended to require the 2-inch band marking for crew exits.

Proposed § 29.811(h)(2) provided that outside markings be such that the reflectance of the lighter color must exceed that of the darker color by a factor of at least three. Where the reflectance of the darker color exceeds 15 percent, the proposal is unduly severe. This amendment therefore permits a reflectance differential of 30 percent in such cases. On the other hand, study since the notice indicates that the factor of 3 to 1 is not sufficient to ensure safe visibility where the reflectance of the darker color is 15 percent or less. For these low reflectance values, safety requires that the reflectance of the lighter color must be no less than 45 percent. This change from the notice is necessary to achieve minimum acceptable conspicuity under emergency evacuation conditions.

One comment suggested amending § 29.813, to make it clear that the requirement for "unobstructed" passageways between passenger compartments and "unobstructed" passageways leading to Type I and Type II emergency exits means "unobstructed" by maximum seat positions either reclined or broken over. No difficulty in administering the current "unobstructed" provision has been experienced in this regard. This comment is not accepted.

The notice proposed to amend § 29.813(b) to include the assumption that all passengers are ambulatory. Since that paragraph is only concerned with the amount of space required for a crewmember to assist in evacuation "without reducing the unobstructed width of the passageway" it is evident that the space requirements of crewmembers, not the condition of passengers, is the only regulatory concern of § 29.813(b). This proposal is therefore withdrawn.

The notice proposed to amend § 27.807(a) to delete the reference to seating capacity. No adverse comments having been received, this amendment is adopted as proposed.

The notice proposed to amend § 29.853(f) to prescribe at least three hand fire extinguishers for rotorcraft with passenger seating capacities greater than 60. No adverse comments having been received, this amendment is drafted as proposed.

The notice proposed to require that doors and windows of cargo and baggage

compartments must be lined with fire resistant materials in addition to the current requirement in § 29.855(a) that those compartments themselves be so lined. This proposal is withdrawn in agreement with comments received. No further detailed lining requirement is necessary since the doors and windows are part of the compartment and, as such, are adequately covered by current § 29.855(a). The notice also proposed to amend § 29.855(d) to make that paragraph specifically applicable only to compartments that are not sealed against fire and to compartments intended for cargo only. One comment stated that the requirement to prevent the "entry" of noxious gases into crew and passenger compartments should be amended to make it clear that compliance may be shown by devices that prevent retention of gases that have entered. The FAA agrees. The purpose of this portion of the rule is to ensure that harmful quantities of noxious gases do not accumulate in crew or passenger compartments. This amendment therefore uses the word "accumulation" in place of the word "entry." The notice finally proposed a new § 29.855(e) containing additional requirements for cargo-only rotorcraft. This amendment is drafted substantively as proposed.

The notice proposed to specifically express the intent of §§ 27.1565 and 29.1565 to provide conspicuity under daylight conditions only. One comment requested that night conspicuity also be required. This comment goes beyond the scope of the notice but will be considered for future rule making. No other adverse comments having been received, §§ 27.1565 and 29.1565 are amended as proposed.

Powerplant. The notice proposed to amend §§ 27.901 and 29.901 to require that "axial and lateral expansion of turbine engines may not affect the safety of the installation." No comments objecting to the intent of this proposal having been received, new §§ 27.901(b)(4) and 29.901(b)(5) are drafted, as proposed, with one minor clarifying change: The word "lateral" is replaced with the word "radial" since the latter word is the more appropriate counterpart of the word "axial." No substantive change results.

The notice proposed to amend the engine stoppage requirement of § 29.903(c) to except turbine engines whose stoppage is not necessary for safety. No adverse comments having been received, this amendment is drafted as proposed.

The notice proposed to amend §§ 27.923 and 29.923 to require substantiation of accessory drive pads under the rotor drive system and control mechanism tests. Where identical pads are involved, the proposal would have permitted the loading of one pad only. Study indicates that this may not be appropriate in every case, and that adequate standards for the substantiation of drive pads would exceed the scope of the notice. These changes are therefore withdrawn and will be reproposed in greater detail.

The notice proposed to amend § 27.923 to require that the rotor system endurance test include a clutch endurance test in which at least 200 "clutch engagements" are accomplished in a certain manner. One comment suggested that more than 200 engagements should be prescribed. The FAA believes that 200 engagements is sufficient to simulate conditions that would exist in service and to substantiate the clutch mechanism for those conditions. This comment cannot, therefore, be accepted. This amendment is drafted as proposed, with one exception: The proposed words "clutch engagements" are changed to read "start-up clutch engagements". This amendment is intended to cover only the start-up (engine accelerating) clutch, not the overrunning (freewheeling) clutch.

The notice proposed to add new §§ 27.923(j) and 29.923(o) to require that the rotor system endurance test include substantiation of the system for certain overboost conditions. One comment generaly concurred, with the following exceptions: The commentator stated that the proposal would require a low temperature operating facility or else test procedures to allow the proposed torque requirements to be met under the normal range of temperatures. The commentator then suggested language changes under which the engines would not be operated above their approved ratings. Under certain conditions, these suggested lauguage changes might not result in substantiation of the system for torque loads above the approved ratings and might therefore prevent the desired evaluation of overboost conditions. The commentator is correct in stating that either a low temperature facility, or procedures to achieve overboost conditions under normal temperatures, are necessary under the proposal. However, the need to obtain overboost conditions requires that the commentator's suggested language be rejected. The commentator stated that the proposal was wrong in assuming that there is no direct control of engine power output by the pilot, because such control in fact exists. It is recognized that power limits are closely followed and controlled during most operations. However, these amendments are necessary to ensure safe operation in conditions under which the pilots are likely to be distracted by an emergency or are forced to exceed power limitations in order to maintain safe flight. For these conditions, it must be assumed that the transmission may be subjected to torque values exceeding those obtainable within approved engine ratings. For these possible overboost conditions, this comment cannot be accepted. These proposals are drafted as proposed, with one relaxing change: The notice would have added these amendments to §§ 27.923 and 29.923. Under § 29.923(a)(2) this would have required that the overboost test under Part 29 be conducted on the rotorcraft, which might result in damage to the engines. One industry comment correctly objected to this aspect of the proposal. Amending §§ 27.923 and 29.923 would also have required the overboost test to be done as part of the endurance test. Neither of these consequences are necessary to the substantiation of the transmission itself for temporary overboost conditions. This is the sole purpose of these amendments. They are therefore drafted as new §§ 27.927(b) and 29.927(b) rather than as amendments to §§ 27.923 and 29.923. New § 27.927(b)(3) and 29.927(b)(3) specify the conditions under which the test need not be conducted on the rotorcraft. The present language in §§ 27.927 and 29.927 is designated as paragraph (a) without substantive change. These amendments also make it clear that, in determining maximum attainable torque for the purpose of the overboost test, it may be assumed that torque limiting devices, if any, function properly. Finally, the words "torque output of the engines" in the proposal for the all-engines operating case are replaced with the words "torque attainable under probable operating conditions" for consistency with the language describing the engine-inoperative test. No differences between the two test conditions, with respect to the probability of attaining the appropriate test power condition in operation, were intended.

The notice proposed to amend §§ 27.991 and 29.991 to require that each fuel pump must meet the endurance test prescribed in §§ 27.923 and 29.923, or equivalent. The main issue in this proposal concerns the possibility that the cited endurance tests may not be sufficient to fully substantiate fuel pumps. This proposal is therefore withdrawn for further study of the severity of endurance testing appropriate for fuel pumps.

The notice proposed to amend §§ 27.991(b) and 29.991(b) to allow a main fuel pump to be used as an emergency pump, as is allowed under § 25.991(b) for transport category airplanes. No adverse comments having been received, this amendment is drafted as proposed.

The notice proposed to delete provisions in §§ 27.991 and 29.991 that require the maintenance of safe fuel pressures, since such provisions duplicate fuel flow requirements in §§ 27.951, 27.955, 29.951, and 29.955. No adverse comments were received. With respect to § 29.991, this amendment is drafted as proposed. However, under § 27.991, the fuel pressure requirement is linked directly to the requirement for automatic or continuous operation, which should not be deleted. The proposal is therefore withdrawn with respect to Part 27.

The notice proposed to amend § 27.993 to eliminate the oversize fuel line requirement and corresponding test requirements of paragraphs (d) and (e), and to add requirements like those in § 29.993(c) (that flexible fuel connections subject to pressure or axial loadings must have a flexible hose assembly) and § 29.993(e) (that no flexible line that might be adversely affected by high temperatures may be used where excessive temperatures will exist during operation or after engine shutdown). No adverse comments were received with respect to the objectives of these proposals. However, one comment stated

that no requirement for flexible hose assembly is necessary if the rule states that relative motion must not result in an unsafe condition. The FAA disagrees. The intent of § 29.993(c), and its proposed adoption under Part 27, is not to account for relative motion (which is covered elsewhere in the rule), but rather to alleviate the effects of pressure and axial loadings. These amendments are drafted as proposed.

The notice proposed to amend § 29.1091 (d) to apply to reciprocating engines only. No adverse comments having been received, this amendment is drafted as proposed.

The notice proposed to amend § 29.997 to add a fuel strainer ice protection requirement similar to those in §§ 25.997 (b) and 27.997(b). One comment suggested that the proposal be clarified to apply only to filter blockage and not to ice crystals downstream of the filter. Experience with §§ 25.997(b) and 27.997 (b) does not indicate any need for such clarification. This amendment is drafted as proposed.

The notice proposed to amend §§ 27.1041 and 29.1041 to require adequate cooling "after engine shutdown" as well as under the conditions now specified in those sections. No adverse comments having been received with respect to the objective of the proposal, these amendments are drafted as proposed, with one minor change: In response to a similar proposal for Part 25 in a separate rule-making action, one comment noted that there may be abnormal engine shutdowns, such as an emergency shutdown from a high power setting, following which temperature limits may be exceeded. The FAA agreed in that case, and therefore narrowed the Part 25 amendment to cover only "normal" engine shutdowns. These amendments are similarly limited for the same reason.

The notice proposed to add, to §§ 27.1091 and 29.1091, turbine engine inlet protection requirements now prescribed for transport category airplanes in § 25.1091(d). One comment suggested limiting the requirement to flammable fluid lines furnished by the airframe manufacturer. The FAA disagrees. Adequate protection of the inlet from hazardous quantities of fuel leakage and from overflow from flammable fluid systems should be provided regardless of the leakage or overflow source within the flammable fluid systems. These amendments are drafted as proposed.

The notice proposed to add to § 29.1093 continuous maximum and intermittent icing condition provisions currently prescribed in § 27.1093. No adverse comments having been received with respect to the objective of the proposal, this amendment is drafted as proposed.

The notice proposed to add a new § 29.1121(h) requiring fuel drains that discharge clear of the rotorcraft if significant fuel traps exist. No adverse comments having been received, this amendment is drafted as proposed.

The notice proposed to amend §§ 27.1163 and 29.1163 to require torque limiting means on certain accessory drives in order to prevent the torque limits established by the manufacturer from being exceeded. One comment suggested language that would cover all "likely" effects of accessory malfunctions. The reason given was the prevention of possible misadministration of the rule as proposed. The exact nature of the misadministration anticipated by the commentator is not clear. However, the language suggested by the commentator would in any case exceed the scope of the notice by covering all possible likely effects of accessory malfunctions, not only the exceeding of torque limits. This amendment is limited to the objective expressed in the notice, which covered only the prevention of unsafe torque loads on accessory drives.

The notice proposed several changes to the designated fire zone provisions of § 29.1181. No adverse comments having been received with respect to the objectives of these proposals, these amendments are drafted substantially as proposed, with one editorial correction: Proposed § 29.1181(a)(8) is drafted as new § 29.1181(a)(7). Further, while the notice, in paragraph (c)(2), proposed that the combined combustor-turbine-tailpipe and compressor-accessory zones would be "a designated fire zone" under certain conditions, this conflicts with the proposal to designate the compressor and accessory sections as a fire zone and the combustor, turbine, and tailpipe sections as another fire zone. This proposed combination of zones is therefore withdrawn. In addition, the designated fire zone comprising the combustor, turbine, and tailpipe sections of turbine engine installations is drafted in a form consistent with the corresponding requirement in Part 25 (§ 25.1181(a)(7)). This limits the designated fire zone prescribed in § 29.1181(a)(7) to regions that contain lines or components carrying flammable fluids or gases. It is therefore unnecessary to refer to the absence of such lines or components in § 29.1181(b) as proposed in the notice. The notice also proposed to except combustor, turbine, and tailpipe sections from the requirement, in § 29.1181(b), to meet §§ 29.1183 through 29.1201 if those sections are isolated from the compressor and accessory sections by a firewall that meets § 29.1191. This proposed exception from §§ 29.1183 through 29.1201 would be too broad since it would except those regions from certain requirements that should apply regardless of whether or not a fire zone is involved, such as certain of the cowling and engine compartment covering requirements of § 29.1193. The proposal is therefore revised as follows: The combustor, turbine, and tailpipe sections designated as fire zones in § 29.1181 (a)(7) are drafted to exclude regions that are isolated from the compressor and accessory sections by a firewall meeting § 29.1191(a); § 29.1191(a) is amended to include the combustor, turbine, and tailpipe sections of turbine engine installations (as proposed in proposal 20 of the notice); finally, § 29.1203 is amended to require a fire detector system for the combustor, turbine, and tailpipe sections (regardless of whether such sections also qualify as designated fire zones). These amendments leave § 29.1181(b) unchanged.

The notice proposed to amend § 27.1185(b) to clearly limit it to reciprocating engines (and therefore remove any question as to whether turbine engines having thrust ratings comparable to reciprocating engines of 900 cubic inches displacement are also included). One comment objected, stating that the present requirements could not in any case be rationally applied to turbine engines by merely equating turbine thrust ratings with the prescribed displacements. The FAA agrees with this statement, but believes that the possibility that such an equation may be attempted is great enough to justify this clarifying amendment. This amendment is drafted as proposed by amending the applicability of paragraphs (a) and (b) to make them mutually exclusive on their face.

The notice proposed to amend §§ 27.1189, 29.1189, 29.1195, and 29.1203 to make it clear that exceptions contained in those sections for engines of certain cubic inch displacements may not be appied by anaogy to turbine engines of roughly comparable thrust ratings. One comment objected, stating that the reasons for the exceptions are also valid for turbine engines of counterpart thrust parameters. The FAA agrees that extension of the exceptions to cover some turbine engines may be possible, after study, and should be proposed in a future notice of proposed rule making. However, until this is done, it is not appropriate to permit extension of the present exceptions, by analogy, to turbine engines. These amendments are drafted as proposed. Section 29.1195(a), second sentence, is also amended to conform more closely to the form of former § 7.484 (a)(3), on which it was based. No substantive change results since none was involved in the recodification. This amendment is therefore adopted without notice.

The notice proposed to amend §§ 27.1191(a) and 29.1191(a) to extend the term "engine," in the case of turbine engine installations, to cover the combustor, turbine, and tailpipe sections of those installations. No adverse comments having been received with respect to the objectives of this proposal, these amendments are drafted as proposed.

The notice proposed to amend § 29.-1193(e)(3) by deleting the words "in the engine power or accessory sections" and replacing them with the words "or burns out of any fire zone," in order to prevent turbine engine combustor burn-throughs from causing a fire to burn out of a fire zone. One comment objected, stating that the need for the changes cannot be found in the service experience of turbine engine powered rotorcraft. While specific helicopter experience bears out the commentator's statement, the FAA disagrees with the conclusion that no rule change is necessary. There is an established history of combustor can burn-through on turbine engines like those used in rotorcraft, although this history was obtained on airplanes. The fact that

this history was obtained on airplanes does not lessen its validity, particularly since this history is based on service experience that is much longer than that yet available in the case of most rotorcraft. This amendment is therefore drafted as proposed. The notice also proposed to amend § 29.1193(c) to take account of the tendency of a fire that burns out of one zone to pass into the next zone "downstream." Because of the wide range of speeds available to helicopters, including hovering, the concept of what is "downstream" requires further study. This proposal is therefore withdrawn.

The notice proposed to add new §§ 27.1194 and 29.1194 to require fire protection of surfaces aft of, and adjacent to, engine compartments and designated fire zones. One comment stated that there is no need for proposed paragraph (b) of these sections in addition to the provisions of §§ 27.861 and 29.861. The FAA agrees. These proposed paragraphs are therefore withdrawn. The remainder of the proposal is drafted as proposed with one exception: Since there are no designated fire zones under Part 27, § 27.1194 uses the words "powerplant compartments" where the proposal referred to "engines compartments and designated fire zones." No substantive change results.

The notice proposed several amendments to the powerplant instrument requirements of § 29.1305. Comments objected to a proposed requirement for a fuel flow meter on the basis that the need for such an instrument should be determined in the operating environment rather than during type certification. The FAA agrees. This part of the proposal is therefore withdrawn. Except for this change and paragraphing changes, these amendments are drafted as proposed.

The notice proposed to add new §§ 27.1459 and 29.1459 to provide standards for equipment containing high energy rotors. These amendments have been renumbered as §§ 27.1461 and 29.1461. One comment stated that the proposed specific rules are unnecessary in addition to the general provisions of §§ 27.1309 and 29.1309. The FAA disagrees. Instances of fragmentation of air turbine starter wheels have occurred. These failures have in turn damaged components external to the starter. Reliance upon general rules to prevent recurrences of this kind of failure should not be continued. These amendments are therefore drafted as proposed.

The notice proposed several changes to the powerplant limitation provisions of § 29.1521 to accommodate turbine engines and achieve consistency with similar provisions in Part 25 where necessary for safe takeoff and continuous operation. The changes included a proposal to specify transmission oil temperature as a powerplant limitation. One comment objected, stating that the transmission oil temperature recorded during the endurance testing under § 29.923 should not become a limitation since it merely represents a temperature occurring under the test conditions. To the extent that only a recorded value is involved, the commentator would be correct. However, § 29.1011(e) requires rotor drive system oil cooling provisions to maintain the oil temperature at or below the "maximum established value" under specified conditions. Further § 29.1041(b) requires provisions to maintain the power transmission fluid temperature "within safe values" under specified conditions. Finally, with respect to the power transmission fluid cooling tests conducted under § 29.1043, paragraph (a) of that section requires (1) correction of recorded powerplant temperatures to account for changing test conditions, and (2) assurance that no corrected temperature will exceed "established limits." It is thus clear that, with respect to power transmission fluid temperatures, the establishing of a safe limit rather than the mere recording of values is involved under the present regulations. This comment cannot, therefore, be accepted. These amendments are drafted as proposed.

Nautical measure. The notice proposed to amend Parts 27 and 29 by changing all references to "miles" and "miles per hour" to "nautical miles" and "knots," respectively, wherever the former are used. No adverse comments were received with respect to the objectives of this proposal. These amendments are therefore drafted as proposed, using the following criteria: (1) In response to one comment, conversions from miles per hour to knots are rounded off to whole units to avoid fractions of a knot, since accurate fractional knot measurement is not necessary under the present rules and is not required to be within the capability of required airspeed indicating systems; (2) current requirements specifying extremely low airspeed values, such as 5 or 10 miles per hour, are not changed numerically (such as to 4 or 9 knots, respectively) since the substantive difference in these cases is approximately 1 mile per hour, which is not practically significant. Sections 27.1399 and 29.1399, which require that each riding light required for water operations must show a white light for at least "two miles", have been amended to read "two nautical miles". This change is substantively insignificant within the conditions of visibility under which illumination is measured. No increase in burden results. One comment requested that no change be made with respect to allowing the use of airspeed indicators calibrated to read in terms of miles per hour. This comment is accepted. Nothing contained in these amendments requires the calibration of the airspeed indicator to read in terms of knots. Finally, it should be noted that the change to nautical units in § 29.1323 is combined with substantive changes based on Flight Proposal 19.

In consideration of the foregoing, Parts 1, 27, and 29 of the Federal Aviation Regulations are amended, effective February 25, 1968, as hereinafter set forth.

§ 1.2 [Amended]

a. Part 1 is amended by amending the definition of "V_H" in § 1.2 to read as follows:

V_H means maximum speed in level flight with maximum continuous power.

b. Part 27 is amended as follows:

1. Section 27.27 is amended to read as follows:

§ 27.27 Center of gravity limits.

The extreme forward and aft centers of gravity and, where critical, the extreme lateral centers of gravity must be established for each weight established under § 27.25. Such an extreme may not lie beyond—

(a) The extremes selected by the applicant;

(b) The extremes within which the structure is proven; or

(c) The extremes within which compliance with the applicable flight requirements is shown.

2. Section 27.33(b) and (c) are amended, and a new § 27.33(d) is added, to read as follows:

§ 27.33 Main rotor speed and pitch limits.

* * * * *

(b) *Normal main rotor high pitch limits (power on).* It must be shown, with power on and without exceeding approved engine maximum limitations, that main rotor speeds substantially less than the minimum approved main rotor speed will not occur under any substained flight condition. This must be met by—

(1) Appropriate setting of the main rotor high pitch stop;

(2) Inherent rotorcraft characteristics that make unsafe low main rotor speeds unlikely; or

(3) Adequate means to warn the pilot of unsafe main rotor speeds.

(c) *Normal main rotor low pitch limits (power off).* It must be shown, with power off, that—

(1) The normal main rotor low pitch limit provides sufficient rotor speed, in any autorotative condition, under the most critical combinations of weight and airspeed; and

(2) It is possible to prevent overspeeding of the rotor without exceptional piloting skill.

(d) *Emergency high pitch.* If the main rotor high pitch stop is set to meet paragraph (b)(1) of this section, and if that stop cannot be exceeded inadvertently, additional pitch may be made available for emergency use.

3. Section 27.141(b) is amended to read as follows:

§ 27.141 General.

* * * * *

(b) Be able to maintain any required flight condition and make a smooth transition from any flight condition to any other flight condition without exceptional piloting skill, alertness, or strength, and without danger of exceeding the limit load factor under any operating condition probable for the type, including—

(1) Sudden failure of one engine, for multiengine rotorcraft meeting Transport Category A engine isolation requirements of Part 29 of this chapter; and

(2) Sudden, complete power failure, for other rotorcraft; and

* * * * *

4. Section 27.143 (b) (1), (c), and (d) are amended to read as follows:

§ 27.143 Controllability and maneuverability.

* * * * *

(b) * * *

(1) Critical weight.

* * * * *

(c) A wind velocity of not less than 17 knots must be established in which the rotorcraft can be operated without loss of control on or near the ground in any maneuver appropriate to the type (such as crosswind takeoffs, sideward flight, and rearward flight), with—

(1) Critical weight;

(2) Critical center of gravity; and

(3) Critical rotor r.p.m.

(d) The rotorcraft, after (1) failure of one engine in the case of multiengine rotorcraft that meet Transport Category A engine isolation requirements, or (2) complete engine failure in the case of other rotorcraft, must be controllable over the range of speeds and altitudes for which certification is requested when such power failure occurs with maximum continuous power and critical weight. No corrective action time delay for any condition following power failure may be less than—

(i) For the cruise condition, one second, or normal pilot reaction time (whichever is greater); and

(ii) For any other condition, normal pilot reaction time.

5. Section 27.173(b) is amended to read as follows:

§ 27.173 Static longitudinal stability.

* * * * *

(b) The stick position versus speed curve may have a negative slope within the speed range specified for the maneuver in § 27.175(d) if the necessary negative stick travel does not exceed 1 inch measured at the top of the pilot's normal hand position.

6. Section 27.175(d) (2) is amended to read as follows:

§ 27.175 Demonstration of static longitudinal stability.

* * * * *

(d) * * *

(2) The stick position curve must have a stable slope, between the maximum approved rearward speed and a forward speed of 17 knots with—

(i) Critical weight;

(ii) Critical center of gravity;

(iii) Power required to maintain an approximately constant height in ground effect;

(iv) The landing gear retracted; and

(v) The helicopter trimmed for hovering.

7. Section 27.473 is amended to read as follows:

§ 27.473 Ground loading conditions and assumptions.

(a) For specified landing conditions, a design maximum weight must be used that is not less than the maximum weight. A rotor lift may be assumed to act through the center of gravity throughout the landing impact. This lift may not exceed two-thirds of the design maximum weight.

(b) Unless otherwise prescribed, for each specified landing condition, the rotorcraft must be designed for a limit load factor of not less than the limit inertia load factor substantiated under § 27.725.

8. Section 27.501(c) (2) is amended to read as follows:

§ 27.501 Ground loading conditions: landing gear with skids.

* * * * *

(c) * * *

(2) The resultant ground loads must equal the vertical load specified in paragraph (b) of this section.

* * * * *

9. The center heading "Main Rotor", following § 27.629 is amended to read "Rotors".

10. Section 27.653 is amended to read as follows:

§ 27.653 Pressure venting and drainage of rotor blades.

(a) For each rotor blade—

(1) There must be means for venting the internal pressure of the blade;

(2) Drainage holes must be provided for the blade; and

(3) The blade must be designed to prevent water from becoming trapped in it.

(b) Paragraph (a) (1) and (2) of this section does not apply to sealed rotor blades capable of withstanding the maximum pressure differentials expected in service.

11. Section 27.659 is amended to read as follows:

§ 27.659 Mass balance.

(a) The rotors and blades must be mass balanced as necessary to—

(1) Prevent excessive vibration; and

(2) Prevent flutter at any speed up to the maximum forward speed.

(b) The structural integrity of the mass balance installation must be substantiated.

12. Section 27.661 is amended to read as follows:

§ 27.661 Rotor blade clearance.

There must be enough clearance between the rotor blades and other parts of the structure to prevent the blades from striking any part of the structure during any operating condition.

13. New § 27.663 is added to read as follows:

§ 27.663 Ground resonance prevention means.

(a) The reliability of the means for preventing ground resonance must be shown either by analysis and tests, or reliable service experience, or by showing that malfunction of a single means will not cause ground resonance.

(b) The probable range of variations, during service, of the damping action of the ground resonance prevention means must be established and must be investigated during the test required by § 27.241.

14. Section 27.751(b) is amended to read as follows:

§ 27.751 Main float buoyancy.

* * * * *

(b) Each main float must have enough water-tight compartments so that, with any single main float compartment flooded, the main floats will provide a margin of positive stability great enough to minimize the probability of capsizing.

15. Section 27.807(a) is amended to read as follows:

§ 27.807 Emergency exits.

(a) *Number and location.* Rotorcraft with closed cabins must have at least one emergency exit on the opposite side of the cabin from the main door. Additional exists must be provided where the total seating capacity is more than 15.

* * * * *

16. A new § 27.901(b) (4) is added to read as follows:

§ 27.901 Installation.

* * * * *

(b) * * *

(4) Axial and radial expansion of turbine engines may not affect the safety of the installation.

17. A new § 27.923(i) is added to read as follows:

§ 27.923 Rotor drive system and control mechanism tests.

* * * * *

(i) At least 200 start-up clutch engagements must be accomplished—

(1) So that the shaft on the driven side of the clutch is accelerated; and

(2) Using a speed and method selected by the applicant.

18. Section 27.927 is amended to read as follows:

§ 27.927 Additional tests.

(a) Any additional dynamic, endurance, and operational tests, and vibratory investigations necessary to determine that the rotor drive mechanism is safe, must be performed.

(b) If turbine engine power output to the transmission can exceed the highest engine or transmission power rating, and that output is not directly controlled by the pilot under normal operating conditions (such as where the primary engine power control is accomplished through the flight control), the following test must be made:

(1) Under conditions associated with all engines operating, make 200 applications, for 10 seconds each, of torque that is at least equal to the lesser of—

(i) The maximum torque used in meeting § 27.923 plus 10 percent; or

(ii) The maximum attainable torque output of the engines, assuming that torque limiting devices, if any, function properly.

(2) For multiengine rotorcraft under conditions associated with each engine, in turn, becoming inoperative, apply to the remaining transmission power inputs the maximum torque attainable under probable operating conditions, assuming that torque limiting devices, if any, function properly. Each transmission input must be tested at this maximum torque for at least one hour.

(3) The tests prescribed in this paragraph must be conducted on the rotorcraft and the power must be absorbed by the rotors to be installed, except that other ground or flight test facilities with other appropriate methods of power absorption may be used if the conditions of support and vibration closely simulate the conditions that would exist during a test on the rotorcraft.

19. Section 27.991(b) is amended to read as follows:

§ 27.991 Fuel pumps.

* * * * *

(b) *Emergency pumps.* There must be emergency pumps, or another main pump, to feed the engines immediately after the failure of any main pump (other than fuel injection pump approved as part of the engine). Each pump used for this purpose must be activated automatically or operated continuously so that enough fuel pressure will be maintained to prevent engine stoppage.

20. Section 27.993 (d) and (e) are amended to read as follows:

§ 27.993 Fuel system lines and fittings.

* * * * *

(d) Each flexible connection in fuel lines that may be under pressure or subjected to axial loading must use flexible hose assemblies.

(e) No flexible hose that might be adversely affected by high temperatures may be used where excessive temperatures will exist during operation or after engine shutdown.

21. Section 27.1041(a) is amended to read as follows:

§ 27.1041 General.

(a) Each powerplant cooling system must be able to maintain the temperatures of powerplant components and engine fluids within the limits established for those components and fluids under any critical surface (ground or water) and flight operating conditions, and after normal engine shutdown.

* * * * *

22. A new § 27.1091(e) is added to read as follows:

§ 27.1091 Air induction.

* * * * *

(e) For turbine engine powered rotorcraft—

(1) There must be means to prevent hazardous quantities of fuel leakage or overflow from drains, vents, or other components of flammable fluid systems from entering the engine intake system; and

(2) The air inlet ducts must be located or protected so as to minimize the ingestion of foreign matter during takeoff, landing, and taxiing.

23. Section 27.1163 is amended to read as follows:

§ 27.1163 Powerplant accessories.

(a) Each engine-mounted accessory must—

(1) Be approved for mounting on the engine involved; and

(2) Use the provisions on the engine for mounting.

(b) Torque limiting means must be provided on all accessory drives that are located on the transmission, including drives on gearboxes that are part of the transmission, in order to prevent the torque limits established for those drives from being exceeded.

24. Section 27.1185 (a) and (b) are amended to read as follows:

§ 27.1185 Flammable fluids.

(a) For rotorcraft with turbine engines, or with reciprocating engines of 900 cubic inches displacement or less, each fuel tank must be isolated from the engines by a firewall or shroud.

(b) For rotorcraft with reciprocating engines of more than 900 cubic inches displacement—

(1) Each flammable fluid tank must be isolated under paragraph (a) of this section; or

(2) The fluid in the tank, the design of the system, the materials used in the tank, the shutoff means, and all connections, lines, and controls must provide a degree of safety equal to that resulting from isolation under paragraph (a) of this section.

25. Section 27.1189(a)(2) is amended to read as follows:

§ 27.1189 Shutoff means.

(a) * * *

(2) For reciprocating engine installations only, engine oil system lines in installation using engines of less than 500 cu. in. displacement.

* * * * *

26. Section 27.1191(a) is amended to read as follows:

§ 27.1191 Firewalls.

(a) Each engine, including the combustor, turbine, and tailpipe sections of turbine engines must be isolated by a firewall, shroud, or equivalent means, from personnel compartments, structures, controls, rotor mechanisms, and other parts that are—

(1) Essential to a controlled landing; and

(2) Not protected under § 27.861.

* * * * *

27. A new § 27.1194 is added to read as follows:

§ 27.1194 Other surfaces.

All surfaces aft of, and near, powerplant compartments, other than tail surfaces not subject to heat, flames, or sparks emanating from a powerplant compartment, must be at least fire resistant.

28. A new § 27.1322 is added to read as follows:

§ 27.1322 Warning, caution, and advisory lights.

If warning, caution, or advisory lights are used, they must be—

(a) Red, for warning lights (lights indicating a hazard requiring immediate corrective action);

(b) Amber, for caution lights (lights indicating the possible need for future corrective action); and

(c) Green, for advisory lights (lights used solely for information not indicating the need for corrective action).

29. Section 27.1323 (a) and (b)(2) is amended to read as follows:

§ 27.1323 Airspeed indicating system.

(a) The airspeed indicating system must be calibrated in flight at forward speeds of 10 knots and over.

(b) * * *

(2) Five knots.

30. Section 27.1399(a)(1) is amended to read as follows:

§ 27.1399 Riding light.

(a) * * *

(1) Show a white light for at least two nautical miles at night under clear atmospheric conditions; and

* * * * *

31. A new § 27.1461 is added to read as follows:

§ 27.1461 Equipment containing high energy rotors.

(a) Equipment containing high energy rotors must meet paragraph (b), (c), or (d) of this section.

(b) High energy rotors contained in equipment must be able to withstand damage caused by malfunctions, vibration, abnormal speeds, and abnormal temperatures. In addition—

(1) Auxiliary rotor cases must be able to contain damage caused by the failure of high energy rotor blades; and

(2) Equipment control devices, systems, and instrumentation must reasonably ensure that no operating limitations affecting the integrity of high energy rotors will be exceeded in service.

(c) It must be shown by test that equipment containing high energy rotors can contain any failure of a high energy rotor that occurs at the highest speed obtainable with the normal speed control devices inoperative.

(d) Equipment containing high energy rotors must be located where rotor failure will neither endanger the occupants nor adversely affect continued safe flight.

32. Section 27.1505(b) is amended to read as follows:

§ 27.1505 Never-exceed speed.

* * * * *

(b) V_{NE} may vary with altitude, r.p.m., temperature, and weight, if—

(1) No more than two of these variables (or no more than two instruments integrating more than one of these variables) are used at one time; and

(2) The ranges of these variables (or of the indications on instruments integrating more than one of these variables) are large enough to allow an operationally practical and safe variation of V_{NE}.

33. Section 27.1519 is amended to read as follows:

§ 27.1519 Weight and center of gravity.

(a) The weight and center of gravity limitations determined under §§ 27.25 and 27.27, respectively, must be established as operating limitations.

(b) Each weight that is less than the highest weight allowing hovering in ground effect at any given altitude under § 27.73, and that is used to establish the limiting height-speed envelope under § 27.79, must be established as a weight limitation for operation at that altitude.

34. Section 27.1565 is amended to read as follows:

§ 27.1565 Tail rotor.

Each tail rotor must be marked so that its disc is conspicuous under normal daylight ground conditions.

35. Section 27.1583(c) is amended to read as follows:

§ 27.1583 Operating limitations.

* * * * *

(c) *Weight and loading distribution.* The weight and center of gravity limits required by §§ 27.25 and 27.27, respectively, must be furnished. If the variety of possible loading conditions warrants, instructions must be included to allow ready observance of the limitations.

* * * * *

c. Part 29 is amended as follows:

1. Section 29.27 is amended to read as follows:

§ 29.27 Center of gravity limits.

The extreme forward and aft centers of gravity and, where critical, the extreme lateral centers of gravity must be established for each weight established under § 29.25. Such an extreme may not lie beyond—

(a) The extremes selected by the applicant;

(b) The extremes within which the structure is proven; or

(c) The extremes within which compliance with the applicable flight requirements is shown.

2. Section 29.33 (b) and (c) are amended, and a new § 29.33(d) is added, to read as follows:

§ 29.33 Main rotor speed and pitch limits.

* * * * *

(b) *Normal main rotor high pitch limit (power on).* It must be shown, with power on and without exceeding approved engine maximum limitations, that main rotor speeds substantially less than the minimum approved main rotor speed will not occur under any sustained flight condition. This must be met by—

(1) Appropriate setting of the main rotor high pitch stop;

(2) Inherent rotorcraft characteristics that make unsafe low main rotor speeds unlikely; or

(3) Adequate means to warn the pilot of unsafe main rotor speeds.

(c) *Normal main rotor low pitch limit (power off).* It must be shown, with power off, that—

(1) The normal main rotor low pitch limit provides sufficient rotor speed, in any autorotative condition, under the most critical combinations of weight and airspeed; and

(2) It is possible to prevent overspeeding of the rotor without exceptional piloting skill.

(d) *Emergency high pitch.* If the main rotor high pitch stop is set to meet paragraph (b)(1) of this section, and if that stop cannot be exceeded inadvertently, additional pitch may be made available for emergency use.

3. Section 29.67(a)(2) is amended to read as follows:

§ 29.67 Climb: one engine inoperative.

(a) * * *

(2) The steady rate of climb without ground effect must be at least 150 feet per minute, 1,000 feet above the takeoff surface, for each weight, altitude, and temperature for which takeoff data are to be scheduled, with—

(i) The critical engine inoperative and the remaining engines at maximum continuous power, or (for helicopters for which certification for the use of 30-minute power is requested), at 30-minute power;

(ii) The most unfavorable center of gravity for takeoff;

(iii) The landing gear retracted;

(iv) The speed selected by the applicant; and

(v) Cowl flaps, or other means of controlling the engine-cooling air supply, in the position that provides adequate cooling at the temperatures and altitudes for which certification is requested.

* * * * *

4. Section 29.73(b)(2) is amended to read as follows:

§ 29.73 Performance at minimum operating speed.

* * * * *

(b) * * *

(2) The hovering ceiling determined under subparagraph (1) of this paragraph—

(i) For reciprocating engine powered helicopters, must be at least 4,000 feet in standard atmosphere at maximum weight;

(ii) For single engine, turbine engine powered helicopters, must be at least 2,500 feet, in standard atmosphere plus 40° F., at maximum weight; and

(iii) For multiengine, turbine engine powered helicopters, must be available at each altitude, temperature, and weight for which takeoff data are to be scheduled.

* * * * *

§ 29.75 [Amended]

5. The introductory text of § 29.75(c)(1) is amended to read as follows:

(1) The horizontal distance required to land and come to a complete stop (or to a speed of approximately three knots for water landings), from a point 50 feet above the landing surface, must be determined with—

6. Section 29.75(b)(6) is deleted, and the semicolon and the word "and", following (b)(5), are deleted and a period is inserted in place thereof.

7. Section 29.75(c)(2)(ii) is amended to read as follows:

(ii) Paragraphs (b)(2) through (5) of this section.

8. Section 29.141(b) is amended to read as follows:

§ 29.141 General.

* * * * *

(b) Be able to maintain any required flight condition and make a smooth transition from any flight condition to any other flight condition without exceptional piloting skill, alertness, or strength, and without danger of exceeding the limit load factor under any operating condition probable for the type, including—

(1) Sudden failure of one engine, for multiengine rotorcraft meeting Transport Category A engine isolation requirements; and

(2) Sudden, complete power failure, for other rotorcraft; and

* * * * *

9. Section 29.143 (b)(1), (c), and (d) are amended to read as follows:

§ 29.143 Controllability and maneuverability.

* * * * *

(b) * * *

(1) Critical weight.

* * * * *

(c) A wind velocity of not less than 17 knots must be established in which the rotorcraft can be operated without loss of control on or near the ground in any maneuver appropriate to the type (such as crosswind takeoffs, sideward flight, and rearward flight), with—

(1) Critical center of gravity; and

(2) Critical rotor r.p.m.

(d) The rotorcraft, after (1) failure of one engine, in the case of multiengine rotorcraft that meet Transport Category A engine isolation requirements, or (2) complete power failure in the case of other rotorcraft, must be controllable over the range of speeds and altitudes for which certification is requested when such power failure occurs with maximum continuous power and critical weight. No corrective action time delay for any condition following power failure may be less than—

(i) For the cruise condition, one second, or normal pilot reaction time (whichever is greater); and

(ii) For any other condition, normal pilot reaction time.

10. Section 29.173(b) is amended to read as follows:

§ 29.173 Static longitudinal stability.

* * * * *

(b) The stick position versus speed curve may have a negative slope within the speed range specified for the maneuver in § 29.175(d) if the necessary negative stick travel does not exceed 1 inch measured at the top of the pilot's normal hand position.

11. Section 29.175(d)(2) is amended to read as follows:

§ 29.175 Demonstration of static longitudinal stability.

* * * * *

(d) * * *

(2) The stick position curve must have a stable slope, between the maximum approved rearward speed and a forward speed of 17 knots, with—

(i) The determined hovering weight (for Category A helicopters), or critical weight (for other helicopters);

(ii) The critical center of gravity;

(iii) Power required to maintain an approximately constant height in ground effect;

(iv) The landing gear retracted; and

(v) The helicopter trimmed for hovering.

12. Section 29.473 is amended to read as follows:

§ 29.473 Ground loading conditions and assumptions.

(a) For specified landing conditions, a design maximum weight must be used that is not less than the maximum weight. A rotor lift may be assumed to act through the center of gravity throughout the landing impact. This lift may not exceed two-thirds of the design maximum weight.

(b) Unless otherwise prescribed, for each specified landing condition, the rotorcraft must be designed for a limit load factor of not less than the limit inertia load factor substantiated under § 29.725.

(c) Triggering or actuating devices for additional or supplementary energy absorption may not fail under loads established in the tests prescribed in §§ 29.725 and 29.727, but the factor of safety prescribed in § 29.303 need not be used.

13. A new § 29.501 is added to read as follows:

§ 29.501 Ground loading conditions: landing gear with skids.

(a) *General.* Rotorcraft with landing gear with skids must be designed for the loading conditions specified in this section. In showing compliance with this section, the following apply:

(1) The design maximum weight, center of gravity, and load factor must be determined under §§ 29.471 through 29.475.

(2) Structural yielding of elastic spring members under limit loads is acceptable.

(3) Design ultimate loads for elastic spring members need not exceed those obtained in a drop test of the gear with—

(i) A drop height of 1.5 times that specified in § 29.725; and

(ii) An assumed rotor lift of not more than 1.5 times that used in the limit drop tests prescribed in § 29.725.

(4) Compliance with paragraph (b) through (e) of this section must be shown with—

(i) The gear in its most critically deflected position for the landing condition being considered; and

(ii) The ground reactions rationally distributed along the bottom of the skid tube.

(b) *Vertical reactions in the level landing attitude.* In the level attitude, and with the rotorcraft contacting the ground along the bottom of both skids, the vertical reactions must be applied as prescribed in paragraph (a) of this section.

(c) *Drag reactions in the level landing attitude.* In the level attitude, and with the rotorcraft contacting the ground along the bottom of both skids, the following apply:

(1) The vertical reactions must be combined with horizontal drag reactions of 50 percent of the vertical reaction applied at the ground.

(2) The resultant ground loads must equal the vertical load specified in paragraph (b) of this section.

(d) *Sideloads in the level landing attitude.* In the level attitude, and with the rotorcraft contacting the ground along the bottom of both skids, the following apply:

(1) The vertical ground reaction must be—

(i) Equal to the vertical loads obtained in the condition specified in paragraph (b) of this section; and

(ii) Divided equally among the skids.

(2) The vertical ground reactions must be combined with a horizontal sideload of 25 percent of their value.

(3) The total sideload must be applied along the length of one skid only.

(4) The unbalanced moments are assumed to be resisted by angular inertia.

(5) The skid gear must be investigated for—

(i) Inward acting sideloads; and

(ii) Outward acting sideloads.

(e) *One-skid landing loads in the level attitude.* In the level attitude, and with the rotorcraft contacting the ground along the bottom of one skid only, the following apply:

(1) The vertical load on the ground contact side must be the same as that obtained on that side in the condition specified in paragraph (b) of this section.

(2) The unbalanced moments are assumed to be resisted by angular inertia.

(f) *Special conditions.* In addition to the conditions specified in paragraphs (b) and (c) of this section, the rotorcraft must be designed for the following ground reactions:

(1) A ground reaction load acting up and aft at an angle of 45 degrees to the longitudinal axis of the rotorcraft. This load must be—

(i) Equal to 1.33 times the maximum weight;

(ii) Distributed symmetrically among the skids;

(iii) Concentrated at the forward end of the straight part of the skid tube; and

(iv) Applied only to the forward end of the skid tube and its attachment to the rotorcraft.

(2) With the rotorcraft in the level landing attitude, a vertical ground reaction load equal to one-half of the vertical load determined under paragraph (b) of this section. This load must be—

(i) Applied only to the skid tube and its attachment to the rotorcraft; and

(ii) Concentrated at a point midway between the skid tube attachments.

14. A new § 29.511 is added to read as follows:

§ 29.511 Ground load: unsymmetrical loads on multiple-wheel units.

(a) In dual-wheel gear units, 60 percent of the total ground reaction for the gear unit must be applied to one wheel and 40 percent to the other.

(b) To provide for the case of one deflated tire, 60 percent of the specified load for the gear unit must be applied to either wheel except that the vertical ground reaction may not be less than the full static value.

(c) In determining the total load on a gear unit, the transverse shift in the load centroid, due to unsymmetrical load distribution on the wheels, may be neglected.

15. New § 29.519 is added to read as follows:

§ 29.519 Hull type rotorcraft: Water-based, amphibian, and limited amphibian.

(a) *General.* For hull type rotorcraft, the structure must be designed to withstand the water loadings set forth in paragraphs (b), (c), and (d) of this section considering the most severe wave heights for which approval is desired. The loads for the landing conditions of paragraphs (b) and (c) of this section must be developed and distributed along and among the hull and auxiliary floats, if used, in a rational and conservative manner, assuming a rotor lift equal to two-thirds of the rotorcraft weight to act throughout the landing impact. For limited amphibian rotorcraft, a factor of safety of 1.15 may be applied to the loads specified in this section.

(b) *Vertical landing conditions.* The rotorcraft must initially contact the water surface at zero forward speed in likely pitch and roll attitudes which result in critical design loadings. The vertical descent velocity may not be less than 6.5 f.p.s.

(c) *Forward speed landing conditions.* The rotorcraft must contact the water at forward velocities from 0 up to 30 knots in likely pitched, rolled, and yawed attitudes and with a vertical decent velocity of not less than 6.5 f.p.s. A maximum forward velocity of less than 30 knots may be used in design if it can be demonstrated that the forward velocity selected would not be exceeded in a normal one-engine out landing.

(d) *Auxiliary float immersion condition.* In addition to the loads from the landing conditions, the auxiliary float, and its support and attaching structure in the hull, must be designed for the load developed by a fully immersed float

unless it can be shown that full immersion of the float is unlikely, in which case the highest likely float buoyancy load must be applied that considers loading of the float immersed to create restoring moments compensating for upsetting moments caused by side wind, asymmetrical rotorcraft loading, water wave action, and rotorcraft inertia.

16. Section 29.521 is amended to read as follows:

§ 29.521 Float landing conditions.

If certification for float operation (including float amphibian operation) is requested, the rotorcraft, with floats, must be designed to withstand the following loading conditions (where the limit load factor is determined under § 29.473(b) or assumed to be equal to that determined for wheel landing gear):

(a) Up-load conditions in which—

(1) A load is applied so that, with the rotorcraft in the static level attitude, the resultant water reaction passes vertically through the center of gravity; and

(2) The vertical load prescribed in subparagraph (1) of this paragraph is applied simultaneously with an aft component of 0.25 times the vertical component

(b) A side load condition in which—

(1) A vertical load of 0.75 times the total vertical load specified in paragraph (a)(1) of this section is divided equally among the floats; and

(2) For each float, the load share determined under subparagraph (1) of this paragraph, combined with a total side load of 0.25 times the total vertical load specified in subparagraph (1) of this paragraph, is applied to that float only.

17. A new § 29.549(e) is added to read as follows:

§ 29.549 Fuselage and rotor pylon structures.

* * * * *

(e) If approval for the use of a 2½-minute power is requested, each engine mount and adjacent structure must be designed to withstand the loads resulting from a limit torque equal to 1.25 times the mean torque for 2½-minute power combined with 1g. flight loads.

18. The subtopic "Main Rotor" following § 29.629 is changed to read "rotors".

19. Section 29.653 is amended to read as follows:

§ 29.653 Pressure venting and drainage of rotor blades.

(a) For each rotor blade—

(1) There must be means for venting the internal pressure of the blade;

(2) Drainage holes must be provided for the blade; and

(3) The blade must be designed to prevent water from becoming trapped in it.

(b) Paragraph (a) (1) and (2) of this section does not apply to sealed rotor blades capable of withstanding the maximum pressure differentials expected in service.

20. Section 29.659 is amended to read as follows:

§ 29.659 Mass balance.

(a) The rotor and blades must be mass balanced as necessary to—

(1) Prevent excessive vibration; and

(2) Prevent flutter at any speed up to the maximum forward speed.

(b) The structural integrity of the mass balance installation must be substantiated.

21. Section 29.661 is amended to read as follows:

§ 29.661 Rotor blade clearance.

There must be enough clearance between the rotor blades and other parts of the structure to prevent the blades from striking any part of the structure during any operating condition.

22. New § 29.663 is added to read as follows:

§ 29.663 Ground resonance prevention means.

(a) The reliability of the means for preventing ground resonance must be shown either by analysis and tests, or reliable service experience, or by showing that malfunction of a single means will not cause ground resonance.

(b) The probable range of variations, during service, of the damping action of the ground resonance prevention means must be investigated during the test required by § 29.241.

23. Section 29.725(a) is amended to read as follows:

§ 29.725 Limit drop test.

* * * * *

(a) The drop height must be at least 8 inches.

* * * * *

24. Section 29.751(b) is amended to read as follows:

§ 29.751 Main float buoyancy.

* * * * *

(b) Each main float must have enough water-tight compartments so that, with any single main float compartment flooded, the mainfloats will provide a margin of positive stability great enough to minimize the probability of capsizing.

25. Section 29.755 is amended to read as follows:

§ 29.755 Hull buoyancy.

(a) *Water-based and amphibian rotorcraft.* The hull and auxiliary floats, if used, must have enough watertight compartments so that, with any single compartment of the hull or auxiliary floats flooded, the buoyancy of the hull and auxiliary floats, and wheel tires if used, provides a margin of positive water stability great enough to minimize the probability of capsizing the rotorcraft for the worst combination of wave heights and surface winds for which approval is desired.

(b) *Limited amphibian rotorcraft.* For limited amphibian rotorcraft, the following apply:

(1) The hull and auxiliary floats, if used, must be divided into compartments so that, with any single compartment located in the likely area of water impact during landing flooded, the buoyancy of the hull and auxiliary floats, and wheel tires if used, will provide a sufficient margin of positive water stability to minimize the probability of capsizing the rotorcraft.

(2) The rotorcraft must remain afloat, after a landing on water, for at least one-half hour.

(3) The requirements of subparagraphs (1) and (2) of this paragraph apply considering the most severe combination of wave heights and wind conditions for which approval is desired.

26. A new § 29.757 is added to read as follows:

§ 29.757 Hull and auxiliary float strength.

The hull, and auxiliary floats if used, must withstand the water loads prescribed by § 29.519 with a rational and conservative distribution of local and distributed water pressures over the hull and float bottom.

§ 29.771 [Amended]

27. Section 29.771 is amended by deleting paragraphs (e) and (f) thereof.

28. Section 29.773(b)(2) is amended to read as follows:

§ 29.773 Pilot compartment view.

* * * * *

(b) * * *

(2) The first pilot must have a window that—

(i) Is openable under the conditions prescribed in subparagraph (1) of this paragraph; and

(ii) Provides the view prescribed in that subparagraph.

29. Section 29.803 is amended by adding the following new paragraph (c):

§ 29.803 Emergency evacuation.

* * * * *

(c) Limited amphibian rotorcraft must meet paragraphs (a) and (b) of this section. In addition, the following apply:

(1) Each external door, window, and exit must withstand the probable maximum local water pressures, unless it can be shown that its failure will not be hazardous to the passengers and crew or have an adverse effect on the rotorcraft's water stability that would preclude safe evacuation of the occupants.

(2) At least two exits, one per side, meeting the minimum dimensions of the exit specified in § 29.807(a)(4) and located above the water level must be provided for passenger seating capacities up to 39, inclusive. For passenger seating capacities from 40 to 59, inclusive, two exits, one per side, above the water level must be provided meeting the minimum dimensions of the exit specified in § 29.807(a)(3). In all cases, there must be at least one emergency exit located above the water level for each 35 passengers.

30. Section 29.805 is amended to read as follows:

§ 29.805 Flight crew emergency exits.

(a) For rotorcraft with passenger emergency exits that are not convenient to the flight crew, there must be flight crew emergency exits, on both sides of the rotorcraft or as a top hatch, in the flight crew area.

(b) Each flight crew emergency exit must be of sufficient size and must be located so as to allow rapid evacuation of the flight crew. This must be shown by test.

31. Section 29.807 is amended to read as follows:

§ 29.807 Passenger emergency exits.

(a) *Type.* For the purpose of this part, the types of passenger emergency exit are as follows:

(1) *Type I.* This type must have a rectangular opening of not less than 24 inches wide by 48 inches high, with corner radii not greater than one-third the width of the exit, in the passenger area in the side of the fuselage at floor level and as far away as practicable from areas that might become potential fire hazards in a crash.

(2) *Type II.* This type is the same as Type I, except that the opening must be at least 20 inches wide by 44 inches high.

(3) *Type III.* This type is the same as Type I, except that—

(i) The opening must be at least 20 inches wide by 36 inches high; and

(ii) The exits need not be at floor level.

(4) *Type IV.* This type must have a rectangular opening of not less than 19 inches wide by 26 inches high, with corner radii not greater than one-third the width of the exit, in the side of the fuselage with a step-up inside the rotorcraft of not more than 29 inches.

Openings with dimensions larger than those specified in this section may be used, regardless of shape, if the base of the opening has a flat surface of not less than the specified width.

(b) *Passenger emergency exits; side-of-fuselage.* Emergency exits must be accessible to the passengers and, except as provided in paragraph (d) of this section, must be provided in accordance with the following table:

Passenger seating capacity	Emergency exits for each side of the fuselage			
	Type I	Type II	Type III	Type IV
1 through 10	----	----	----	1
11 through 19	----	----	1 or---	2
20 through 39	----	1	----	1
40 through 59	1	----	----	1
60 through 79	1	----	1 or---	2

(c) *Passenger emergency exits; other than side-of-fuselage.* In addition to the requirements of paragraph (b) of this section—

(1) There must be enough openings in the top, bottom, or ends of the fuselage to allow evacuation with the rotorcraft on its side; or

(2) The probability of the rotorcraft coming to rest on its side in a crash landing must be extremely remote.

(d) *Ramp exits.* One Type I exit only, or one Type II exit only, that is required in the side of the fuselage under paragraph (b) of this section, may be installed instead in the ramp of floor ramp rotorcraft if—

(1) Its installation in the side of the fuselage is impractical; and

(2) Its installation in the ramp meets § 29.813.

(e) *Tests.* The proper functioning of each emergency exit must be shown by test.

32. Section 29.809 is amended to read as follows:

§ 29.809 Emergency exit arrangement.

(a) Each emergency exit must consist of a movable door or hatch in the external walls of the fuselage and must provide an unobstructed opening to the outside.

(b) Each emergency exit must be openable from the inside and from the outside.

(c) The means of opening each emergency exit must be simple and obvious and may not require exceptional effort.

(d) There must be means for locking each emergency exit and for preventing opening in flight inadvertently or as a result of mechanical failure.

(e) There must be means to minimize the probability of the jamming of any emergency exit in a minor crash landing as a result of fuselage deformation.

(f) Each land-based rotorcraft emergency exit (other than exits located over the wing) more than 6 feet from the ground with the rotorcraft on the ground and the landing gear extended, must have an approved slide, or its equivalent, for each floor level exit, and an approved rope, or its equivalent, for other exits. If a rope is used, it must be—

(1) Able, with its attachment, to withstand a 400-pound static load; and

(2) Attached to the fuselage structure at or above the top of the emergency exit opening, or (for the pilot's emergency exit window where the stowed rope would reduce the pilot's view in flight), at another approved location.

33. Section 29.811 is amended to read as follows:

§ 29.811 Emergency exit marking.

(a) Each passenger emergency exit, its means of access, and its means of opening must be conspicuously marked.

(b) The identity and location of each passenger emergency exit must be recognizable from a distance equal to the width of the cabin.

(c) The location of each passenger emergency exit must be indicated by a sign visible to occupants approaching along the main passenger aisle. There must be a locating sign—

(1) Next to or above the aisle near each floor emergency exit, except that one sign may serve two exits if both exists can be seen readily from that sign; and

(2) On each bulkhead or divider that prevents fore and aft vision along the passenger cabin, to indicate emergency exits beyond and obscured by it, except that if this is not possible the sign may be placed at another appropriate location.

(d) Each passenger emergency exit marking and each locating sign must have white letters 1 inch high on a red background 2 inches high, be self or electrically illuminated, and have a minimum luminescence (brightness) of at least 160 microlamberts. The colors may be reversed if this will increase the emergency illumination of the passenger compartment.

(e) The location of each passenger emergency exit operating handle and instructions for opening must be shown—

(1) For each emergency exit, by a marking on or near the exit that is readable from a distance of 30 inches; and

(2) For each Type I or Type II emergency exit with a locking mechanism released by rotary motion of the handle, by—

(i) A red arrow, with a shaft at least three-fourths inch wide and a head twice the width of the shaft, extending along at least 70 degrees of arc at a radius approximately equal to three-fourths of the handle length; and

(ii) The word "open" in red letters 1 inch high, placed horizontally near the head of the arrow.

(f) A source of light, independent of the main lighting system, must be installed to—

(1) Illuminate each passenger emergency exit marking and locating sign; and

(2) Provide enough general lighting in the passenger cabin so that the average illumination, when measured at 40-inch intervals at seat armrest height on the center line of the main passenger aisle, is at least 0.05 foot-candles.

(g) Each light required by paragraph (f) of this section must be designed to be operable manually, and to operate automatically when armed (if necessary), from the independent lighting system required by paragraph (f) of this section in a crash landing and whenever the rotorcraft's normal electrical power to the light is interrupted.

(h) Each emergency exit, and its means of opening, must be marked on the outside of the rotorcraft. In addition, the following apply:

(1) There must be a 2-inch colored band outlining each passenger emergency exit.

(2) Each outside marking, including the band, must have color contrast to be readily distinguishable from the surrounding fuselage surface. The contrast must be such that, if the reflectance of the darker color is 15 percent or less, the reflectance of the lighter color must be at least 45 percent. "Reflectance" is the ratio of the luminous flux reflected by a body to the luminous flux it receives. When the reflectance of the darker color is greater than 15 percent, at least a 30 percent difference between its reflectance and the reflectance of the lighter color must be provided.

(l) Exits marked as such, though in excess of the required number of exits, must meet the requirements for emergency exits of the particular type. Emergency exits need only be marked with the word "Exit."

34. Section 29.853(f) is amended to read as follows:

§ 29.853 Compartment interiors.

* * * * *

(f) At least the following number of hand fire extinguishers must be conveniently located in passenger compartments:

Passenger capacity:	*Fire extinguishers*
7 through 30	1
31 through 60	2
61 or more	3

35. Section 29.855(d) is amended, and new § 29.855(e) is added to read as follows:

§ 29.855 Cargo and baggage compartments.

* * * * *

(d) Each cargo and baggage compartment that is not sealed so as to contain cargo compartment fires completely without endangering the safety of a rotorcraft or its occupants must be designed, or must have a device, to ensure detection of fires by a crewmember while at his station and to prevent the accumulation of harmful quantities of smoke, flame, extinguishing agents, and other noxious gases in any crew or passenger compartment. This must be shown in flight.

(e) For rotorcraft used for the carriage of cargo only, the cabin area may be considered a cargo compartment and, in addition to paragraphs (a) through (d) of this section, the following apply:

(1) There must be means to shut off the ventilating airflow to or within the compartment. Controls for this purpose must be accessible to the flight crew in the crew compartment.

(2) Required crew emergency exits must be accessible under all cargo loading conditions.

(3) Sources of heat within each compartment must be shielded and insulated to prevent igniting the cargo.

36. A new § 29.901(b)(5) is added to read as follows:

§ 29.901 Installation.

* * * * *

(b) * * *

(5) Axial and radial expansion of turbine engines may not affect the safety of the installation.

37. Section 29.903(c), introductory paragraph, is amended to read as follows:

§ 29.903 Engines.

* * * * *

(c) *Category A; control of engine rotation.* For each Category A rotorcraft, there must be means for stopping and restarting any engine individually in flight, except that, for turbine engine installations, the means for stopping the engine need be provided only where necessary for safety. In addition—

* * * * *

38. Section 29.927 is amended to read as follows:

§ 29.927 Additional tests.

(a) Any additional dynamic, endurance, and operational tests, and vibratory investigations necessary to determine that the rotor drive mechanism is safe, must be performed.

(b) If turbine engine power output to the transmission can exceed the highest engine or transmission power rating, and that output is not directly controlled by the pilot under normal operating conditions (such as where the primary engine power control is accomplished through the flight control), the following test must be made:

(1) Under conditions associated with all engines operating, make 200 applications, for 10 seconds each, of torque that is at least equal to the lesser of—

(i) The maximum torque used in meeting § 29.923 plus 10 percent; or

(ii) The maximum torque attainable under probable operating conditions, assuming that torque limiting devices, if any, function properly.

(2) For multiengine rotorcraft under conditions associated with each engine, in turn, becoming inoperative, apply to the remaining transmission power inputs the maximum torque attainable under probable operating conditions, assuming that torque limiting devices, if any, function properly. Each transmission input must be tested at this maximum torque for at least one hour.

(3) The tests prescribed in this paragraph must be conducted on the rotorcraft and the power must be absorbed by the rotors to be installed, except that other ground or flight test facilities with other appropriate methods of power absorption may be used if the conditions of support and vibration closely simulate the conditions that would exist during a test on the rotorcraft.

39. Section 29.991 (b) and (c) are amended to read as follows:

§ 29.991 Fuel pumps.

* * * * *

(b) *Emergency pumps.* There must be emergency pumps or another main pump to feed the engines immediately after the failure of any main pump (other than a fuel injection pump approved as part of the engine).

(c) *Installation.* The following fuel pump installation requirements apply:

(1) When necessary for the maintenance of the proper fuel pressure—

(i) A connection must be provided to transmit the carburetor air intake static pressure to the proper fuel pump relief valve connection; and

(ii) The gauge balance lines must be independently connected to the carburetor inlet pressure to avoid incorrect fuel pressure readings;

(2) The installation of fuel pumps having seals or diaphragms that may leak must have means for draining leaking fuel; and

(3) Each drain line must discharge where it will not create a fire hazard.

40. A new § 29.997(e) is added to read as follows:

§ 29.997 Fuel strainer or filter.

* * * * *

(e) Unless there are means in the fuel system to prevent the accumulation of ice of the filter, there must be means to automatically maintain the fuel flow if ice-clogging of the filter occurs.

41. Section 29.1041(a) is amended to read as follows:

§ 29.1041 General.

(a) The powerplant cooling provisions must be able to maintain the temperatures of powerplant components, engine fluids, and the carburetor intake air within safe values under any critical surface (ground or water) and flight operating conditions, and after normal engine shutdown.

* * * * *

42. Section 29.1091(d) is amended and (f) is added to read as follows:

§ 29.1091 Air induction.

* * * * *

(d) Each reciprocating engine must have an alternate air source.

* * * * *

(f) For turbine engine powered rotorcraft—

(1) There must be means to prevent hazardous quantities of fuel leakage or overflow from drains, vents, or other components of flammable fluid systems from entering the engine intake system; and

(2) The air inlet ducts must be located or protected so as to minimize the ingestion of foreign matter during takeoff, landing, and taxiing.

43. Section 29.1093 is amended to read as follows:

§ 29.1093 Induction system icing protection.

(a) *Reciprocating engines.* Each reciprocating engine air induction system must have means to prevent and eliminate icing. Unless this is done by other means, it must be shown that, in air free of visible moisture at a temperature of 30° F., and with the engines at 60 percent of maximum continuous power—

(1) Each rotorcraft with sea level engines using conventional venturi carburetors has a preheater that can provide a heat rise of 90° F.;

(2) Each rotorcraft with sea level engines using carburetors tending to prevent icing has a preheater that can provide a heat rise of 70° F.;

(3) Each rotorcraft with altitude engines using conventional venturi carburetors has a preheater that can provide a heat rise of 120° F.; and

(4) Each rotorcraft with altitude engines using carburetors tending to prevent icing has a preheater that can provide a heat rise of 100° F.

(b) *Turbine engines.* Each turbine engine must be able to operate, throughout

its flight power range, without adverse effect on engine operation or serious loss of power or thrust, under the icing conditions specified in Appendix C of Part 25 of this chapter.

44. A new § 29.1121(h) is added to read as follows:

§ 29.1121 General.

* * * * *

(h) If significant traps exist, each turbine engine exhaust system must have drains discharging clear of the rotorcraft, in any normal ground and flight attitudes, to prevent fuel accumulation after the failure of an attempted engine start.

45. A new § 29.1163(d) is added to read as follows:

§ 29.1163 Powerplant accessories.

* * * * *

(d) Torque limiting means must be provided on all accessory drives that are located on the transmission, including drives on gearboxes that are part of the transmission, in order to prevent the torque limits established for those drives from being exceeded.

46. Section 29.1181 is amended to read as follows:

§ 29.1181 Designated fire zones: regions included.

(a) Designated fire zones are—

(1) The engine power section of reciprocating engines;

(2) The engine accessory section of reciprocating engines;

(3) Any complete powerplant compartment in which there is no isolation between the engine power section and the engine accessory section, for reciprocating engines;

(4) Any auxiliary power unit compartment;

(5) Any fuel-burning heater and other combustion equipment installation described in § 29.859;

(6) The compressor and accessory sections of turbine engines; and

(7) The combustor, turbine, and tailpipe sections of turbine engine installations except sections that do not contain lines and components carrying flammable fluids or gases and are isolated from the designated fire zone prescribed in subparagraph (6) of this paragraph by a firewall that meets § 29.1191.

47. Section 29.1189(a) is amended to read as follows:

§ 29.1189 Shutoff means.

(a) There must be means to shut off or otherwise prevent hazardous quantities of fuel, oil, deicing fluid, and other flammable fluids from flowing into, within, or through any designated fire zone, except that this means need not be provided—

(1) For lines and fittings forming an integral part of an engine; or

(2) In the case of reciprocating engines only, for engine oil systems in Category B rotorcraft using engines of less than 500 cubic inches displacement.

* * * * *

48. Section 29.1191(a) is amended to read as follows:

§ 29.1191 Firewalls.

(a) Each engine, including the combustor, turbine, and tailpipe sections of turbine engine installations, must be isolated by a firewall, shroud, or equivalent means, from personnel compartments, structures, controls, rotor mechanisms, and other parts that are—

(1) Essential to controlled flight and landing; and

(2) Not protected under § 29.861.

* * * * *

49. Section 29.1193(e)(3) is amended to read as follows:

§ 29.1193 Cowling and engine compartment covering.

* * * * *

(e) * * *

(3) Have fireproof skin in areas subject to flame if a fire starts in or burns out of any designated fire zone.

50. A new § 29.1194 is added to read as follows:

§ 29.1194 Other surfaces.

All surfaces aft of, and near, engine compartments and designated fire zones, other than tail surfaces not subject to heat, flames, or sparks emanating from a designated fire zone or engine compartment, must be at least fire resistant.

51. Section 29.1195(a) is amended to read as follows:

§ 29.1195 Fire extinguishing systems.

(a) Each turbine engine powered rotorcraft and Category A reciprocating engine powered rotorcraft, and each Category B reciprocating engine powered rotorcraft with engines of more than 1,500 cubic inches must have a fire extinguishing system for the designated fire zones. The fire extinguishing system for a powerplant must be able to simultaneously protect all zones of the powerplant compartment for which protection is provided.

* * * * *

52. Section 29.1203(a) is amended to read as follows:

§ 29.1203 Fire detector systems.

(a) For each turbine engine powered rotorcraft and Category A reciprocating engine powered rotorcraft, and for each Category B reciprocating engine powered rotorcraft with engines of more than 900 cubic inches displacement, there must be approved, quick-acting fire detectors in designated fire zones and in the combustor, turbine, and tailpipe sections of turbine installations (whether or not such sections are designated fire zones) in numbers and locations ensuring prompt detection of fire in those zones.

* * * * *

53. Section 29.1305(a) is amended to read as follows:

§ 29.1305 Powerplant instruments.

(a) For each rotorcraft—

(1) A carburetor air temperature indicator for each reciprocating engine;

(2) A cylinder head temperature indicator for each air-cooled reciprocating engine, and a coolant temperature indicator for each liquid-cooled reciprocating engine;

(3) A fuel quantity indicator for each fuel tank;

(4) If an engine can be supplied with fuel from more than one tank, a warning device to indicate, for each tank, when a 5-minute usable fuel supply remains when the rotorcraft is in the most adverse fuel feed condition for that tank, regardless of whether that condition can be sustained for the 5 minutes;

(5) A manifold pressure indicator, for each reciprocating engine of the altitude type;

(6) An oil pressure warning device for each pressure-lubricated gearbox to indicate when the oil pressure falls below a safe value;

(7) An oil quantity indicator for each oil tank and each rotor drive gearbox, if lubricant is self-contained;

(8) An oil temperature indicator for each engine;

(9) An oil temperature warning device to indicate unsafe oil temperatures in each main rotor drive gearbox, including gearboxes necessary for rotor phasing;

(10) A gas temperature indicator for each turbine engine;

(11) A gas producer rotor tachometer for each turbine engine;

(12) A tachometer for each engine that, if combined with the applicable instrument required by subparagraph (13) of this paragraph, indicates rotor r.p.m. during autorotation.

(13) At least one tachometer to indicate, as applicable—

(i) The r.p.m. of the single main rotor;

(ii) The common r.p.m. of any main rotors whose speeds cannot vary appreciably with respect to each other; and

(iii) The r.p.m. of each main rotor whose speed can vary appreciably with respect to that of another main rotor;

(14) A free power turbine tachometer for each turbine engine; and

(15) A means, for each turbine engine, to indicate power for that engine.

* * * * *

54. A new § 29.1322 is added to read as follows:

§ 29.1322 Warning, caution, and advisory lights.

If warning, caution, or advisory lights are used, they must be—

(a) Red, for warning lights (lights indicating a hazard requiring immediate corrective action);

(b) Amber, for caution lights (lights indicating the possible need for future corrective action); and

(c) Green, for advisory lights (lights used solely for information not indicating the need for corrective action).

55. Section 29.1323 (b)(2), (c), and (d) are amended to read as follows:

§ 29.1323 Airspeed indicating system.

* * * * *

(b) * * *

(2) During takeoff, with repeatable and readable indications that ensure—

(i) Consistent realization of the field lengths specified in the Rotorcraft Flight Manual; and

(ii) Avoidance of the critical areas of the limiting height-speed envelope established under § 29.79.

* * * * *

(c) For multiengine rotorcraft, the airspeed error of the installation may not exceed 3 percent, or 5 knots, whichever is greater—

(1) Throughout the speed range in level flight at forward speeds of 30 knots or over; and

(2) Throughout the speed range in climb from 10 knots below the takeoff climbout safety speed to 10 knots above the best rate of climb speed.

(d) For single engine rotorcraft, calibration of the airspeed indicator must be made in flight at forward speeds of 20 knots or over. The airspeed error of the installation may not exceed 3 percent, or 5 knots, whichever is greater, at any forward speed above 80 percent of the climbout speed.

* * * * *

56. Secton 29.1325(e) is amended to read as follows:

§ 29.1325 Static air vent and pressure altimeter systems.

* * * * *

(e) Each system must be designed and installed so that the error in indicated pressure altitude at sea level with a standard atmosphere, excluding instrument calibration error, does not result in an error of more than ±30 feet in the level flight speed range from 0 knots to $0.9V_H$.

57. A new § 29.1461 is added to read as follows:

§ 29.1461 Equipment containing high energy rotors.

(a) Equipment containing high energy rotors must meet paragraph (b), (c), or (d) of this section.

(b) High energy rotors contained in equipment must be able to withstand damage caused by malfunctions, vibration, abnormal speeds, and abnormal temperatures. In addition—

(1) Auxiliary rotor cases must be able to contain damage caused by the failure of high energy rotor blades; and

(2) Equipment control devices, systems, and instrumentation must reasonably ensure that no operating limitations affecting the integrity of high energy rotors will be exceeded in service.

(c) It must be shown by test that equipment containing high energy rotors can contain any failure of a high energy rotor that occurs at the highest speed obtainable with the normal speed control devices inoperative.

(d) Equipment containing high energy rotors must be located where rotor failure will neither endanger the occupants nor adversely affect continued safe flight.

58. Section 29.1505(b) is amended to read as follows:

§ 29.1505 Never-exceed speed.

* * * * *

(b) V_{NE} may vary with altitude, r.p.m., temperature, and weight, if—

(1) No more than two of these variables (or no more than two instruments integrating more than one of these variables) are used at one time; and

(2) The ranges of these variables (or of the indications on instruments integrating more than one of these variables) are large enough to allow an operationally practical and safe variation of V_{NE}.

59. Section 29.1521 (b) and (c) are amended to read as follows:

§ 29.1521 Powerplant limitations.

* * * * *

(b) *Takeoff operation.* The powerplant takeoff operation must be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value shown during the type tests;

(2) The maximum allowable manifold pressure (for reciprocating engines);

(3) The maximum allowable turbine inlet or turbine outlet gas temperature (for turbine engines);

(4) The maximum allowable power or torque for each engine, considering the power input limitations of the transmission with all engines operating;

(5) The maximum allowable power or torque for each engine considering the power input limitations of the transmission with one engine inoperative;

(6) The time limit for the use of the power corresponding to the limitations established in subparagraphs (1) through (5) of this paragraph; and

(7) If the time limit established in subparagraph (6) of this paragraph exceeds 2 minutes—

(i) The maximum allowable cylinder head or coolant outlet temperature (for reciprocating engines); and

(ii) The maximum allowable engine and transmission oil temperatures.

(c) *Continuous operation.* The continuous operation must be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value shown during the type tests;

(2) The minimum rotational speed shown under the rotor speed requirements in § 29.1509(c).

(3) The maximum allowable manifold pressure (for reciprocating engines);

(4) The maximum allowable turbine inlet or turbine outlet gas temperature (for turbine engines);

(5) The maximum allowable power or torque for each engine, considering the power input limitations of the transmission with all engines operating;

(6) The maximum allowable power or torque for each engine, considering the power input limitations of the transmission with one engine inoperative; and

(7) The maximum allowable temperatures for—

(i) The cylinder head or coolant outlet (for reciprocating engines);

(ii) The engine oil; and

(iii) The transmission oil.

* * * * *

60. Section 29.1557(d) is amended to read as follows:

§ 29.1557 Miscellaneous markings and placards.

* * * * *

(d) *Emergency exit placards.* Each placard and operating control for each emergency exit must differ in color from the surrounding fuselage surface as prescribed in § 29.811(h)(2). A placard must be near each emergency exit control and must clearly indicate the location of that exit and its method of operation.

61. Section 29.1565 is amended to read as follows:

§ 29.1565 Tail rotor.

Each tail rotor must be marked so that its disc is conspicuous under normal daylight ground conditions.

62. Section 29.1583(c) is amended to read as follows:

§ 29.1583 Operating limitations.

* * * * *

(c) *Weight and loading distribution.* The weight and center of gravity limits required by §§ 29.25 and 29.27, respectively, must be furnished. If the variety of possible loading conditions warrants, instructions must be included to allow ready observance of the limitations.

* * * * *

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

Issued in Washington, D.C., on January 19, 1968.

D. D. THOMAS,
Acting Administrator.

[F.R. Doc. 68-977; Filed, Jan. 25, 1968; 8:45 a.m.]

SUBCHAPTER B—PROCEDURAL RULES

[Docket No. 8678; Amdt. 11-9]

PART 11—GENERAL RULE-MAKING PROCEDURES

Miscellaneous Amendments

The purpose of these amendments to Part 11 of the Federal Aviation Regulations is to (1) authorize the Administrator to provide time periods during which repetitious petitions for medical exemptions will not be considered; and (2) remove the provision for placing in the official rule-making docket additional medical information or further medical examination obtained from a petitioner for medical exemption at the request of the advisory panel of medical experts.

Until now, a person denied a medical exemption could file and obtain consideration of another petition at any time. This has been done promptly in a

number of instances, followed by repeated denials because of the same disqualifying medical condition.

Even under the best management or therapy the human organism may well need time to show significant progress toward recovery after experiencing a disqualifying medical condition under Part 67, and this time varies from one individual to another and from one condition to another. In the area of medical exemptions it is appropriate to provide that, as applied on an individual basis, a new petition may not be considered until after the lapse of a given period of time appropriate to the disqualifying condition. Before the expiration of such a time, medical considerations make it impossible to sensibly reevaluate the effects upon safety of a given medical deficiency (such as an established medical history or clinical diagnosis of myocardial infarction, chronic alcoholism or drug addiction) that has remained either active or in a state of remission. To attempt reevaluation before that time has elapsed would elicit no meaningful information that could reasonably be expected to alter a previously made decision. In other words, given the same basic fact situation, reconsidering a medical case within a fixed period of time may be a purely repetitious review that is time consuming, imposes an unreasonable workload and financial burden upon the FAA, and subjects the petitioner himself to false hopes and eventual disappointment.

Since exemption from standard medical requirements is a discretionary function under the Federal Aviation Act of 1958, a proper balancing of the interest of the applicant against cost-benefit considerations in Government operations requires dismissal of exemption petitions during that minimum period.

These amendments therefore provide that the advisory panel of medical specialists may, when recommending the denial of a petition for exemption, also advise the Administrator in an appropriate case that, as a matter of individual medical consideration, an exemption may not be entertained before a certain minimum period of time has elapsed. On this advice the Administrator may determine that a second or any subsequent petition for exemption from the requirements of Part 67 may not be considered before a predetermined period of time elapses.

These amendments also delete from § 11.55 the provision that the Federal Air Surgeon sends to be placed in the official rule-making docket a copy of additional medical information or further medical examination obtained from the petitioner at the panel's request. The provision is deleted because medical information relating to an individual is, for the most part, properly withheld from public disclosure.

Since these amendments are procedural in nature, notice and public procedure thereon are not required.

In consideration of the foregoing, § 11.55 of the Federal Aviation Regulations is amended as follows, effective February 25, 1968.

1. By inserting a sentence at the end of paragraph (b) to read as follows:

(b) * * * If the panel recommends denial of the petition, it may advise the Administrator that medical considerations make it impossible to consider favorably another petition for exemption from the petitioner before the expiration of a period of time stated by the panel.

2. By striking out the words "and shall send a copy to be placed in the official rule making docket" in the second sentence of paragraph (c).

3. By inserting a sentence at the end of paragraph (e) to read as follows:

(e) * * * The Administrator may, upon the advice of the panel, provide in a denial of the petition that another petition for exemption from the applicant will not be considered before a date fixed not later than the end of the period of time stated by the panel. If the Administrator so provides, another petition from the applicant will be dismissed if filed before that date.

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

Issued in Washington, D.C., on January 19, 1968.

D. D. THOMAS,
Acting Administrator.

[F.R. Doc. 68-976; Filed, Jan. 25, 1968; 8:45 a.m.]

SUBCHAPTER F—AIR TRAFFIC AND GENERAL OPERATING RULES

[Reg. Docket No. 8672; Amdt. 95-163]

PART 95—IFR ALTITUDES

Miscellaneous Amendments

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

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

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (24 F.R. 5662), Part 95 of The Federal Aviation Regulations is amended, effective February 29, 1968 as follows:

1. By amending Subpart C as follows:

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

From, to, and MEA

Mount Healthy INT, Ohio; Richmond, Ind., LF/RBN; 2,300.

Richmond, Ind., LF/RBN; Cincinnati, Ohio, VOR; 2,400.

Richmond, Ind., LF/RBN; Indianapolis, Ind., LF/RBN; 2,900.

Richmond, Ind., LF/RBN; Mount Healthy INT, Ohio; 2,300.

Richmond, Ind., LF/RBN; Dayton, Ohio, VOR or ILS/LOM; 2,400.

Richmond, Ind., LF/RBN; Arba INT, Ind.; 2,300.

Savannah, Ga., VOR; Alma, Ga., VOR; *3,000. *1,500—MOCA.

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

Gainesville, Fla., VOR; Roy INT, Fla.; *4,000. *1,400—MOCA.

Harrison INT, Ga.; Norcross, Ga., VOR; 3,000.

Section 95.6003 *VOR Federal airway 3* is amended to read in part:

Vance, S.C., VOR; Florence, S.C., VOR; 2,000.

Section 95.6004 *VOR Federal airway 4* is amended to read in part:

Byers, INT, Colo.; Thurman, Colo., VOR; *8,000. *7,000—MOCA.

Topeka, Kans., VOR via N alter.; Easton INT, Kans. via N alter.; *2,700. *2,400—MOCA.

Easton INT, Kans. via N alter.; Farley INT, Mo. via N alter.; *2,700. *2,300—MOCA.

Jerome INT, Idaho; Burley, Idaho, VOR; 6,500.

Evansville, Ind., VOR; Lamar INT, Ind.; 2,500.

Evansville, Ind., VOR via N alter.; Holland INT, Ind. via N alter.; 2,500.

Holland INT, Ind. via N alter.; St. Marks INT, Ind. via N alter.; *4,500. *1,700—MOCA.

Section 95.6012 *VOR Federal airway 12* is amended to read in part:

Blue Springs, Mo., VOR; *Odessa INT, Mo.; **2,700. *4,000—MRA. **2,200—MOCA.

Odessa INT, Mo.; Booneville INT, Mo.; *2,700. *2,200—MOCA.

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

Camden INT, Mo.; Dearborn INT, Mo.; *2,800. *2,300—MOCA.

Dearborn INT, Mo.; St. Joseph, Mo., VOR; 2,800.

Section 95.6018 *VOR Federal airway 18* is amended to read in part:

Raytown INT, Ga.; Augusta, Ga., VOR; *2,100. *1,900—MOCA.

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

*Crosby INT, Tex., via N alter.; Fannett INT, Tex., via N alter.; **2,000. *2,000—MRA. **1,300—MOCA.

Fannett INT, Tex., via N alter.; Beaumont, Tex., VOR via N alter.; *2,000. *1,400—MOCA.

Beaumont, Tex., VOR, via N alter.; Peveto INT, Tex., via N alter.; *1,500. *1,400—MOCA.

Peveto INT, Tex., via N alter; Orange INT, Tex., via N alter.; 1,500.

Section 95.6036 *VOR Federal airway 36* is amended to read in part:

From, to, and MEA

United States-Canadian border via S alter.; Grand Island INT, N.Y., via S alter.; 2,500.
Grand Island INT, N.Y., via S alter.; Buffalo, N.Y., VOR via S alter.; 2,300.

Section 95.6038 *VOR Federal airway 38* is amended to read in part:

Peotone, Ill., VOR; Int, 138° M rad, Chicago Heights VOR and 096° M rad, Peotone VOR; *2,500. *2,200—MOCA.
Int, 138° M rad, Chicago Heights VOR and 096° M rad, Peotone VOR; Claypool INT, Ind.; *4,000. *2,200—MOCA.
Claypool INT, Ind.; Fort Wayne, Ind., VOR; *2,600. *2,200—MOCA.

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

Raleigh-Durham, N.C., VOR; Chapel Hill INT, N.C.; *4,000. *2,000—MOCA.
Chapel Hill INT, N.C.; Kimes INT, N.C.; *4,000. *2,500—MOCA.

Section 95.6047 *VOR Federal airway 47* is amended to read in part:

Evansville, Ind. VOR; Holland INT, Ind.; 2,500.
Holland INT, Ind.; St. Marks INT, Ind.; *4,500. *1,700—MOCA.
St. Marks INT, Ind.; Henryville INT, Ind.; *4,500. *2,200—MOCA.
Henryville INT, Ind.; Nabb, Ind., VOR; *3,000. *2,200—MOCA.

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

Troy, Ill., VOR; Cartter INT, Ill.; 2,100.

Section 95.6056 *VOR Federal airway 56* is amended to read in part:

Geneva INT, Ga.; *Junction INT, Ga.; **2,400. *4,000—MRA. **1,900—MOCA.

Section 95.6070 *VOR Federal airway 70* is amended to read in part:

Picayune, Miss., VOR; Greene County, Miss., VOR; *9,500. *1,500—MOCA.

Section 95.6094 *VOR Federal airway 94* is amended to read in part:

Chrome INT, Ariz.; San Simon, Ariz., VOR; *10,000. *9,700—MOCA.

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

Americus INT, Ga.; *Junction City INT, Ga.; **3,500. *4,000—MRA. **1,800—MOCA.
Junction City INT, Ga.; Grant INT, Ga.; *4,000. *1,500—MOCA.
Grant INT, Ga.; Concord INT, Ga.; *3,000. *2,600—MOCA.
Knoxville, Tenn., VOR; Norris INT, Tenn.; 3,300.

Section 95.6115 *VOR Federal airway 115* is amended to read in part:

Crestview, Fla., VOR; Montgomery, Ala., VOR; 2,500.

Section 95.6144 *VOR Federal airway 144* is amended to read in part:

Peotone, Ill., VOR; Int, 138° M rad, Chicago Heights VOR and 096° M rad, Peotone VOR; *2,500. *2,200—MOCA.
Int, 138° M rad, Chicago Heights VOR and 096° M rad, Peotone VOR; Claypool INT, Ind.; *4,000. *2,200—MOCA.
Claypool INT, Ind.; Fort Wayne, Ind., VOR; *2,600. *2,200—MOCA.

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

Vance, S.C., VOR; Florence, S.C., VOR; 2,000.

Section 95.6159 *VOR Federal airway 159* is amended to read in part:

Camden INT, Mo.; Dearborn INT, Mo.; *2,800. *2,300—MOCA.
Dearborn INT, Mo.; St. Joseph, Mo., VOR; 2,800.
Palm Beach, Fla., VOR; Parkway INT, Fla.; *1,600. *1,300—MOCA.
Parkway INT, Fla.; Pluto INT, Fla.; *1,600. *1,100—MOCA.

Section 95.6177 *VOR Federal airway 177* is amended to read in part:

Fort Wayne, Ind., VOR; Claypool INT, Ind.; *2,600. *2,200—MOCA.
Claypool INT, Ind.; Int, 138° M rad, Chicago Heights VOR and 096° M rad, Peotone VOR; *4,000. *2,200—MOCA.
Int, 138° M rad, Chicago Heights VOR and 096° M rad, Peotone VOR; Chicago Heights, Ill., VOR; *2,600. *2,200—MOCA.

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

Cypress INT, Tex.; *Crosby INT, Tex.; **6,000. *2,000—MRA. **1,600—MOCA.
Crosby INT, Tex.; Fannett INT, Tex.; *2,000. *1,300—MOCA.
Fannett INT, Tex.; Beaumont, Tex., VOR; *2,000. *1,400—MOCA.
Cypress INT, Tex., via N alter.; Daisetta, Tex., VOR via N alter.; *3,000. *1,600—MOCA.
Daisetta, Tex., VOR via N alter.; Silsbee INT, Tex., via N alter.; 1,600.
Silsbee INT, Tex., via N alter.; Orange INT, Tex., via N alter.; *2,200. *2,000—MOCA.

Section 95.6263 *VOR Federal airway 263* is amended to delete:

Hugo, Colo., VOR; Kiowa, Colo., VOR; 8,200.

Section 95.6363 *VOR Federal airway 263* is amended by adding:

Hugo, Colo., VOR; Gill, Colo., VOR; *10,100. *8,000—MOCA.

Section 95.6280 *VOR Federal airway 280* is amended to read in part:

Topeka, Kans., VOR; Easton INT, Kans.; *2,700. *2,400—MOCA.
Easton INT, Kans.; Farley INT, Mo.; *2,700. *2,300—MOCA.

Section 95.6289 *VOR Federal airway 289* is amended to read in part:

Kountze INT, Tex.; Lufkin, Tex., VOR; *3,000. *1,600—MOCA.

Section 95.6306 *VOR Federal airway 306* is amended to read in part:

Daisetta, Tex., VOR; Silsbee INT, Tex.; 1,600.
Silsbee INT, Tex.; Orange INT, Tex.; *2,200. *2,000—MOCA.

Section 95.6310 *VOR Federal airway 310* is amended to read in part:

Kimes INT, N.C.; Chapel Hill INT, N.C.; *4,000. *2,500—MOCA.
Chapel Hill INT, N.C.; Raleigh-Durham, N.C., VOR; *4,000. *2,000—MOCA.

Section 95.6329 *VOR Federal airway 329* is added to read:

From, to, and MEA

Corky INT, Fla.; Montgomery, Ala., VOR; 3,000.

Section 95.6420 *VOR Federal airway 420* is added to read:

Green Bay, Wis. VOR; Traverse City, Mich., VOR; *3,500. *2,300—MOCA.

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

Muzon INT, Alaska; Larch Bay DME Fix, Alaska; *%12,000. *4,000—MOCA.
Larch Bay DME Fix, Alaska; Biorka Island, Alaska, VOR; %4,500. %MEA is established with a gap in navigation signal coverage.
Biorka Island, Alaska, VOR; Salisbury DME Fix, Alaska; #5,300.
Salisbury DME Fix, Alaska; *Harbor Point INT, Alaska; **#9,000. *15,000—MRA. **2,000—MOCA. #MEA is established with a gap in navigation signal coverage.

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

Troy, Ill., VOR; Cartter INT, Ill.; 2,100.

Section 95.6454 *VOR Federal airway 454* is amended to read in part:

Fort Mill, S.C., VOR; Liberty, N.C., VOR; *2,600. *2,500—MOCA.

Section 95.6484 *VOR Federal airway 484* is amended to read in part:

Gunnison, Colo., VOR; Homelake DME Fix, Colo.; *14,600. *13,900—MOCA.
Homelake DME Fix, Colo.; Alamosa, Colo., VOR; Southbound; 10,000. Northbound; 14,600.

Section 95.6492 *VOR Federal airway 492* is amended to read in part:

Pahokee, Fla., VOR; Palm Beach, Fla., VOR; *1,600. *1,300—MOCA.
Pluto INT, Fla., via N alter.; Parkway INT, Fla., via N alter.; *1,600. *1,100—MOCA.
Parkway INT, Fla., via N alter.; Palm Beach, Fla., VOR via N alter.; *1,600. *1,300—MOCA.

2. By amending Subpart D as follows:

Section 95.8003 *VOR Federal airway changeover points:*

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

V–54 is amended to delete:
Muscle Shoals, Ala., VOR; Huntsville, Ala., VOR; 25; Muscle Shoals.
V–94 is amended by adding:
Casa Grande, Ariz., VOR; San Simon, Ariz., VOR; 82; Casa Grande.

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

Issued in Washington, D.C., on January 17, 1968.

R. S. SLIFF,
Acting Director,
Flight Standards Service.

[F.R. Doc. 68–930; Filed, Jan. 25, 1968; 8:45 a.m.]

[Reg. Docket No. 8666; Amdt. 578]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

The amendments to the standard instrument approach procedures contained herein are adopted to become effective when indicated in order to promote safety. The amended procedures supersede the existing procedures of the same classification now in effect for the airports specified therein. For the convenience of the users, the complete procedure is republished in this amendment indicating the changes to the existing procedures.

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

In view of the foregoing and pursuant to the authority delegated to me by the Administrator (24 F.R. 5662), Part 97 (14 CFR Part 97) is amended as follows:

1. By amending § 97.11 of Subpart B to amend low or medium frequency range (L/MF), automatic direction finding (ADF) and very high frequency omnirange (VOR) procedures as follows:

LFR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
					2-engine or less		More than 2-engine, more than 65 knots
From—	To—	Course and distance	Minimum altitude (feet)	Condition	65 knots or less	More than 65 knots	
Delta Island Int	AC LFR	Direct	1500	T-dn-24	600-1	600-1	200-½
				T-dn-6	300-1	300-1	
AN LOM	AC LFR	Direct	1500	C-dn	600-1	600-1	600-1½
				A-dn	800-2	800-2	800-2

Procedure turn W side S crs, 183° Outbnd, 003° Inbnd, 1500′ within 10 miles.
Minimum altitude over facility on final approach crs, 900′.
Crs and distance, facility to airport, 006°—5.8 miles.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 5.8 miles after passing AC LFR, turn left, climb to 1500′ on N crs to AC LFR.
MSA within 25 miles of facility: NE, 8600′; SE, 6000′; SW, 3000′; NW, 1500′.

City, Anchorage; State, Alaska; Airport name, Merrill Field; Elev., 136′; Fac. Class., SBRAZ; Ident., AC; Procedure No. LFR-1, Amdt. 15; Eff. date, 17 Feb. 68; Sup. Amdt. No. 1, Amdt. 14; Dated, 20 Nov. 65

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
					2-engine or less		More than 2-engine, more than 65 knots
From—	To—	Course and distance	Minimum altitude (feet)	Condition	65 knots or less	More than 65 knots	
R 154°, GRW VORTAC clockwise	R 254°, GRW VORTAC	Via 10-mile DME Arc.	2400	T-d	300-1	300-1	200-½
				C-d	700-1	700-1	700-1½
R 350°, GRW VORTAC counterclockwise	R 254°, GRW VORTAC	Via 10-mile DME Arc.	1900	S-d-5*	700-1	700-1	700-1
10-mile DME Fix, R 254°	GRW VORTAC (final)	R 254°	1900	A-d#	800-2	800-2	800-2
				DME Minimums:			
				S-d-5	400-1	400-1	400-1
				C-d	600-1	600-1	600-1½

Procedure turn S side of crs, 254° Outbnd, 074° Inbnd, 2400′ within 10 miles.
Minimum altitude over facility on final approach crs, 1900′; 5-mile DME Fix, 854′.
Crs and distance, facility to airport, 074°—9.5 miles; 5-mile DME Fix, 074°—4.5 miles.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 9.5 miles after passing GRW VORTAC, turn right, climb to 2400′, return to GRW VORTAC. Hold SW, 254° Outbnd, 074° Inbnd, 1-minute right turns.
NOTES: (1) Cancel flight plan with Greenwood Flight Service Station when landing assured or immediately after landing. (2) Use Greenwood, Miss., municipal altimeter setting and weather information.
CAUTION: Terrain 400′, 1 mile E of airport.
*Reduction not authorized.
#Alternate minimums authorized for air carriers only, provided such air carriers have approval of their arrangements for weather service at this airport.
MSA within 25 miles of facility: 000°–180°—1800′; 180°–270°—2400′; 270°–360°—1600′.

City, Greenwood; State, Miss.; Airport name, Greenwood-Le Flore; Elev., 154′; Fac. Class., H-BVORTAC; Ident., GRW; Procedure No. VOR Runway 5, Amdt. 1; Eff. date, 17 Feb. 68; Sup. Amdt. No. Orig.; Dated, 30 Sept. 67

VOR STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Keansburg VHF Int	Prospect Int/9.3-mile DME Fix	Via LGA R 220°	2500	T-dn	300-1	300-1	200-½
Prospect Int/9.3-mile DME Fix	Diamond Int/5-mile DME Fix (final)	Via LGA R 220°	1200	C-dn	700-2	700-2	700-2
				A-dn	800-2	800-2	800-2

Radar available.
Procedure turn not authorized.
Minimum altitude on final approach crs (LGA R 220°) over Prospect Int (9.3-mile DME Fix), 2500'; over Diamond Int (5-mile DME Fix), 1200'; over facility, 721'.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 mile after passing LGA VOR, climb to 4000' on LGA VOR, R 045° to Stamford Int. Cross Scarsdale Int at 3000' or above. Hold NE Stamford Int, 1-minute left turns, Inbnd crs, 225°.
NOTES: (1) Radar vectors may be substituted for the above transitions. (2) Dual VOR receivers or VOR/DME receiver required for this procedure.
MSA within 25 miles of facility: 010°-100°—2000'; 100°-190°—1600'; 190°-280°—2600'; 280°-010°—2600'.

City, New York; State, N.Y.; Airport name, La Guardia; Elev., 21'; Fac. Class., L-VOR/DME; Ident., LGA; Procedure No. VOR-2, Amdt. 7; Eff. date, 17 Feb. 68; Sup. Amdt. No. 6; Dated, 10 Jan. 67

SIT LFR	BKA VOR	Direct	1700	T-d	500-2	500-2	500-2
20-mile DME Fix (R 339°)	10-mile DME Fix (R 339°)	159°-10 miles	4000	T-n	700-2	700-2	700-2
10-mile DME Fix (R 339°)	BKA VOR	159°-10 miles	1700	C-dn	700-2	700-2	700-2
9-mile DME Fix (R 099°)	4-mile DME Fix (R 099°)	279°-5 miles	4000	A-dn	800-2	800-2	800-2
4-mile DME Fix (R 099°)	BKA VOR	279°-4 miles	1700				
10-mile DME Fix (R 295°)	BKA VOR	Direct	1700				
10-mile DME Fix (R 120°)	BKA VOR	Direct	1700				

Procedure turn S side of crs, 181° Outbnd, 001° Inbnd, 1700' within 10 miles.
Minimum altitude over facility on final approach crs, 1000'.
Crs and distance, facility to airport, 001°—12.9 miles.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3 miles after passing BKA VOR, turn left, climbing to 1700' on R 181° within 13 miles.
NOTE: Visual flight required from missed approach point to airport.
CAUTION: High terrain E of R 001° within 9.5 miles of VOR. Mount Edgecumbe 3274', 13 miles N of VOR.
MSA within 25 miles of facility: 000°-090°—8000'; 090°-180°—4800'; 180°-270°—1000'; 270°-360°—4300'.

City, Sitka; State, Alaska; Airport name, Sitka; Elev., 19'; Fac. Class., H-BVORTAC; Ident., BKA; Procedure No. VOR-1, Amdt. 2; Eff. date, 17 Feb. 68; Sup. Amdt. No. 1; Dated, 23 Dec. 67

2. By amending § 97.11 of Subpart B to cancel low or medium frequency range (L/MF), automatic direction finding (ADF) and very high frequency omnirange (VOR) procedures as follows:

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	

PROCEDURE CANCELED, EFFECTIVE 17 FEB. 1968.

City, Colts Neck; State, N.J.; Airport name, Colts Neck; Elev., 100'; Fac. Class., L-VORTAC; Ident., COL; Procedure No. VOR-1, Amdt. 2; Eff. date, 22 July 67; Sup. Amdt. No. VOR 1, Amdt. 1; Dated, 3 Sept. 66

3. By amending § 97.11 of Subpart B to delete low or medium frequency range (L/MF), automatic direction finding (ADF) and very high frequency omnirange (VOR) procedures as follows:

Independence, Kans.—Independence Municipal, NDB (ADF) Runway 35, Amdt. 2, 6 May 67 (established under Subpart C).
San Juan, P.R.—Puerto Rico International, NDB (ADF) Runway 35, Amdt. 9, 9 Dec. 67 (established under Subpart C).
San Juan, P.R.—Puerto Rico International, VOR 1, Amdt. 9, 14 May 66 (established under Subpart C).
Toledo, Ohio—Toledo Municipal, VOR 1, Amdt. 2, 17 Dec. 66 (established under Subpart C).

4. By amending § 97.13 of Subpart B to delete terminal very high frequency omnirange (TerVOR) procedures as follows:

San Juan, P.R.—Puerto Rico International, TerVOR-7, Amdt. 6, 14 May 66 (established under Subpart C).
San Juan, P.R.—Puerto Rico International, TerVOR-25, Amdt. 7, 14 May 66 (established under Subpart C).

5. By amending § 97.15 of Subpart B to amend very high frequency omnirange-distance measuring equipment (VOR/DME) procedures as follows:

VOR/DME STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
					2-engine or less		More than 2-engine, more than 65 knots
From—	To—	Course and distance	Minimum altitude (feet)	Condition	65 knots or less	More than 65 knots	
R 196°, DCA VOR/DME clockwise	R 332°, DCA VOR/DME	Via 10-mile DME Arc DCA, R 322° lead radial.	3000	T-dn	300-1	300-1	200-½
				C-dn#	700-1	700-1	700-2
				S-dn-18#*	700-1	700-1	700-2
R 022°, DCA VOR/DME counterclockwise	R 332°, DCA VOR/DME	Via 10-mile DME Arc DCA, R 342° lead radial.	3000	A-dn	800-2	800-2	800-2

Radar available.
Procedure turn not authorized. Final approach crs, 152° Inbd from 10-mile DME Fix.
Minimum altitude over 10-mile DME Fix on final approach crs, 3000'; 7-mile DME Fix, 2100'; 5-mile DME Fix, 1500'; 3-mile DME Fix, 900'; 715' over facility.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 mile, of DCA VOR/DME, make right-climbing turn direct to DC NDB at 1800'. Hold S, 001° Inbd, 1-minute left turns.
CAUTION: Washington Monument 596', 1.6 miles N of airport.
*Reduction not authorized.
#All turbojet aircraft 700-2.
MSA within 25 miles of facility: 090°-270°—1900'; 270°-090°—2500'.

City, Washington; State, D.C.; Airport name, Washington National; Elev., 15'; Fac. Class., VOR/DME; Ident., DCA; Procedure No. VOR/DME Runway 18, Amdt. 1; Eff. date, 17 Feb. 68; Sup. Amdt. No. Orig.; Dated, 1 Oct. 67

6. By amending § 97.17 of Subpart B to amend instrument landing system (ILS) procedures as follows:

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
					2-engine or less		More than 2-engine, more than 65 knots
From—	To—	Course and distance	Minimum altitude (feet)	Condition	65 knots or less	More than 65 knots	
Mentor Int	LOM	Direct	2300	T-dn	300-1	300-1	300-1
Strongsville VOR	LOM	Direct	3000	C-dn#	700-1	700-1	700-1½
Vermillion Int	LOM	Via SUM RBn	2400	S-dn-24 L & R*	600-1	600-1	600-1
				A-dn$	800-2	800-2	800-2

Radar available.
Procedure turn NW side of crs, 062° Outbnd, 242° Inbnd, 2300' within 10 miles.
Minimum altitude over LOM on final approach crs, 1900'.
Crs and distance, LOM to airport, 242°—5.3 miles.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished at the middle marker, make immediate right turn to 330° heading, climb to 2000', intercept CXR R 285°, climb to 3000', proceed to Crib Int. Hold E, 1-minute left turns, 285° Inbnd or, when directed by ATC, make immediate right-climbing turn to 2300', proceed to LOM. Hold NE, 1-minute, right turns, 242° Inbnd.
NOTES: (1) Use Cleveland, Ohio, altimeter setting when control zone not in effect. (2) No glide slope.
CAUTION: Numerous high structures S in immediate vicinity of airport.
#Circling not authorized SE of Runways 6-24.
$Alternate minimums not authorized during time control zone not in effect.
*Reduction not authorized.
MSA within 25 miles of LOM: 000°-090°—2600'; 090°-180°—2700'; 180°-270°—3000'; 270°-360°—2100'.

City, Cleveland; State, Ohio; Airport name, Burke Lakefront; Elev., 584'; Fac. Class., ILS; Ident., I-BFT; Procedure No. LOC Runways 24 R and L, Amdt. 1; Eff. date, 17 Feb. 68; Sup. Amdt. No. Orig.; Dated, 20 May 67

Stonewall Int	LOM (final)	Direct	1600	T-dn*	300-1	300-1	200-½
				C-dn	500-1	500-1	500-1½
		Direct	1600	S-dn-1R*	200-½	200-½	200-½
				A-dn	600-2	600-2	600-2
				Category II special authorization required: TDZ elevation 313'; decision heights—S-dn-1R, DH 150, RVR-1600' 463' MSL, RA 149'; S-n-1R, DH 100, RVR-1200', 413' MSL, RA 95'.			

Radar available.
Procedure turn W side of crs, 186° Outbnd, 006° Inbnd, 1600' within 10 miles. Procedure turn must be authorized by ATC.
Minimum altitude at glide slope interception Inbnd, 1600'.
Altitude of glide slope and distance to approach end of runway at OM, 1597'—4.6 miles; at MM, 515'—0.6 mile; at IM, 413'-1203'.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.6 miles after passing LOM, proceed direct to Poolesville RBn. Hold N, 186° bearing Inbnd, 2800', 1-minute, right turns.
Supplementary charting information: Category II DH 463', MSL located 2323' from runway threshold, DH 413' MSL located 1203' from runway threshold.
*RVR 2000' 4-engine turbojet; RVR 1800' other aircraft. Descent below 513' not authorized unless ALS visible.
#Category II missed approach: Proceed direct to Poolesville RBn. Hold N 186° bearing Inbnd, 2800', 1-minute right turns, if contact with visual guidance system not established at DH.
MSA within 25 miles of LOM: 000°-090°—2100'; 090°-180°—1700'; 180°-270°—2400'; 270°-360°—2500'.

City, Washington; State, D.C.; Airport name, Dulles International; Elev., 313'; Fac. Class., ILS; Ident., I-DIA; Procedure No. ILS Runway 1R, Amdt. 6; Eff. date, 17 Feb. 68; Sup. Amdt. No. 5; Dated, 5 Aug. 67

7. By amending § 97.19 of Subpart B to amend radar procedures as follows:

RADAR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If a radar instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below. Positive identification must be established with the radar controller. From initial contact with radar to final authorized landing minimums, the instructions of the radar controller are mandatory except when (A) visual contact is established on final approach at or before descent to the authorized landing minimums, or (B) at pilot's discretion if it appears desirable to discontinue the approach, except when the radar controller may direct otherwise prior to final approach, a missed approach shall be executed as provided below when (A) communication on final approach is lost for more than 5 seconds during a precision approach, or for more than 30 seconds during a surveillance approach; (B) directed by radar controller; (C) visual contact is not established upon descent to authorized landing minimums; or (D) if landing is not accomplished.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
000°	360°	0–25 miles	2600		Precision approach#		
110°	240°	25–35 miles	2600	T–dn*	300–1	300–1	**300–1
110°	240°	35–40 miles	2700	C–dn%	600–1	700–1	700–1½
				S–dn–18@	400–1	400–1	400–1
				A–dn	800–2	800–2	800–2

Radar transition altitudes: All bearings and distances are from Kansas City Radar site.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished, make right turn, climbing to 2700′ on a heading of 270°, intercept the STJ VOR R 165°, turn N to Farley Int.

CAUTION: Numerous obstructions all quadrants.

*No reduction in takeoff minimums except Runway 36. **200–½ authorized Runway 36 only. *Unless radar vectored when weather is below 1000–3:

(a) Aircraft taking off S or SW and planned route is between 090° and 180°, intercept the RIS VOR R 210° or MKC VOR R 190°, climb to 2500′ before proceeding on crs.

(b) Aircraft taking off N or NE and planned route is between 090° and 180°, climb to 2500′ before proceeding S of the 090° ADF bearing from KC LMM.

#PAR on operational standby status-service available on pilot request only.

%Circling or straight-in approaches to Runways 3, 35, and 36 not authorized when MKC weather sequence remarks indicate cloud height below authorized minimums. Circling not authorized E of airport in sector from 090° through 180°.

@500–1 required when approach lights inoperative. Reduction not authorized.

City, Kansas City; State, Mo.; Airport name, Municipal; Elev., 758′; Fac. Class and Ident., Kansas City Radar; Procedure No. Radar–1, Amdt. 7; Eff. date, 17 Feb. 68; Sup. Amdt. No. 1, Amdt. 6; Dated, 22 Oct. 66

RADAR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If a radar instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below. Positive identification must be established with the radar controller. From initial contact with radar to final authorized landing minimums, the instructions of the radar controller are mandatory except when (A) visual contact is established on final approach at or before descent to the authorized landing minimums, or (B) at pilot's discretion if it appears desirable to discontinue the approach, except when the radar controller may direct otherwise prior to final approach, a missed approach shall be executed as provided below when (A) communication on final approach is lost for more than 5 seconds during a precision approach, or for more than 30 seconds during a surveillance approach; (B) directed by radar controller; (C) visual contact is not established upon descent to authorized landing minimums; or (D) if landing is not accomplished.

Radar terminal area maneuvering sectors and altitudes														Ceiling and visibility minimums			
From	To	Dist.	Alt.	Dist.	Alt.	Dist.	Alt.	Dist.	Alt.	Dist.	Alt.	Dist.	Alt.	Condition	2-engine or less		More than 2-engine, more than 65 knots
															65 knots or less	More than 65 knots	
RADAR TERMINAL AREA MANEUVERING SECTORS AND ALTITUDES														CEILING AND VISIBILITY MINIMUMS			
From	To	Dist.	Alt.	Dist.	Alt.	Dist.	Alt.	Dist.	Alt.	Dist.	Alt.	Dist.	Alt.	Condition	Two Engine or Less		More Than Two Engine, More Than 65 Knots
															65 Knots or Less	More Than 65 Knots	
000°	360°	10	%2500	20	3000	----	----	40	5000	----	----	----	----		Surveillance approach		
000°	340°	----	----	25	3000	30	4000	----	----	----	----	----	----	T–dn@	300–1	300–1	200–½
340°	360°	----	----	25	4000	----	----	----	----	----	----	----	----	C–dn	500–1	500–1	500–1½
														S–dn*	500–1	500–1	500–1
														S–dn–10L/28L, 32 & 10 R**#	400–1	400–1	400–1
														A–dn	800–2	800–2	800–2

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished: Runways 5, 10R, 14—Climb to 3000′ within 10 miles and proceed to GP LOM, hold E, right turn, 1-minute, 277° Inbnd. Runways 23, 28R, 32—Climb to 3000′ within 10 miles and proceed to Creek RBn. Hold W, right turn, 1-minute, 097° Inbnd. Runway 10L—Make left-climbing turn to 3000′ on a 360° crs, proceed direct to EWC VOR, hold N, 1-minute right turns, 182° Inbnd. Runway 28L—Make left-climbing turn to 3000′ on a 180° crs. Proceed direct to AGC VOR. Hold S, 1-minute right turns, 354° Inbnd.

CAUTION: Runway 28R approach: Fluorescent street lights alined with Runway 28R and terminating approximately ¾ mile from runway end. Can be mistaken for runway lights.

**On approaches to Runway 32, do not descend below 1700′ until radar advises passing water tank 1410′, 3.3 miles from approach end of Runway 32.

@RVR 2000′ 4-engine turbojets; 1800′ other aircraft authorized for takeoff on Runway 28R.

*All runways except 10L, 28L, 32, and 10R.

%Radar control will provide 1000′ vertical clearance within 3-mile radius of 2049′ TV antenna 10 miles E of radar antenna.

#Runways 28L, 10L, and 10R: 400–¾ authorized, except for 4-engine turbojet aircraft, with operative high-intensity runway lights.

#Runways 28L, 10L: 400–½ authorized, except for 4-engine turbojet aircraft, with operative ALS.

#Runway 32: 400–¾ authorized, except for 4-engine turbojet aircraft, with operative REIL.

City, Pittsburgh; State, Pa.; Airport name, Greater Pittsburgh; Elev., 1203′; Fac. Class., and Ident., Pittsburgh Radar; Procedure No. Radar–1, Amdt. 11; Eff. date, 17 Feb. 68; Sup. Amdt. No. 1, Amdt. 10; Dated, 19 Nov. 66

8. By amending § 97.23 of Subpart C to establish very high frequency omnirange (VOR) and very high frequency-distance measuring equipment (VOR/DME) procedures as follows:

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE VOR

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL, except HAT, HAA, and RA. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles or hundreds of feet RVR.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator. Initial approach minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Terminal routes				Missed approach
From	To	Via	Minimum altitude (feet)	MAP: 0 mile after passing SJU VORTAC
Isla Verde Int/10.4-mile DME Fix	4-mile DME, R 094°	R 094°	700	Climb to 1800′ right turn to R 359° within 10 miles of SJU VORTAC. Supplementary charting information: Reil to be commissioned Runway 25 and removed from Runway 7.

Procedure turn not authorized.
Approach crs profile starts at Isla Verde Int/10.4-mile DME Fix.
Final approach crs, 274°.
MDA over Isla Verde Int., 1500′; 4-mile DME Fix, 700′.
MSA: 000°–090°—1200′; 090°–180°—4600′; 180°–270°—5100′; 270°–360°—1800′.

NOTES: (1) ASR. (2) Sliding scale not authorized.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
C	700	1	691	700	1	691	700	1½	691	700	2	691
	VOR/DME minimums:											
C	480	1	471	480	1	471	480	1½	471	560	2	551
A	Standard		T 2 eng or less—Standard					T over 2 eng—Standard				

City, San Juan; State, P.R.; Airport name, Puerto Rico International; Elev., 9′; Fac. Class., SJU; Procedure No. VOR-1, Amdt. 10; Eff. date, 17 Feb. 68; Sup. Amdt. No. 9; Dated, 14 May 66

Terminal routes				Missed approach
From	To	Via	Minimum altitudes (feet)	Map: 4.6 miles after passing Antenna Int.
SJU NDB	SJU VORTAC	Direct	1800	Turn right and climb to 1500′ on R 094° within 15 miles of SJU VORTAC.
R 341°, SJU VORTAC counterclockwise	R 260°, SJU VORTAC (NOPT)	11-mi. DME Arc SJU, R 270° lead radial.	1800	
R 260°, 11-mile DME Fix	Antenna Int (NOPT)	Direct	1500	Supplementary charting information: REIL Runway 7 to be removed and commissioned Runway 25. ALS to be commissioned to Runway 7.

Procedure turn N side of crs, 260° Outbnd, 080° Inbnd, 1800′ within 11 miles of SJU VORTAC.
FAF, Antenna Int. Final approach crs, 080°. Distance FAF to MAP, 4.6 miles.
Minimum altitude over 11-mile DME Fix, 1800′; Antenna Int/6-mile DME Fix, 1500′.
MSA: 000°–090°—1200′; 090°–180°—4600′; 180°–270°—5100′; 270°–360°—1800′.

NOTE: ASR.
*1¼ mile required for Category D with inoperative ALS.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-7	520	½	511	520	½	511	520	½	511	520	*1	511
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	520	1	511	520	1	511	520	1½	511	560	2	551
A	Standard		T 2 eng or less—Standard					T over 2 eng—Standard				

City, San Juan; State, P.R.; Airport name, Puerto Rico International; Elev., 9′; Fac. Class., SJU; Procedure No. VOR Runway 7, Amdt. 7; Eff. date, 17 Feb. 68; Sup. Amdt. No. TerVOR-7, Amdt. 6; Dated, 14 May 66

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE VOR—Continued

Terminal routes				Missed approach
From	To	Via	Minimum Altitude (feet)	MAP: 0 mile after passing SJU VORTAC.
SJU NDB	SJU VORTAC	24.2–101°	1800	Climb to 1800′ right turn to R 359° within 10 miles of SJU VORTAC.
SJP NDB	SJU VORTAC	6.1–076°	1600	
R 304°, SJU VORTAC clockwise	R 066°, SJU VORTAC	10-mile DME Arc SJU, R 056° lead radial.	1800	Supplementary charting information: REIL to be commissioned to Runway 25, and removed from Runway 7.
R 094°, SJU VORTAC counterclockwise	R 066°, SJU VORTAC	10-mile DME Arc	1500	
R 066°, 10-mile DME Fix	SJU VORTAC (NOPT)	Direct	400	

Procedure turn N side of crs, 066° Outbnd, 246° Inbnd, 1500′ within *9 miles of SJU VORTAC.
Final approach crs, 246°.
Minimum altitude over SJU VORTAC, 400′.
MSA: 000°–090°—1200′; 090°–180°—4600′; 180°–270°—5100′; 270°–360°—1800′.
NOTE: ASR.
*Procedure turn not authorized for Category B, C, D aircraft when warning area (W-368) active; when inactive, procedure turn limits extended to 10 miles.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-25	400	1	391	400	1	391	400	1	391	400	1	391
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	480	1	471	480	1	471	480	1½	471	560	2	551
A	Standard		T 2 eng or less—Standard					T over 2 eng—Standard				

City, San Juan; State, P.R.; Airport name, Puerto Rico International; Elev., 9′; Fac. Class., SJU; Procedure No. VOR Runway 25, Amdt. 8; Eff. date, 17 Feb. 68; Sup. Amdt. No. TerVOR-25, Amdt. 7; Dated, 14 May 66

Terminal routes				Missed approach
From	To	Via	Minimum altitude (feet)	MAP: 9.5 miles after passing VWV VOR.
				Make right-climbing turn to 2200′; proceed to Waterville VOR and hold.
				Supplementary charting information: Hold SW Waterville VOR R 299°, right turns, 1 minute, 049° Inbnd.

Procedure turn S side of crs, 229° Outbnd, 049° Inbnd, 2200′ within 10 miles of VWV VORTAC.
FAF, VWV VORTAC. Final approach crs, 049°. Distance FAF to MAP, 9.5 miles.
Minimum altitude over VWV VORTAC, 2200′.
MSA: 000°–090°—3100′; 090°–180°—2400′; 180°–360°—2200′.
NOTES: (1) Radar vectoring. (2) Use Toledo Express altimeter setting.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S	1420	1	798	1420	1¼	798		NA			NA	
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	1420	1	798	1420	1¼	798		NA			NA	
A	Not authorized		T 2 eng or less—Standard					T over 2 eng—Standard				

City, Toledo; State, Ohio; Airport name, Toledo Municipal; Elev., 622′; Fac. Class., VWV; Procedure No. VOR Runway 4, Amdt. 3; Eff. date, 17 Feb. 68; Sup. Amdt. No. VOR 1, Amdt. 2; Dated, 17 Dec. 66

9. By amending § 97.27 of Subpart C to establish nondirectional beacon (automatic direction finder) (NDB/ADF) procedures as follows:

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE NDB(ADF)

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL, except HAT, HAA, and RA. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles or hundreds of feet RVR.
If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator. Initial approach minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Terminal routes				Missed approach
From	To	Via	Minimum altitudes (feet)	Map: IDP NDB.
Tyro Int	IDP NDB	Direct	2600	Right turn, climb to 2600′ on 185° crs from IDP NDB, turn left to IDP NDB. Supplementary charting information: Final approach crs intercepts runway centerline 600′ from threshold.
Liberty Int	IDP NDB	Direct	2600	
CFV NDB	IDP NDB	Direct	2600	
OSW VOR	IDP NDB	Direct	2600	

Procedure turn E side of crs, 185° Outbnd, 005° Inbnd, 2600′ within 10 miles of IDP NDB.
Final approach crs, 005°.
Minimum altitude over Bolton Int, 1500′.
MSA: 090°–270°—2300′; 270°–090°—2600′.

NOTES: (1) Lights operating Runways 17/35 only. (2) Use Chanute, Kans., altimeter setting.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-35	1500	1	680	1500	1	680	1500	1¼	680		NA	
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	1500	1	680	1500	1	680	1500	1½	680		NA	
Dual ADF minimums:												
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-35	1400	1	580	1400	1	580	1400	1	580		NA	
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	1400	1	580	1400	1	580	1400	1½	580		NA	
A	Not authorized		T 2 eng or less—Standard				T over 2 eng—Standard					

City, Independence; State, Kans.; Airport name, Independence Municipal; Elev., 820′; Fac. Class., IDP; Procedure No. NDB(ADF) Runway 35, Amdt. 3; Eff. date, 17 Feb. 68; Sup. Amdt. No. 2; Dated, 6 May 67

Terminal routes				Missed approach
From	To	Via	Minimum altitude (feet)	MAP: 4.6 miles after passing SJP NDB/LOM.
SJU VORTAC	SJP NDB/LOM	Direct	1600	Climb to 1600′ on crs of 075° within 15 miles of SJP NDB. Supplementary charting information: REIL Runway 7 to be removed and commissioned Runway 25. ALS to be commissioned to Runway 7. San Pat NDB and ILS OM collocated.
SJU NDB	SJP NDB/LOM	Direct	1600	
San Lorenzo Int	SJP NDB/LOM	Direct	3000	
Greenwater Int	SJP NDB/LOM	Direct	2000	
Coral Int	SJP NDB/LOM	Direct	1600	
Mangrove Int	SJP NDB/LOM	Direct	2000	
Caribbean Int	SJP NDB/LOM	Direct	2000	
Guaynabo Int	SJP NDB/LOM	Direct	3200	

Procedure turn N side of crs, 285° Outbnd, 105° Inbnd, 1600′ within 10 miles of SJP NDB/LOM.
FAF, SJP NDB/LOM. Final approach crs, 075°. Distance FAF to MAP, 4.6 miles.
Minimum altitude over SJP NDB/LOM, 1500′.
MSA: 000°–090°—1300′; 090°–180°—5100′; 180°–270°—5100′; 270°–360°—1800′.

NOTES: (1) ASR. (2) Sliding scale not authorized.
*1¼ miles required for Category D with inoperative ALS.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
S-7	560	¾	551	560	¾	551	560	¾	551	560	*1	551
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	560	1	551	560	1	551	560	1½	551	560	2	551
A	Standard		T 2 eng or less—Standard				T over 2 eng—Standard.					

City, San Juan; State, P.R.; Airport name, Puerto Rico International; Elev., 9′; Fac. Class., SJP; Procedure No. NDB(ADF) Runway 7, Amdt. 10; Eff. date, 17 Feb. 68; Sup. Amdt. No. 9; Dated, 9 Dec. 67

10. By amending § 97.29 of Subpart C to establish instrument landing system (ILS) procedures as follows:

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE ILS

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL, except HAT, HAA, and RA. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles or hundreds of feet RVR.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator. Initial approach minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Terminal Routes				Missed approach
From	To	Via	Minimum altitudes (feet)	Map: ILS DH 209'; LOC 4.6 miles after passing NBD/LOM.
SJU NDB	Townsend Int	Direct	2200	Climb to 1600' on E crs of LOC within 15 miles.
Townsend Int	SJP NDB/LOM	Direct	1500	
R 341°, SJU VORTAC CCW	LOC crs SJU R 255°	11-mile DME Arc SJU, R 265° lead radial.	1800	Supplementary charting information: REIL Runway 7 to be removed and commissioned Runway 25. ALS to be commissioned to Runway 7. TDZ elevation, 9'.
LOC crs 11-mile DME Fix SJU, R 255°	SJP NDB/LOM	LOC crs	1500	

Procedure turn not authorized.
Approach crs (profile) starts at Townsend Int.
FAF, SJP, NDB. Final approach crs, 075°. Distance FAF to MAP, 4.6 miles.
Minimum altitude over Townsend Int, 2200'.
Minimum glide slope interception altitude, 1500'. Glide slope altitude at OM, 1421'; MM, 212'.
Distance to runway threshold at: OM, 4.6 miles; MM, 0.5 mile.
MSA within 25 miles of SJP NDB/OM: 000°-090°—1300'; 090°-180°—5100'; 180°-270°—5100'; 270°-360°—1800'.

NOTE: ASR.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D		
	DH	VIS	HAT	DH	VIS	HAT	DH	VIS	HAT	DH	VIS	HAT
S-7	209	½	200	209	½	200	209	½	200	209	½	200
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
LOC	520	½	511	520	½	511	520	½	511	520	1	511
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	520	1	511	520	1	511	520	1½	511	560	2	551
A	Standard			T 2 eng or less—Standard					T over 2 eng—Standard			

City, San Juan; State, P.R.; Airport name, Puerto Rico International; Elev., 9'; Fac. Class., I-SJU; Procedure No. ILS Runway 7, Amdt. Orig.; Eff. date, 17 Feb. 68

11. By amending § 97.31 of Subpart C to establish precision approach radar (PAR) and airport surveillance radar (ASR) procedures as follows:

STANDARD INSTRUMENT APPROACH PROCEDURE—TYPE RADAR

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL, except HAT, HAA, and RA. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles or hundreds of feet RVR.

If a radar instrument approach is conducted at the below named airport, it shall be accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure authorized for such airport by the Administrator. Initial approach minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below. Positive identification must be established with the radar controller. From initial contact with radar to final authorized landing minimums, the instructions of the radar controller are mandatory except when (A) visual contact is established on final approach at or before descent to the authorized landing minimums, or (B) at Pilot's discretion if it appears desirable to discontinue the approach. Except when the radar controller may direct otherwise prior to final approach, a missed approach shall be executed as provided below when (A) communication on final approach is lost for more than 5 seconds during a precision approach, or for more than 30 seconds during a surveillance approach; (B) directed by radar controller; (C) visual contact is not established upon descent to authorized landing minimums; or (D) if landing is not accomplished.

Radar terminal area maneuvering sectors and altitudes (sectors and distances measured from radar antenna)												Notes
From	To	Distance	Altitude	Distance	Altitude	Distance	Altitude	Distance	Altitude	Distance	Altitude	
000°	360°	10	1700									1. Descend aircraft to MDA after 5-mile Radar Fix from approach end of Runway 16. 2. CAUTION: 614' tower on final approach to Runway 16. 3. Radar antenna site at NAS Albany.

Vectoring beyond 10 miles as established by NAS Albany ASR minimum altitude vectoring chart.
Missed approach—Climb to 2000' on a 157° heading within 10 miles.

DAY AND NIGHT MINIMUMS

Cond.	A			B			C			D		
	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT	MDA	VIS	HAT
ASR												
S-16	880	1¼	684	880	1½	684	880	1¾	684	880	2	684
	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA	MDA	VIS	HAA
C	880	1¼	684	880	1½	684	880	1¾	684	920	2	724
A	Standard		T 2 eng or less—Standard				T over 2 eng—Standard					

City, Albany; State, Ga.; Airport name, Albany Municipal; Elev., 196'; Fac. Class., NAS Albany Radar; Procedure No. Radar-1, Amdt. Orig.; Eff. date, 17 Feb. 68

These procedures shall become effective on the dates specified therein.

(Secs. 307(c), 313(a), 601, Federal Aviation Act of 1958; 49 U.S.C. 1348(c), 1354(a), 1421; 72 Stat. 749, 752, 775)

Issued in Washington, D.C., on January 11, 1968.

EDWARD C. HODSON,
Acting Director, Flight Standards Service.

[F.R. Doc. 68-681; Filed, Jan. 25, 1968; 8:45 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

PART 228—TIRE ADVERTISING AND LABELING GUIDES

Tire Description

The Federal Trade Commission has deleted the second sentence of the note under subdivision (ii) of § 228.1(b)(3) of the Tire Advertising and Labeling Guides to read as follows:

§ 228.1 **Tire description.**

* * * * *

(b) * * *

(3) *Other disclosures.* * * *

(ii) *Load-carrying capacity and inflation pressure.* * * *

NOTE: Automobile manufacturers who provide tires as original equipment with new automobiles should incorporate such information in the owner's manual given to new car purchasers.

[Guide 1]

(Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46)

Approved: January 16, 1968.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 68-983; Filed, Jan. 25, 1968; 8:45 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER A—GENERAL

PART 8—COLOR ADDITIVES

Subpart—Provisional Regulations

POSTPONEMENT OF CLOSING DATES OF PROVISIONAL LISTING; CANCELLATION OF CERTIFICATES

The color additive amendments of 1960 (Public Law 86-618; 74 Stat. 404; 21 U.S.C. 376, note) authorize the Secretary of Health, Education, and Welfare to postpone the closing date of a provisional listing of a color additive on his own initiative or upon application of an interested person. Requests have been received to postpone the closing dates of provisional listings of a number of color additives because scientific investigations necessary for listing these color additives under section 706 of the Federal Food, Drug, and Cosmetic Act have not been completed.

The Commissioner of Food and Drugs finds that postponement of the closing dates of the provisionally listed color additives included in this order is consistent with the protection of the public health. These extensions are granted on condition that, where applicable, progress reports be supplied on or before June 30, 1968.

The closing dates of the provisional listing of aluminum benzoate, bone black, cochineal, carminic acid, and charcoal for use in cosmetics are not postponed and the provisional listings are therefore terminated as of December 31, 1967. These color additives had been provisionally listed on the basis that scientific investigations were underway preparatory to submission of petitions for permanent listing. The Food and Drug Administration is unaware of any studies currently being made. To allow for an orderly change in cosmetic formulations containing the color additives being delisted, a grace period of 6 months is allowed for continued use.

Scientific investigations of the safety of D&C Yellow No. 11 have been completed. The Commissioner of Food and Drugs has concluded that the data available to him do not presently permit the establishment of a safe level of ingested use of this color additive. Accordingly, the closing date of the provisional listing of D&C Yellow No. 11 is postponed with the restriction that the color additive be used only in externally applied drugs and cosmetics. Certificates for D&C Yellow No. 11, insofar as ingested use is concerned, are cancelled effective 90 days after publication of this order.

By an order published in the FEDERAL REGISTER of July 26, 1967 (32 F.R. 10930), the provisional listing of carminic acid for use in foods and drugs was terminated effective July 1, 1967. A grace period was allowed until December 31, 1967, to permit orderly withdrawal of the color additive from the market. After publication of the order, the Meer Corporation, New York, N.Y., completed investigations previously underway to establish the safety of a carminic acid solution (cochineal extract) for food and drug use and intends submitting a petition for its listing. In the absence of information that the continued use of a carminic acid solution would adversely affect the public health, carminic acid (cochineal extract) is restored to the list of color additives provisionally listed for food and drug use with a closing date of March 31, 1968.

Therefore, pursuant to the authority of the Federal Food, Drug, and Cosmetic Act (sec. 203(a)(2), Public Law 86-618; 74 Stat. 404; 21 U.S.C. 376, note), delegated by the Secretary to the Commissioner (21 CFR 2.120), Part 8 is amended as follows:

§ 8.501 **[Amended]**

1. Section 8.501 *Provisional lists of color additives* is amended in the following respects:

a. In paragraph (b) *Color additives previously and presently subject to certification and provisionally listed for drug and cosmetic use*, the closing dates for D&C Green No. 5, D&C Green No. 6, D&C Yellow No. 10, D&C Yellow No. 11, D&C Red No. 30, D&C Red No. 33, and D&C Blue No. 6 are changed to "Sept. 30, 1968"; the closing date for D&C Green No. 8 is changed to "June 30, 1968", and there is inserted in the "Restrictions" column for D&C Yellow No. 11 the statement "External use only."

b. In paragraph (c) *Color additives previously and presently subject to certification and provisonally listed for use in externally applied drugs and cosmetics*, the closing dates for External D&C Yellow No. 1 and External D&C Green No. 1 are changed to "Sept. 30, 1968".

c. In paragraph (e) *Color additives provisionally listed for food use on the basis of prior commercial sale but which have not been nor are now subject to certification*, the closing date for carbon black (prepared by the "impingement" or "channel" process) is changed to

"Sept. 30, 1968"; the closing date for iron oxide is changed to "June 30, 1968"; a new item "Carminic acid (cochineal extract)" is alphabetically inserted with a closing date of "March 31, 1968"; and xanthophyll is deleted since it has already been permanently listed as corn endosperm oil (§ 8.322).

d. In paragraph (f) *Color additives provisionally listed for drug use on the basis of prior commercial sale but which have not been nor are now subject to certification*, the closing date for carbon black ("impingement" or "channel" process) is changed to "Sept. 30, 1968"; also a new item "Carminic acid (cochineal extract)" is inserted alphabetically with a closing date of "March 31, 1968".

e. Paragraph (g) is amended: By deleting aluminum benzoate, bone black, carminic acid, charcoal, and cochineal; by deleting ferric hydroxide as a separate item and including it parenthetically in the "iron oxides" item as "(hydrated iron oxides)"; and by changing the closing dates for the remaining items to read as indicated. As amended, paragraph (g) reads as follows:

(g) *Color additives provisionally listed for cosmetic use on the basis of prior commercial sale but which have not been nor are now subject to certification.* The color additives provisonally listed in this paragraph are so listed only for the uses and purposes commercially employed prior to July 12, 1960. Thus, a color additive previously used for coloring cosmetics to be applied to portions of the body other than the eye area (as defined in § 8.1(s)) is not provisionally listed for eye-area use.

Color additive	*Closing date*
Aluminum hydroxide	Dec. 31, 1968
Aluminum powder	Do.
Aluminum silicate (including hydrated aluminum silicate).	Do.
Aluminum stearate	June 30, 1968
Annato	Dec. 31, 1968
Azulene	June 30, 1968
Barium sulfate (blanc fixe)	Dec. 31, 1968
Bentonite	June 30, 1968
Bismuth oxychloride	Dec. 31, 1968
Bronze powder	June 30, 1968
Calcium carbonate	Dec. 31, 1968
Calcium silicate	June 30, 1968
Calcium stearate	Do.
Calcium sulfate	Dec. 31, 1968
Caramel	Do.
Carbon black (prepared by the "impingement" or "channel" process).	Sept. 30, 1968
Carmine	Dec. 31, 1968
Carotene	Do.
Chlorophyll copper complex and chlorophyllin copper complex.	Mar. 31, 1968
Chromium hydroxide green	June 30, 1968
Chromium oxide greens	Do.
Copper, metallic powder	Dec. 31, 1968
Copper versenate	June 30, 1968
Cornstarch	Dec. 31, 1968
Dihydroxyacetone	June 30, 1968
Ferric ferrocyanide (iron blue).	Do.
Gold	Dec. 31, 1968
Graphite	June 30, 1968
Guanine (pearl essence)	Do.
Iron oxides (including hydrated iron oxides).	Dec. 31, 1968
Kaolin	June 30, 1968
Lithium stearate	Do.
Magnesium aluminum silicate.	Dec. 31, 1968
Magnesium carbonate	Do.
Magnesium oxide	Do.
Magnesium stearate	June 30, 1968
Magnesium trisilicate	Dec. 31, 1968
Manganese violet (probably $2(NH_4)_2Mn_2(P_2O_7)_2$).	June 30, 1968
Mica	Do.
Silicic acid	Dec. 31, 1968
Silicon dioxide (silica)	Do.
Silk, powdered	Mar. 31, 1968
Talc	Dec. 31, 1968
Tin oxide	Do.
Titanium dioxide	Dec. 31, 1968
Ultramarine blue	June 30, 1968
Ultramarine green	Do.
Ultramarine pink	Do.
Ultramarine red	Do.
Ultramarine violet	Do.
Zinc carbonate	Dec. 31, 1968
Zinc oxide	Do.
Zinc stearate	June 30, 1968

2. Section 8.510 is amended by adding thereto a new paragraph as follows:

§ 8.510 **Cancellation of certificates.**

* * * * *

(f) Certificates issued for D&C Yellow No. 11 and all mixtures containing this color additive are cancelled and have no effect after April 30, 1968, insofar as ingested use is concerned. Use of this color additive in the manufacture of ingested drugs or cosmetics subject to ingestion after that date will result in adulteration.

In order to allow orderly withdrawal from the market of aluminum benzoate, bone black, carminic acid, charcoal, and cochineal for use in cosmetics and in the absence of information that the continued use of these color additives will adversely affect the public health, the Food and Drug Administration will not institute regulatory action against these color additives, or the articles in which they have been permitted to be used, solely for the reason that they are not provisionally or permanently listed as color additives for the period ending June 30, 1968.

Notice and public procedure and delayed effective date are unnecessary prerequisites to the promulgation of this order, and I so find, since section 203(a)(2) of Public Law 86-618 provides for this issuance.

Effective date. This order is effective as of January 1, 1968.

(Sec. 203(a)(2), Public Law 86-618; 74 Stat. 404; 21 U.S.C. 376, note)

Dated: January 18, 1968.

JAMES L. GODDARD,
Commissioner of Food and Drugs.

[F.R. Doc. 68-996; Filed, Jan. 25, 1968; 8:47 a.m.]

Title 27—INTOXICATING LIQUORS

Chapter I—Internal Revenue Service, Department of the Treasury

[T.D. 6945]

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Standards of Identity for Neutral Spirits and Domestic Whiskies

Notice of public hearing to be held in Washington, D.C., beginning on September 18, 1967, with respect to certain petitions to amend 27 CFR Part 5, Labeling and Advertising of Distilled Spirits, was published in the FEDERAL REGISTER on July 11, 1967 (32 F.R. 10208). At the conclusion of the hearing and after a thorough study of matters relevant to the issues, including evidence submitted by interested parties at this hearing and the hearing held in April 1966, the following conclusions have been reached:

1. *Proposals.* A group of proposals (subjects 2 through 6 in the notice) considered at the hearing were aimed at eliminating the present restrictions relating to proof of distillation, entry proof, and cooperage required with respect to bourbon, rye, and other traditional American type whiskies, including "straight" whiskies.

Findings. The relative presence of flavoring materials which characterize whisky is normally determined by the proof of distillation of the spirits. As distillation proof rises, flavoring materials decrease until a point is reached at which the spirits no longer possess whisky characteristics (190° proof). The typical American whiskies, bourbon, rye, etc., and the "straight" possess characteristics which distinguish them from other type whiskies. Two principal factors contribute to the development of such characteristics: (a) The distillation of the whisky at lower proofs (not exceeding 160°) resulting in pronounced natural flavoring components in the raw distillate; and (b) the maturing, except in the case of corn whiskies, of such distillates in charred new oak containers so as to cure the whiskies and enhance their palatability.

No evidence was submitted that other proofs of distillation than 190° and 160° would more accurately distinguish whiskies from neutral spirits or American type whiskies from other whiskies even were it conceded that those distinctions are not infallible under sophisticated distilling processes.

No significant evidence was submitted to establish that a change should be made with respect to the American type whiskies in the present limitation on entry proof prescribed in 1962 after experimentation, research, and public hearing. At that time it was concluded that entry at higher proofs would substantially affect the character of the

whisky. These types of whiskies are generally being produced well within the present regulatory limits for distillation and entry proofs.

Storage in charred new oak wood is necessary in order (a) to supply some of the raw materials for the chemical reactions needed to develop the distinguishing characteristics of the whiskies and (b) to act as a catalyst in speeding up chemical reactions vital to the maturing process. The additional materials in the char aid in the removal or alteration of the undesirable flavoring components which result from the low distillation proof and assist in the development of desirable characteristics.

Since charred new oak wood is necessary to properly mature these types of whiskies distilled not in excess of 160° proof, the consumer should be advised if such whiskies (other than the corn whiskies) are not so stored. Reused cooperage does not provide the char and proper balance of wood extractives to mature and develop such whiskies in the traditional manner. The present regulatory requirements provide the consumer with this information by requiring that if such whiskies are stored in reused cooperage they bear, as a part of their designation, "Distilled from rye (or bourbon, wheat, etc.) mash," if distilled from a predominant mash, and the statement, "stored _____ (years and/or months) in reused cooperage", in lieu of the statement "* * * is _____ (years and/or months) old."

The removal of the present regulatory restrictions referred to would facilitate the production of whiskies to be marketed as bourbon, rye, etc., or "straight" whisky which generally lack the distinguishing characteristics of such whiskies, and this would not be in the interests of the consumer. Further, the Congress has recognized the distinctive character of bourbon whisky as unlike other types of beverages, whether foreign or domestic.

Conclusion. All proposals for amendments in the regulations with respect to domestic whiskies distilled at 160° proof of the statement "* * * is _____ (years or less are rejected. The evidence presented did not establish that the requested changes in the standards for distinctive American types of whiskies are in the public interest within the legislative standards for these regulations.

Any claim that the present regulations favor imported products is inapplicable to these types of whiskies. Bourbon whisky can only be produced in the United States and the other types of whiskies distinctive of this country, i.e., rye, corn, "straight," if produced abroad and imported must be labeled so as to show their foreign origin and must comply with the American standards.

2. *Proposal.* One of the petitions considered at the hearing proposed (subject 1 in the notice) to add a new standard of identity for a whisky which has been distilled at more than 160° proof but at less than 190° proof, aged in oak barrels seasoned by prior use, and to permit such whisky to bear a conventional age statement.

Findings. Several studies proved conclusively that whiskies distilled at more than 160° proof mature satisfactorily in used cooperage. Canadian, Scotch, and Irish whiskies are composed primarily of whisky so matured. The storage of whisky in charred new oak containers is peculiar to American types of whiskies which must be distilled at not more than 160° proof. Whisky distilled at proofs higher than 160° and less than 190° and stored in used cooperage has taste and characteristics that are unlike the taste and characteristics which distinguish the American types of whiskies.

The higher distillation proof produces a distillate containing less pronounced natural flavoring components (both desirable and undesirable ones). Thus a smaller amount of wood extractives is needed to produce a balanced, palatable whisky. Whiskies distilled at such higher proofs are matured abroad in American used charred oak containers, "small wood," sherry casks, sherry butts, or other oak containers of varying capacities. Storing of such whisky in charred new oak containers would not produce a balanced whisky since it would be overburdened with wood extractives. Consistent with the higher distillation proof, such whiskies may be properly entered for storage at proofs higher than 125°.

In view of the distinctive characteristics of this whisky, adequate consumer information requires that it bear a distinctive designation and that a standard of identity be established. The word "light" aptly describes the distinguishing character of this whisky. The featuring of the name of a State which is associated in the consumer's mind with an American type whisky would be likely to mislead the consumer into confusing this whisky with the dissimilar American type.

The present regulations with respect to whisky distilled at not exceeding 160° proof are appropriate for the traditional American types but discriminate against the domestic production of whisky distilled at high distillation proof and stored in used cooperage. Although the latter type of whisky is properly matured in used containers, the regulations prohibit it from bearing the normal age statement and require the statement "stored __ years in reused cooperage." This statement, although descriptive of the actual maturing process, adversely affects marketability. The appearance of a storage statement is likely to mislead the consumer into believing the product to be inferior because it was matured in used containers instead of new oak containers. In fact, the product properly matures in used containers although it is different in character than the traditional American types of whiskies. Similar foreign whiskies so matured are, however, permitted to claim age.

Conclusion. The proposal is adopted with modifications. A standard of identity under the distinctive type designation "light whiskey" should be prescribed for a domestic whisky distilled at more than 160° proof, and aged in used or uncharred new oak containers. (The opportunity to use uncharred new containers is provided since the aging effect would be comparable to that of used containers.) If "light whisky" is mixed with less than 20 percent by volume of 100° proof straight whisky, the mixture shall be designated "blended light whiskey." The establishment of a type designation employing the word "light" does not preclude the use of such word as an adjective to describe other whiskies, but it shall not be used as a part of the class or type designation. The names of states which are associated in the consumer's mind with the production of the American types of whiskies shall not be permitted to be featured on the labels and in the advertising of "light whisky" or "blended light whisky."

The regulations as so amended will permit the production in this country of a whisky distilled at relatively high proof on a parity with the production of such whiskies abroad.

3. *Proposal.* One petitioner proposed (subject 8 in the notice) that a maximum limit of 53 wine gallons be imposed on the size of new white oak barrels used for the aging of domestic whiskies.

Findings. The evidence has disclosed that barrels of varying sizes are used for the storage of whiskies in other major whisky-producing countries. Canadian regulations require that whisky be stored in "small wood," i.e., wood casks or barrels of any size not greater than approximately 180 U.S. gallon capacity. Scotch and Irish regulations are silent, but, as far as can be determined, malt and grain whiskies are aged in casks not in excess of 150 gallons. Normally the barrels used have had prior use for other purposes, e.g., as sherry butts or American whisky barrels.

The American type whisky container shows a high degree of standardization, normally approximately 53 gallons. Although size has been relatively constant, domestic containers show marked and important variations in other respects, principally degree and depth of char. The maturing process for American-type whiskies (other than corn whiskies) depends on contact between the whisky and charred new oak and thus there is a necessary relationship between the volume of whisky and the volume of wood surface area available. So far, however, there has not been sufficient experimentation to determine the point at which a barrel would become so large as to be deficient for aging purposes.

Of course, no product, regardless of the size of the barrel in which aged, can bear a type designation unless it possesses the taste, aroma, and characteristics generally attributed to that type. The practice of adding powdered oak, or wood chips, whether large (slabs) or small in size, in order to make up for deficiencies in wood extractives resulting from excessive barrel size is limited by the regulatory requirement that where such materials are used the label state such fact.

Conclusion. The proposal to set maximum size for whisky barrels is rejected. Although the available evidence indicates that the size of the container suitable for aging may vary with the

character of the whisky to be produced, the maximum size of the oak container is effectively limited by the regulatory requirement that the product must possess the taste, aroma, and characteristics generally attributed to it. In addition, the consumer is advised by an appropriate label statement of any attempt to short cut normal aging processes through the addition of wood or wood extractives. The present regulation requiring label disclosure of the addition of wood chips should be amended to make clear that the disclosure requirement applies to the addition of any wood pieces regardless of size. Thus the selection of the size of the container suitable for maturing a product may continue to be left to the distiller.

4. *Proposal.* One petitioner requested that the regulations be amended (subject 7 in the notice) to provide that all domestically produced whiskies must be aged a minimum of 2 years before bottling; a second petition requested a 4-year minimum.

Findings. No need was established for a minimum age requirement for current domestic types of whisky. There are no appreciable amounts of immature whiskies currently being sold. Although some whisky is being offered at less than 2 years of age, this is, in the main, corn whisky. In any event, the present regulations protect the consumer by requiring all whiskies less than 4 years old to bear a true age statement. Although Ireland, Great Britain, and Canada have enacted immature spirits acts, requiring spirits to remain in storage for a specific minimum period, their laws do not require that the consumer be provided with information as to age.

Conclusion. The proposal to establish a minimum age requirement for whiskies is rejected. It is preferable to permit the consumer an adequate basis for the selection of whiskies (even immature ones) than to limit his choice by banning them from the market. The mere desire to conform American regulations to those applicable in foreign countries is not sufficient justification for imposing the proposed limitation.

5. *Proposal.* One petitioner proposed (subjects 9 and 10 in the notice) to relax the standard for straight whisky (and the various types thereof) so as to permit blends of straight whisky of one type or of different types to be designated as straight whisky without the words "blend" or "blended" appearing in the designation.

Findings. No evidence was submitted which would establish that the present regulations, as to the labeling of blends of straight whiskies, fail in their purpose of providing the consumer with information as to the identity of the whiskies he purchases. Nor was any evidence submitted to indicate that this information is meaningless, misunderstood or unimportant to the consumer.

In one respect, however, the present regulations burden the industry with no appreciable benefit to the consumer. Under the present regulations two straight whiskies (unmixed) 4 or more years old produced at the same distillery may be offered to the consumer under identical labels even though differing in age. This being the case, there seems to be no compelling reason insofar as the consumer is concerned why they could not be mixed and offered to him under the same label. Such mixing, under the designation of straight whisky, would give the distiller a greater degree of flexibility in the area of quality control and uniformity of his individual straight whisky brands. In view of the connotation of the designation "straight" whisky as implying a product which is all whisky, the present provisions prohibiting the addition of harmless coloring, flavoring, and blending ingredients, such as caramel, should be applicable to mingled whiskies if designated as "straight" whisky.

Conclusion. The proposal to permit a mixture of different types of straight whisky as "straight" whisky is rejected since it would deprive the consumer of important information which he is now furnished. The consumer is entitled to be advised that he is not buying a single type distillate when, for example, straight bourbon and straight rye whiskies are mixed. Although it was argued that a straight whisky can be produced through the mixture of predominant mashes, prior to distillation, and that therefore similar labeling should be applied to a mixture of straight whiskies, this argument is not relevant to the appropriate designation for a mixture of whiskies.

As to requiring blends of straight whiskies of the same type to be designated as "straight" whisky, the proposal is adopted provided that the straight whiskies are produced by the same distiller at the same distillery, and are not less than 4 years old.

6. *Proposal.* One petitioner proposed (subject 11 in the notice) that grain neutral spirits stored in reused cooperage for not less than 2 years be designated as "grain spirits" and be permitted to claim age. This proposal is related to the subject matter of a hearing held in April 1966; thus, the record of the earlier hearing has been considered at this time.

Findings. Grain neutral spirits when stored in reused cooperage undergo changes which modify the neutral character of the spirits. Such spirits possess a distinctive character which differs from that of neutral spirits which have not been so stored.

The formation of esters, acids, solids and color in the neutral spirits evidences a development of flavoring components related to the period of storage in wood. In general, the development of flavoring components is analogous to that which occurs when whisky is stored in reused cooperage. However, the flavoring components in neutral spirits are minimal and this distinguishes the maturing process from that of whisky.

Aging is a two-step process. Interaction between the distillate and the wood results first in the improvement of the original characteristics in the spirits and second in the development of additional flavoring components. The storage of neutral spirits in oak containers results only in the latter. Therefore, neutral spirits do not "age" in the fullest sense, although they do mature in some respects.

The presence of residual whisky soaked into the staves of the barrels is not necessary to the development of flavoring components in the neutral spirits although it may add to them. The neutral character of the spirits is altered when the spirits come in contact with oak containers, whether new or used.

Conclusion. The proposal is adopted with modifications. It has been established that the neutral character of the spirits is affected when the spirits are put in oak containers and that storage in such containers develops in the spirits certain of the characteristics attributed to age.

In order to recognize the distinction between neutral spirits which have come in contact with oak wood and those which have not, a type designation, "grain spirits," is established within the class "neutral spirits." Similarly, in recognition of the fact that the storage of such spirits in oak containers results in a development of flavoring components, analogous in certain respects to that which occurs in the aging of whisky, the period of such storage may be stated on the label; for example, "* * * stored _____ (years and/or months) in oak casks." No minimum period of storage is prescribed because the neutral spirits begin to acquire their distinctive character and to develop flavoring components when placed in the oak container.

Accordingly, the following amendments to 27 CFR Part 5 are hereby adopted:

PARAGRAPH 1. Section 5.21(a) is amended by adding at the end thereof a new subparagraph (2) reading as follows:

(2) "Grain spirits" are neutral spirits distilled from a fermented mash of grain stored in oak containers and bottled at not less than 80° proof.

PAR. 2. Section 5.21(b) is amended:

A. By striking out the first paragraph and inserting in lieu thereof the following:

(b) *Class 2; Whisky.* "Whisky" is an alcoholic distillate from a fermented mash of grain distilled at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to whisky, and bottled at not less than 80° proof, and also includes mixtures of the foregoing distillates for which no specific standards of identity are prescribed in this part. The types of whisky specified in subparagraphs (1) to (10) of this paragraph shall be deemed "American type" whiskies;

B. By inserting in subparagraph (1) in the first sentence ", at more than 125° proof," after "March 31, 1938, stored";

C. By inserting in subparagraph (1) in the second sentence ", at not more than 125° proof," after "corn grain, stored";

D. By striking out the period in the last sentence of subparagraph (2) and adding at the end thereof "and mixtures of straight whiskies of the same type produced by the same proprietor at the

same distillery all of which are not less than 4 years old."; and

E. By redesignating subparagraphs (11) through (13) as (12) through (14), respectively, and by inserting after subparagraph (10) the following new subparagraph:

(11) "Light whisky" is whisky which has been distilled in the United States at more than 160° proof, stored in used or uncharred new oak containers, and bottled at not less than 80° proof, and also includes mixtures of such whiskies. If "light whisky" is mixed with less than 20 percent by volume of 100° proof straight whisky, the mixture shall be designated "blended light whisky."

PAR. 3. Section 5.21(h) is amended by adding at the end thereof a new subparagraph (5) reading as follows:

(5) The name of any State which the Director finds is associated by consumers with an American type whisky shall not appear in any manner on any label for light whisky, as defined in paragraph (b)(11) of this section, except as a part of the name and address of the distiller, bottler, or person bottled for, as required by § 5.35 (a) and (c).

PAR. 4. Section 5.34(d) is amended to read as follows:

(d) In the case of whisky, including any of the types thereof, produced on or after March 31, 1938, and in the case of brandy produced on or after July 1, 1941, which, in whole or in part, is treated with wood through percolation or otherwise, during distillation, rectification, or storage (other than through contact with the oak container), there shall be stated as a part of the class and type designation the phrase "colored and flavored with wood _____ (insert chips, slabs, etc., as appropriate)": *Provided*, That this paragraph shall not be construed as authorizing the treatment of any of the types of corn whisky with charred wood.

PAR. 5. Section 5.34(f) is amended by striking out in the last sentence "§ 5.21 (b) (11), (12) and (13)," and inserting in lieu thereof "§ 5.21(b) (12), (13) and (14),".

PAR. 6. Section 5.35(e) is amended by adding at the end thereof the following new sentence: "In the case of 'light whisky', as defined in § 5.21(b)(11), the State of distillation shall not appear in any manner on any label, when the Director finds that such State is associated by consumers with an American type whisky, except as a part of a name and address as set forth in paragraph (a) of this section."

PAR. 7. Section 5.38(a) is amended by striking out the period in the last sentence and adding at the end thereof "; or '_____ percent grain spirits,' as appropriate."

PAR. 8. Section 5.39(a) is amended:

A. By inserting in the first sentence of subparagraph (1) "(14)," after (13), "; and".

B. By striking out the first sentence of subparagraph (2) and inserting in lieu thereof the following "In the case of any of the types of straight whisky, if not mixed, the age of the straight whisky; if mixed, the age of the youngest straight whisky."

PAR. 9. Section 5.39(c) is amended to read as follows:

(c) *Other distilled spirits.* Age, maturity, or similar statements or representations as to neutral spirits (except for grain spirits as stated below), gin, liqueurs, cordials, vodka, cocktails, gin fizzes, highballs, bitters, and specialties are misleading and are prohibited from being stated on any label. In the case of grain spirits, the period of storage in oak containers may be stated in immediate conjunction with the required percentage statement; e.g., "_____ percent grain spirits stored _____ (years and/or months) in oak casks".

PAR. 10. Section 5.39(d) is amended by inserting in the second sentence of subparagraph (5) "(except as provided for grain spirits in paragraph (c) of this section)" after "neutral spirits".

PAR. 11. Section 5.62(d) is amended by striking out the period in the last sentence of subparagraph (1) and adding at the end thereof "; or '_____ percent grain spirits,' as appropriate."

The amendments contained in paragraphs 2D and 8B above relieve restrictions presently contained in the regulations and require very little trade adjustment. Therefore, these amendments shall become effective on the first day of the month that begins not less than 30 days after the date of publication in the FEDERAL REGISTER.

In the interest of equity as between members of the distilling industry, to avoid any unfair advantages or windfalls resulting from existing stocks of distilled spirits, the status of which would otherwise be affected by these regulations, and to permit the industry an opportunity to adjust their operations to the changed rules, all other amendments shall become effective July 1, 1972, but shall in no event apply to the labeling of spirits distilled before the date of publication. As to spirits distilled before the date of publication, the present regulations shall continue in effect.

(49 Stat. 981, as amended; 27 U.S.C. 205)

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

Approved: January 23, 1968.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

[F.R. Doc. 68-981; Filed, Jan. 25, 1968; 8:45 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER B—STATEMENTS OF GENERAL POLICY OR INTERPRETATION NOT DIRECTLY RELATED TO REGULATIONS

PART 778—OVERTIME COMPENSATION

Part 778 of Title 29 of the Code of Federal Regulations is hereby revised as set forth below in order to adapt it to the overtime compensation requirements effective under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) as amended by the Fair Labor Standards Amendments of 1966 (80 Stat. 830), and as affected by the Service Contract Act of 1965 (79 Stat. 1034). The revisions consist principally of clarification of statutory references and changes in figures used to illustrate pay computations so that they will conform to the legislative changes made in provisions of the Act, and other changes of an editorial nature.

The provisions of section 4 of the Administrative Procedure Act (5 U.S.C. 553) which require notice of proposed rule making, opportunity for public participation, and delay in effective date are not applicable because these are interpretative rules. I do not believe such procedures will serve a useful purpose here. Accordingly, this amendment shall become effective immediately.

The revised 29 CFR Part 778 reads as follows:

Subpart A—General Considerations

Subpart B—The Overtime Pay Requirements

INTRODUCTORY

PRINCIPLES FOR COMPUTING OVERTIME PAY BASED ON THE "REGULAR RATE"

Subpart C—Payments That May Be Excluded From the "Regular Rate"

THE STATUTORY PROVISIONS

AUTHORITY: The provisions of this Part 778 issued under 52 Stat. 1060, as amended; 29 U.S.C. 201–219.

Subpart A—General Considerations

§ 778.0 Introductory statement.

The Fair Labor Standards Act, as amended, hereinafter referred to as the Act, is a Federal statute of general application which establishes minimum wage, overtime pay, child labor, and equal pay requirements that apply as provided in the Act. All employees whose employment has the relationship to interstate or foreign commerce which the Act specifies are subject to the prescribed labor standards unless specifically exempted from them. Employers having such employees are required to comply with the Act's provisions in this regard unless relieved therefrom by some exemption in the Act. Such employers are also required to comply with specified recordkeeping requirements contained in Part 516 of this chapter. The law authorizes the Department of Labor to investigate for compliance and, in the event of violations, to supervise the payment of unpaid wages or unpaid overtime compensation owing to any employee. The law also provides for enforcement in the courts.

§ 778.1 Purpose of interpretative bulletin.

This Part 778 constitutes the official interpretation of the Department of

Labor with respect to the meaning and application of the maximum hours and overtime pay requirements contained in section 7 of the Act. It is the purpose of this bulletin to make available in one place the interpretations of these provisions which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon reexamination of an interpretation, that it is incorrect. These official interpretations are issued by the Administrator on the advice of the Solicitor of Labor, as authorized by the Secretary (Reorg. Pl. 6 of 1950, 64 Stat. 1263; Gen. Ord. 45A, May 24, 1950, 15 F.R. 3290).

§ 778.2 Coverage and exemptions not discussed.

This Part 778 does not deal with the general coverage of the Act or various specific exemptions provided in the statute, under which certain employees within the general coverage of the wage and hours provisions are wholly or partially excluded from the protection of the Act's minimum-wage and overtime-pay requirements. Some of these exemptions are self-executing; others call for definitions or other action by the Administrator. Regulations and interpretations relating to general coverage and specific exemptions may be found in other parts of this chapter.

§ 778.3 Interpretations made, continued, and superseded by this part.

On and after publication of this part in the FEDERAL REGISTER, the interpretations contained therein shall be in effect and shall remain in effect until they are modified, rescinded or withdrawn. This part supersedes and replaces the interpretations previously published in the FEDERAL REGISTER and Code of Federal Regulations as Part 778 of this chapter. Prior opinions, rulings, and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Fair Labor Standards Act as amended by the Fair Labor Standards Amendments of 1966 are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part are rescinded and withdrawn. Questions on matters not fully covered by this part may be addressed to the Administrator of the Wage and Hour and Public Contracts Divisions, U.S. Department of Labor, Washington, D.C. 20210, or to any Regional Office of the Divisions.

§ 778.4 Reliance on interpretations.

The interpretations of the law contained in this Part 778 are official interpretations which may be relied upon as provided in section 10 of the Portal-to-Portal Act of 1947 (61 Stat. 84).

§ 778.5 Relation to other laws generally.

Various Federal, State, and local laws require the payment of minimum hourly, daily or weekly wages different from the minimum set forth in the Fair Labor Standards Act, and the payment of overtime compensation computed on bases different from those set forth in the Fair Labor Standards Act. Where such legislation is applicable and does not contravene the requirements of the Fair Labor Standards Act, nothing in the act, the regulations or the interpretations announced by the Administrator should be taken to override or nullify the provisions of these laws. Compliance with other applicable legislation does not excuse noncompliance with the Fair Labor Standards Act. Where a higher minimum wage than that set in the Fair Labor Standards Act is applicable to an employee by virtue of such other legislation, the regular rate of the employee, as the term is used in the Fair Labor Standards Act, cannot be lower than such applicable minimum, for the words "regular rate at which he is employed" as used in section 7 must be construed to mean the regular rate at which he is lawfully employed.

§ 778.6 Effect of Davis-Bacon Act.

Section 1 of the Davis-Bacon Act (46 Stat. 1494, as amended; 40 U.S.C. 276a) provides for the inclusion of certain fringe benefits in the prevailing wages that are predetermined by the Secretary of Labor, under that Act and related statutes, as minimum wages for laborers and mechanics employed by contractors and subcontractors performing construction activity on Federal and federally assisted projects. Laborers and mechanics performing work subject to such predetermined minimum wages may, if they work overtime, be subject to overtime compensation provisions of other laws which may apply concurrently to them, including the Fair Labor Standards Act. In view of this fact, specific provision was made in the Davis-Bacon Act for the treatment of such predetermined fringe benefits in the computation of overtime compensation under other applicable statutes including the Fair Labor Standards Act. The application of this provision is discussed in § 5.32 of this title, which should be considered together with the interpretations in this Part 778 in determining any overtime compensation payable under the Fair Labor Standards Act to such laborers and mechanics in any workweek when they are subject to fringe benefit wage determinations under the Davis-Bacon and related acts.

§ 778.7 Effect of Service Contract Act of 1965.

The McNamara-O'Hara Service Contract Act of 1965, which provides for the predetermination and the specification in service contracts entered into by the Federal Government or the District of Columbia, of the minimum wages and fringe benefits to be received by employees of contractors and subcontractors employed in work on such contracts, contains the following provision:

SEC. 6. In determining any overtime pay to which such service employees are entitled under any Federal law, the regular or basic hourly rate of pay of such an employee shall not include any fringe benefit payments computed hereunder which are excluded from the regular rate under the Fair Labor Standards Act by provisions of section 7(e)* thereof. (*Subsection designation changed in text from section 7(d) to 7(e) to conform with the relettering enacted by the Fair Labor Standards Amendments of 1966.)

Where the fringe benefits specified in such a service contract are furnished to an employee, the above provision permits exclusion of such fringe benefits from the employee's regular rate of pay under the Fair Labor Standards Act pursuant to the rules and principles set forth in Subpart C of this Part 778. However, the McNamara-O'Hara Act permits an employer to discharge his obligation to provide the specified fringe benefits by furnishing any equivalent combinations of bona fide fringe benefits or by making equivalent or differential payments in cash. Permissible methods of doing this are set forth in Part 4 of this title, Subpart B. If the employer furnishes equivalent benefits or makes cash payments, or both, to an employee as therein authorized, the amounts thereof, to the extent that they operate to discharge the employer's obligation under the McNamara-O'Hara Act to furnish such specified fringe benefits, may be excluded pursuant to such Act from the employee's regular or basic rate of pay in computing any overtime pay due the employee under the Fair Labor Standards Act, pursuant to the rule provided in § 4.55 of this title. This means that such equivalent fringe benefits or cash payments which are authorized under the McNamara-O'Hara Act to be provided in lieu of the fringe benefits specified in determinations issued under such Act are excludable from the regular rate in applying the overtime provisions of the Fair Labor Standards Act if the fringe benefits specified under the McNamara-O'Hara Act would be so excludable if actually furnished. This is true regardless of whether the equivalent benefits or payments themselves meet the requirements of section 7(e) of the Fair Labor Standards Act and Subpart C of this Part 778.

Subpart B—The Overtime Pay Requirements

INTRODUCTORY

§ 778.100 The maximum-hours provisions.

Section 7(a) of the Act deals with maximum hours and overtime compensation for employees who are within the general coverage of the Act and are not specifically exempt from its overtime pay requirements. It prescribes the maximum weekly hours of work permitted for the employment of such employees in any workweek without extra compensation for overtime, and a general overtime rate of pay not less than one and one-half times the employee's regular rate which the employee must receive for all hours worked in any workweek in excess of the applicable maximum hours. The employment by an employer of an employee in any work subject to the Act in any workweek brings these provisions

into operation. The employer is prohibited from employing the employee in excess of the prescribed maximum hours in such workweek without paying him the required extra compensation for the overtime hours worked at a rate meeting the statutory requirement.

§ 778.101 Maximum nonovertime hours.

As a general standard, section 7(a) of the Act provides 40 hours as the maximum number that an employee subject to its provisions may work for an employer in any workweek without receiving additional compensation at not less than the statutory rate for overtime. Hours worked in excess of the statutory maximum in any workweek are overtime hours under the statute; a workweek no longer than the prescribed maximum is a nonovertime workweek under the Act, to which the pay requirements of section 6 (minimum wage and equal pay) but not those of section 7(a) are applicable. With respect to employees brought within the overtime pay provisions for the first time by the Fair Labor Standards Amendments of 1966, a deferment until February 1, 1969, of the application of the general 40-hour standard maximum nonovertime workweek was provided in section 7(a)(2) of the Act pursuant to the following schedule:

Effective February 1, 1967—overtime for hours in excess of 44 in a workweek;
Effective February 1, 1968—overtime for hours in excess of 42 in a workweek;
Effective February 1, 1969—overtime for hours in excess of 40 in a workweek.

Thus the overtime requirements for all employment subject to any provision of section 7(a) on and after February 1, 1969, are the same; i.e., not less than the statutory overtime rate for all hours worked in excess of 40 in any workweek.

§ 778.102 Application of overtime provisions generally.

Since there is no absolute limitation in the Act on the number of hours that an employee may work in any workweek, he may work as many hours a week as he and his employer see fit, so long as the required overtime compensation is paid him for hours worked in excess of the maximum workweek prescribed by section 7(a). The Act does not require, however, that an employee be paid overtime compensation for hours in excess of eight per day, or for work on Saturdays, Sundays, holidays or regular days of rest. If no more than the maximum number of hours prescribed in the Act are actually worked in the workweek, overtime compensation pursuant to section 7(a) need not be paid. Nothing in the Act, however, will relieve an employer of any obligation he may have assumed by contract or of any obligation imposed by other Federal or State law to limit overtime hours of work or to pay premium rates for work in excess of a daily standard or for work on Saturdays, Sundays, holidays, or other periods outside of or in excess of the normal or regular workweek or workday. (The effect of making such payments is discussed in §§ 778.201–207 and 778.219.)

§ 778.103 The workweek as the basis for applying section 7(a).

If in any workweek an employee is covered by the Act and is not exempt from its overtime pay requirements, the employer must total all the hours worked by the employee for him in that workweek (even though two or more unrelated job assignments may have been performed), and pay overtime compensation for each hour worked in excess of the maximum hours applicable under section 7(a) of the Act. In the case of an employee employed jointly by two or more employers (see Part 791 of this chapter), all hours worked by the employee for such employers during the workweek must be totaled in determining the number of hours to be compensated in accordance with section 7(a). The principles for determining what hours are hours worked within the meaning of the Act are discussed in Part 785 of this chapter.

§ 778.104 Each workweek stands alone.

The Act takes a single workweek as its stndard and does not permit averaging of hours over 2 or more weeks. Thus, if an employee works 30 hours one week and 50 hours the next, he must receive overtime compensation for the overtime hours worked beyond the applicable maximum in the second week, even though the average number of hours worked in the 2 weeks is 40. This is true regardless of whether the employee works on a standard or swing-shift schedule and regardless of whether he is paid on a daily, weekly, biweekly, monthly or other basis. The rule is also applicable to pieceworkers and employees paid on a commission basis. It is therefore necessary to determine the hours worked and the compensation earned by pieceworkers and commission employees on a weekly basis.

§ 778.105 Determining the workweek.

An employee's workweek is a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. For purposes of computing pay due under the Fair Labor Standards Act, a single workweek may be established for a plant or other establishment as a whole or different workweeks may be established for different employees or groups of employees. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked by him. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act. The proper method of computing overtime pay in a period in which a change in the time of commencement of the workweek is made, is discussed in §§ 778.301 and 778.302.

§ 778.106 Time of payment.

There is no requirement in the Act that overtime compensation be paid weekly. The general rule is that overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends. When the correct amount of overtime compensation cannot be determined until some time after the regular pay period, however, the requirements of the Act will be satisfied if the employer pays the excess overtime compensation as soon after the regular pay period as is practicable. Payment may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment of the amount due and in no event may payment be delayed beyond the next pay day after such computation can be made. Where retroactive wage increases are made, retroactive overtime compensation is due at the time the increase is paid, as discussed in § 778.303. For a discussion of overtime payments due because of increases by way of bonuses, see § 778.209.

Principles for Computing Overtime Pay Based on the "Regular Rate"

§ 778.107 General standard for overtime pay.

The general overtime pay standard in section 7(a) requires that overtime must be compensated at a rate not less than one and one-half times the regular rate at which the employee is actually employed. The regular rate of pay at which the employee is employed may in no event be less than the statutory minimum. (The statutory minimum is the specified minimum wage applicable under section 6 of the Act, except in the case of workers specially provided for in section 14 and workers in Puerto Rico, the Virgin Islands, and American Samoa who are covered by wage orders issued pursuant to section 8 of the Act.) If the employee's regular rate of pay is higher than the statutory minimum, his overtime compensation must be computed at a rate not less than one and one-half times such higher rate. Under certain conditions prescribed in section 7 (f), (g), and (j), the Act provides limited exceptions to the application of the general standard of section 7(a) for computing overtime pay based on the regular rate. With respect to these, see §§ 778.400 through 778.421 and 778.601 and Part 548 of this chapter. The Act also provides, in section 7 (b), (c), (d), and (i) and in section 13, certain partial and total exemptions from the application of section 7(a) to certain employees and under certain conditions. Regulations and interpretations concerning these exemptions are outside the scope of this Part 778 and reference should be made to other applicable parts of this chapter.

§ 778.108 The "regular rate".

The "regular rate" of pay under the Act cannot be left to a declaration by the parties as to what is to be treated as the regular rate for an employee; it must be drawn from what happens under the employment contract (Bay Ridge Operating Co. v. Aaron, 334 U.S. 446). The Supreme Court has described it as the hourly rate actually paid the employee for the normal, nonovertime workweek for which he is employed—an

"actual fact" (Walling v. Youngerman-Reynolds Hardwood Co., 325 U.S. 419). Section 7(e) of the Act requires inclusion in the "regular rate" of "all remuneration for employment paid to, or on behalf of, the employee" except payments specifically excluded by paragraphs (1) through (7) of that subsection. (These seven types of payments, which are set forth in § 778.200 and discussed in §§ 778.201 through 778.224, are hereafter referred to as "statutory exclusions.") As stated by the Supreme Court in the Youngerman-Reynolds case cited above: "Once the parties have decided upon the amount of wages and the mode of payment the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary 'regular rate' in the wage contracts."

§ 778.109 The regular rate is an hourly rate.

The "regular rate" under the Act is a rate per hour. The Act does not require employers to compensate employees on an hourly rate basis; their earnings may be determined on a piece-rate, salary, commission, or other basis, but in such case the overtime compensation due to employees must be computed on the basis of the hourly rate derived therefrom and, therefore, it is necessary to compute the regular hourly rate of such employees during each workweek, with certain statutory exceptions discussed in §§ 778.400–778.421. The regular hourly rate of pay of an employee is determined by dividing his total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by him in that workweek for which such compensation was paid. The following sections give some examples of the proper method of determining the regular rate of pay in particular instances: (The maximum hours standard used in these examples is 40 hours in a workweek).

§ 778.110 Hourly rate employee.

(a) *Earnings at hourly rate exclusively.* If the employee is employed solely on the basis of a single hourly rate, the hourly rate is his "regular rate." For his overtime work he must be paid, in addition to his straight time hourly earnings, a sum determined by multiplying one-half the hourly rate by the number of hours worked in excess of 40 in the week. Thus a $2 hourly rate will bring, for an employee who works 46 hours, a total weekly wage of $98 (46 hours at $2 plus 6 at $1). In other words, the employee is entitled to be paid an amount equal to $2 an hour for 40 hours and $3 an hour for the 6 hours of overtime, or a total of $98.

(b) *Hourly rate and bonus.* If the employee receives, in addition to his earnings at the hourly rate, a production bonus of $4.60, the regular hourly rate of pay is $2.10 an hour (46 hours at $2 yields $92; the addition of the $4.60 bonus makes a total of $96.60; this total divided by 46 hours yields a rate of $2.10). The employee is then entitled to be paid a total wage of $102.90 for 46 hours (46 hours at $2.10 plus 6 hours at $1.05, or 40 hours at $2.10 plus 6 hours at $3.15).

§ 778.111 Pieceworker.

(a) *Piece rates and supplements generally.* When an employee is employed on a piece-rate basis, his regular hourly rate of pay is computed by adding together his total earnings for the workweek from piece rates and all other sources (such as production bonuses) and any sums paid for waiting time or other hours worked (except statutory exclusions). This sum is then divided by the number of hours worked in the week for which such compensation was paid, to yield the pieceworker's "regular rate" for that week. For his overtime work the pieceworker is entitled to be paid, in addition to his total weekly earnings at this regular rate for all hours worked, a sum equivalent to one-half this regular rate of pay multiplied by the number of hours worked in excess of 40 in the week. (For an alternative method of complying with the overtime requirements of the Act as far as pieceworkers are concerned, see § 778.418.) Only additional half-time pay is required in such cases where the employee has already received straight-time compensation at piece rates or by supplementary payments for all hours worked. Thus, if the employee has worked 50 hours and has earned $83.60 at piece rates for 46 hours of productive work and in addition has been compensated at $1.60 an hour for 4 hours of waiting time, his total compensation, $90, must be divided by his total hours of work, 50, to arrive at his regular hourly rate of pay—$1.80. For the 10 hours of overtime the employee is entitled to additional compensation of $9 (10 hours at 90 cents). For the week's work he is thus entitled to a total of $99 (which is equivalent to 40 hours at $1.80 plus 10 overtime hours at $2.70).

(b) *Piece rates with minimum hourly guarantee.* In some cases an employee is hired on a piece-rate basis coupled with a minimum hourly guaranty. Where the total piece-rate earnings for the workweek fall short of the amount that would be earned for the total hours of work at the guaranteed rate, the employee is paid the difference. In such weeks the employee is in fact paid at an hourly rate and the minimum hourly guaranty which he was paid is his regular rate in that week. In the example just given, if the employee was guaranteed $1.70 an hour for productive working time, he would be paid $78.20 (46×$1.70) for the 46 hours of productive work (instead of the $83.60 earned at piece rates). In a week in which no waiting time was involved, he would be owed an additional 85 cents (half-time) for each of the 6 overtime hours worked, to bring his total compensation up to $83.30 (46 hours at $1.70 plus 6 hours at 85 cents or 40 hours at $1.70 plus 6 hours at $2.55). If he is paid at a different rate for waiting time, his regular rate is the weighted average of the two hourly rates, as discussed in § 778.115.

§ 778.112 Day rates and job rates.

If the employee is paid a flat sum for a day's work or for doing a particular job, without regard to the number of hours worked in the day or at the job, and if he receives no other form of compensation for services, his regular rate is determined by totaling all the sums received at such day rates or job rates in the workweek and dividing by the total hours actually worked. He is then entitled to extra half-time pay at this rate for all hours worked in excess of 40 in the workweek.

§ 778.113 Salaried employees—general.

(a) *Weekly salary.* If the employee is employed solely on a weekly salary basis, his regular hourly rate of pay, on which time and a half must be paid, is computed by dividing the salary by the number of hours which the salary is intended to compensate. If an employee is hired at a salary of $70 and if it is understood that this salary is compensation for a regular workweek of 35 hours, the employee's regular rate of pay is $70 divided by 35 hours, or $2 an hour, and when he works overtime he is entitled to receive $2 for each of the first 40 hours and $3 (one and one-half times $2) for each hour thereafter. If an employee is hired at a salary of $70 for a 40-hour week, his regular rate is $1.75 an hour.

(b) *Salary for periods other than workweek.* Where the salary covers a period longer than a workweek, such as a month, it must be reduced to its workweek equivalent. A monthly salary is subject to translation to its equivalent weekly wage by multiplying by 12 (the number of months) and dividing by 52 (the number of weeks). A semimonthly salary is translated into its equivalent weekly wage by multiplying by 24 and dividing by 52. Once the weekly wage is arrived at, the regular hourly rate of pay will be calculated as indicated above. The regular rate of an employee who is paid a regular monthly salary of $277.33, or a regular semimonthly salary of $138.67 for 40 hours a week, is thus found to be $1.60 per hour. The Administrator has announced that, as an enforcement policy, he will consider that payment of such regular monthly or semimonthly salary is in accordance with the minimum wage requirements of the Act for employment to which the $1.60 minimum rate is applicable. Under regulations of the Administrator, pursuant to the authority given to him in section 7(g)(3) of the Act, the parties may provide that the regular rates shall be determined by dividing the monthly salary by the number of working days in the month and then by the number of hours of the normal or regular workday. Of course, the resultant rate in such a case must not be less than the statutory minimum wage.

§ 778.114 Fixed salary for fluctuating hours.

(a) An employee employed on a salary basis may have hours of work which fluctuate from week to week and the salary may be paid him pursuant to an understanding with his employer that he

will receive such fixed amount as straight time pay for whatever hours he is called upon to work in a workweek, whether few or many. Where there is a clear mutual understanding of the parties that the fixed salary is compensation (apart from overtime premiums) for the hours worked each workweek, whatever their number, rather than for working 40 hours or some other fixed weekly work period, such a salary arrangement is permitted by the Act if the amount of the salary is sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked in those workweeks in which the number of hours he works is greatest, and if he receives extra compensation, in addition to such salary, for all overtime hours worked at a rate not less than one-half his regular rate of pay. Since the salary in such a situation is intended to compensate the employee at straight time rates for whatever hours are worked in the workweek, the regular rate of the employee will vary from week to week and is determined by dividing the number of hours worked in the workweek into the amount of the salary to obtain the applicable hourly rate for the week. Payment for overtime hours at one-half such rate in addition to the salary satisfies the overtime pay requirement because such hours have already been compensated at the straight time regular rate, under the salary arrangement.

(b) The application of the principles above stated may be illustrated by the case of an employee whose hours of work do not customarily follow a regular schedule but vary from week to week, whose overtime work is never in excess of 50 hours in a workweek, and whose salary of $80 a week is paid with the understanding that it constitutes his compensation, except for overtime premiums, for whatever hours are worked in the workweek. If during the course of 4 weeks this employee works 40, 44, 50, and 48 hours, his regular hourly rate of pay in each of these weeks is approximately $2, $1.82, $1.60, and $1.67, respectively. Since the employee has already received straight-time compensation on a salary basis for all hours worked, only additional half-time pay is due. For the first week the employee is entitled to be paid $80; for the second week $83.64 ($80 plus 4 hours at 91 cents, or 40 hours at $1.82 plus 4 hours at $2.73); for the third week $88 ($80 plus 10 hours at 80 cents, or 40 hours at $1.60 plus 10 hours at $2.40); for the fourth week approximately $86.72 ($80 plus 8 hours at 84 cents or 40 hours at $1.67 plus 8 hours at $2.51).

(c) The "fluctuating workweek" method of overtime payment may not be used unless the salary is sufficiently large to assure that no workweek will be worked in which the employee's average hourly earnings from the salary fall below the minimum hourly wage rate applicable under the Act, and unless the employee clearly understands that the salary covers whatever hours the job may demand in a particular workweek and the employer pays the salary even though the workweek is one in which a full schedule of hours is not worked. Typically, such salaries are paid to employees who do not customarily work a regular schedule of hours and are in amounts agreed on by the parties as adequate straight-time compensation for long workweeks as well as short ones, under the circumstances of the employment as a whole. Where all the legal prerequisites for use of the "fluctuating workweek" method of overtime payment are present, the Act, in requiring that "not less than" the prescribed premium of 50 percent for overtime hours worked be paid, does not prohibit paying more. On the other hand, where all the facts indicate that an employee is being paid for his overtime hours at a rate no greater than that which he receives for nonovertime hours, compliance with the Act cannot be rested on any application of the fluctuating workweek overtime formula.

§ 778.115 Employees working at two or more rates.

Where an employee in a single workweek works at two or more different types of work for which different nonovertime rates of pay (of not less than the applicable minimum wage) have been established, his regular rate for that week is the weighted average of such rates. That is, his total earnings (except statutory exclusions) are computed to include his compensation during the workweek from all such rates, and are then divided by the total number of hours worked at all jobs. Certain statutory exceptions permitting alternative methods of computing overtime pay in such cases are discussed in §§ 778.400 and 778.415 through 778.421.

§ 778.116 Payments other than cash.

Where payments are made to employees in the form of goods or facilities which are regarded as part of wages, the reasonable cost to the employer or the fair value of such goods or of furnishing such facilities must be included in the regular rate. (See §§ 531.32 and 531.37(b) of this chapter for a discussion as to the inclusion of goods and facilities in wages and the method of determining reasonable cost.) Where, for example, an employer furnishes lodging to his employees in addition to cash wages, the reasonable cost or the fair value of the lodging (per week) must be added to the cash wages before the regular rate is determined.

§ 778.117 Commission payments—general.

Commissions (whether based on a percentage of total sales or of sales in excess of a specified amount, or on a fixed allowance per unit agreed upon as a measure of accomplishment, or on some other formula) are payments for hours worked and must be included in the regular rate. This is true regardless of whether the commission is the sole source of the employee's compensation or is paid in addition to a guaranteed salary or hourly rate, or on some other basis, and regardless of the method, frequency, or regularity of computing, allocating and paying the commission. It does not matter whether the commission earnings are computed daily, weekly, biweekly, semimonthly, monthly, or at some other interval. The fact that the commission is paid on a basis other than weekly, and that payment is delayed for a time past the employee's normal pay day or pay period, does not excuse the employer from including this payment in the employee's regular rate.

§ 778.118 Commission paid on a workweek basis.

When the commission is paid on a weekly basis, it is added to the employee's other earnings for that workweek (except overtime premiums and other payments excluded as provided in section 7(e) of the Act), and the total is divided by the total number of hours worked in the workweek to obtain the employee's regular hourly rate for the particular workweek. The employee must then be paid extra compensation at one-half of that rate for each hour worked in excess of the applicable maximum hours standard.

§ 778.119 Deferred commission payments—general rules.

If the calculation and payment of the commission cannot be completed until sometime after the regular pay day for the workweek, the employer may disregard the commission in computing the regular hourly rate until the amount of commission can be ascertained. Until that is done he may pay compensation for overtime at a rate not less than one and one-half times the hourly rate paid the employee, exclusive of the commission. When the commission can be computed and paid, additional overtime compensation due by reason of the inclusion of the commission in the employee's regular rate must also be paid. To compute this additional overtime compensation, it is necessary, as a general rule, that the commission be apportioned back over the workweeks of the period during which it was earned. The employee must then receive additional overtime compensation for each week during the period in which he worked in excess of the applicable maximum hours standard. The additional compensation for that workweek must be not less than one-half of the increase in the hourly rate of pay attributable to the commission for that week multiplied by the number of hours worked in excess of the applicable maximum hours standard in that workweek.

§ 778.120 Deferred commission payments not identifiable as earned in particular workweeks.

If it is not possible or practicable to allocate the commission among the workweeks of the period in proportion to the amount of commission actually earned or reaasonably presumed to be earned each week, some other reasonable and equitable method must be adopted. The following methods may be used:

(a) *Allocation of equal amounts to each week.* Assume that the employee earned an equal amount of commission

in each week of the commission computation period and compute any additional overtime compensation due on this amount. This may be done as follows:

(1) For a commission computation period of 1 month, multiply the commission payment by 12 and divide by 52 to get the amount of commission allocable to a single week. If there is a semimonthly computation period, multiply the commission payment by 24 and divide by 52 to get each week's commission. For a commission computation period of a specific number of workweeks, such as every 4 weeks (as distinguished from every month) divide the total amount of commission by the number of weeks for which it represents additional compensation to get the amount of commission allocable to each week.

(2) Once the amount of commission allocable to a workweek has been ascertained for each week in which overtime was worked, the commission for that week is divided by the total number of hours worked in that week, to get the increase in the hourly rate. Additional overtime due is computed by multiplying one-half of this figure by the number of overtime hours worked in the week. A shorter method of obtaining the amount of additional overtime compensation due is to multiply the amount of commission allocable to the week by the decimal equivalent of the fraction $\frac{\text{Overtime hours}}{\text{Total hours} \times 2}$. A coefficient table (WH–134) has been prepared which contains the appropriate decimals for computing the extra half-time due.

Examples:

(i) If there is a monthly commission payment of $41.60, the amount of commission allocable to a single week is $9.60 ($41.60×12=$499.20÷52=$9.60). In a week in which an employee who is due overtime compensation after 40 hours works 48 hours, dividing $9.60 by 48 gives the increase to the regular rate of $0.20. Multiplying one-half of this figure by 8 overtime hours gives the additional overtime pay due of $0.80. The $9.60 may also be multiplied by 0.083 (the appropriate decimal shown on the coefficient table), to get the additional overtime pay due of $0.80.

(ii) An employee received $38.40 in commissions for a 4-week period. Dividing this by 4 gives him a weekly increase of $9.60. Assume that he is due overtime compensation after 40 hours and that in the 4-week period he worked 44, 40, 44 and 48 hours. He would be due additional compensation of $0.44 for the first and third week ($9.60÷44=0.22÷2=0.11×4 overtime hours=$0.44), no extra compensation for the second week during which no overtime hours were worked, and $0.80 for the fourth week, computed in the same manner as weeks one and three. The additional overtime pay due may also be computed by multiplying the amount of the weekly increase by the appropriate decimal on the coefficient table, for each week in which overtime was worked.

(b) *Allocation of equal amounts to each hour worked.* If there are facts which make it inappropriate to assume equal commission earnings for each workweek as outlined in paragraph (a) of this section, assume that the employee earned an equal amount of commission in each hour that he worked during the commission computation period, and divide the amount of the commission payment by the number of hours worked in the period to obtain the amount of increase in the regular rate allocable to the commission payment. One-half of this figure should be multiplied by the number of statutory overtime hours worked by the employee in the overtime workweeks of the commission computation period, to get the amount of additional overtime compensation due for this period.

Example: An employee received commissions of $19.20 for a commission computation period of 96 hours, including 16 overtime hours (i.e., two workweeks of 48 hours each). Dividing the $19.20 by 96 gives a $0.20 increase in the hourly rate. If the employee is entitled to overtime after 40 hours in a workweek, he is due an additional $1.60 for the commission computation period, representing an additional $0.10 for each of the 16 overtime hours.

§ 778.121 Commission payments—delayed credits and debits.

If there are delays in crediting sales or debiting returns or allowances which affect the computation of commissions, the amounts paid to the employee for the computation period will be accepted as the total commission earnings of the employee during such period, and the commission may be allocated over the period from the last commission computation date to the present commission computation date, even though there may be credits or debits resulting from work which actually occurred during a previous period. The hourly increase resulting from the commission may be computed as outlined in the preceding paragraphs.

§ 778.122 Computation of overtime for commission employees on established basic rate.

Overtime pay for employees paid wholly or partly on a commission basis may be computed on an established basic rate, in lieu of the method described above. See § 778.400 and Part 548 of this chapter.

Subpart C—Payments That May Be Excluded From the "Regular Rate"

THE STATUTORY PROVISIONS

§ 778.200 Provisions governing inclusion, exclusion, and crediting of particular payments.

(a) *Section 7(e).* This subsection of the Act provides as follows:

As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include—

(1) Sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency; [discussed in § 778.212].

(2) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment; [discussed in §§ 778.216 through 778.224].

(3) Sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Secretary of Labor set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Secretary) paid to performers, including announcers, on radio and television programs; [discussed in §§ 778.208 through 778.215 and 778.225].

(4) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees; [discussed in §§ 778.214 and 778.215].

(5) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be; [discussed in §§ 778.201 and 778.202].

(6) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days; or [discussed in §§ 778.203, 778.205, and 778.206].

(7) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a)), where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek; [discussed in §§ 778.201 and 778.206].

(b) *Section 7(h).* This subsection of the Act provides as follows:

Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) shall be creditable toward overtime compensation payable pursuant to this section.

(c) *Only the statutory exclusions are authorized.* It is important to determine the scope of these exclusions, since all remuneration for employment paid to employees which does not fall within one of these seven exclusionary clauses must

be added into the total compensation received by the employee before his regular hourly rate of pay is determined.

EXTRA COMPENSATION PAID FOR OVERTIME

§ 778.201 Overtime premiums—general.

(a) Certain premium payments made by employers for work in excess of or outside of specified daily or weekly standard work periods or on certain special days are regarded as overtime premiums. In such case, the extra compensation provided by the premium rates need not be included in the employee's regular rate of pay for the purpose of computing overtime compensation due under section 7(a) of the Act. Moreover, under section 7(h) this extra compensation may be credited towards the overtime payments required by the Act.

(b) The three types of extra premium payments which may thus be treated as overtime premiums for purposes of the Act are outlined in section 7(e) (5), (6), and (7) of the Act as set forth in § 778.200(a). These are discussed in detail in the sections following.

(c) Section 7(h) of the Act specifically states that the extra compensation provided by these three types of payments may be credited toward overtime compensation due under section 7(a) for work in excess of the applicable maximum hours standard. No other types of remuneration for employment may be so credited.

§ 778.202 Premium pay for hours in excess of a daily or weekly standard.

(a) *Hours in excess of 8 per day or statutory weekly standard.* Many employment contracts provide for the payment of overtime compensation for hours worked in excess of 8 per day or 40 per week. Under some contracts such overtime compensation is fixed at one and one-half times the base rate; under others the overtime rate may be greater or less than one and one-half times the base rate. If the payment of such contract overtime compensation is in fact contingent upon the employee's having worked in excess of 8 hours in a day or in excess of the number of hours in the workweek specified in section 7(a) of the Act as the weekly maximum, the extra premium compensation paid for the excess hours is excludable from the regular rate under section 7(e)(5) and may be credited toward statutory overtime payments pursuant to section 7(h) of the Act. In applying these rules to situations where it is the custom to pay employees for hours during which no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, as these terms are explained in §§ 778.216 to 778.224, it is permissible (but not required) to count these hours as hours worked in determining the amount of overtime premium pay, due for hours in excess of 8 per day or the applicable maximum hours standard, which may be excluded from the regular rate and credited toward the statutory overtime compensation.

(b) *Hours in excess of normal or regular working hours.* Similarly, where the employee's normal or regular daily or weekly working hours are greater or less than 8 hours and 40 hours respectively and his contract provides for the payment of premium rates for work in excess of such normal or regular hours of work for the day or week (such as 7 in a day or 35 in a week) the extra compensation provided by such premium rates, paid for excessive hours, is a true overtime premium to be excluded from the regular rate and it may be credited towards overtime compensation due under the Act.

(c) *Premiums for excessive daily hours.* If an employee whose maximum hours standard is 40 hours is hired at the rate of $1.75 an hour and receives, as overtime compensation under his contract, $2.25 per hour for each hour actually worked in excess of 8 per day (or in excess of his normal or regular daily working hours), his employer may exclude the premium portion of the overtime rate from the employee's regular rate and credit the total of the extra 50-cent payments thus made for daily overtime hours against the overtime compensation which is due under the statute for hours in excess of 40 in that workweek. If the same contract further provided for the payment of $2.75 for hours in excess of 12 per day, the extra $1 payments could likewise be credited toward overtime compensation due under the Act. To qualify as overtime premiums under section 7(e)(5), the daily overtime premium payments must be made for hours in excess of 8 hours per day or the employee's normal or regular working hours. If the normal workday is artificially divided into a "straight time" period to which one rate is assigned, followed by a so-called "overtime" period for which a higher "rate" is specified, the arrangement will be regarded as a device to contravene the statutory purposes and the premiums will be considered part of the regular rate. For a fuller discussion of this problem, see § 778.501.

(d) *Hours in excess of other statutory standard.* Where payment at premium rates for hours worked in excess of a specified daily or weekly standard is made pursuant to the requirements of another applicable statute, the extra compensation provided by such premium rates will be regarded as a true overtime premium.

(e) *Premium pay for sixth or seventh day worked.* Under section 7(e)(5) and 7(h), extra premium compensation paid pursuant to contract or statute for work on the sixth or seventh day worked in the workweek is regarded in the same light as premiums paid for work in excess of the applicable maximum hours standard or the employee's normal or regular workweek.

§ 778.203 Premium pay for work on Saturdays, Sundays, and other "special days".

(a) Under section 7(e)(6) and 7(h) of the Act, extra compensation provided by a premium rate of at least time and one-half which is paid for work on Saturdays, Sundays, holidays, or regular days of rest or on the sixth or seventh day of the workweek (hereinafter referred to as "special days") may be treated as an overtime premium for the purposes of the Act. If the premium rate is less than time and one-half, the extra compensation provided by such rate must be included in determining the employee's regular rate of pay and cannot be credited toward statutory overtime due, unless it qualifies as an overtime premium under section 7(e)(5).

(b) "Special day" rate must be at least time and one-half to qualify as overtime premium: The premium rate must be at least "one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days." Where an employee is hired on the basis of a salary for a fixed workweek or at a single hourly rate of pay, the rate paid for work on "special days" must be at least time and one-half his regular hourly rate in order to qualify under section 7(e)(6). If the employee is a pieceworker or if he works at more than one job for which different hourly or piece rates have been established and these are bona fide rates applicable to the work when performed during nonovertime hours, the extra compensation provided by a premium rate of at least one and one-half times either (1) the bona fide rate applicable to the type of job the employee performs on the "special days", or (2) the average hourly earnings in the week in question, will qualify as an overtime premium under this section. (For a fuller discussion of computation on the average rate, see § 778.111; on the rate applicable to the job, see §§ 778.415 through 778.421; on the "established" rate, see § 778.400.)

(c) Bona fide base rate required: The statute authorizes such premiums paid for work on "special days" to be treated as overtime premiums only if they are actually based on a "rate established in good faith for like work performed in nonovertime hours on other days." This phrase is used for the purpose of distinguishing the bona fide employment standards contemplated by section 7(e)(6) from fictitious schemes and artificial or evasive devices as discussed in Subpart F of this part. Clearly, a rate which yields the employee less than time and one-half the minimum rate prescribed by the Act would not be a rate established in good faith.

(d) Work on the specified "special days": To qualify as an overtime premium under section 7(e)(6), the extra compensation must be paid for work on the specified days. The term "holiday" is read in its ordinary usage to refer to those days customarily observed in the community in celebration of some historical or religious occasion. A day of rest arbitrarily granted to employees because of lack of work is not a "holiday" within the meaning of this section, nor is it a "regular day of rest". The term "regular day of rest" means a day on which the employee in accordance with his regular prearranged schedule is not

expected to report for work. In some instances the "regular day of rest" occurs on the same day or days each week for a particular employee; in other cases, pursuant to a swing shift schedule, the scheduled day of rest rotates in a definite pattern, such as 6 days of work followed by 2 days of rest. In either case the extra compensation provided by a premium rate for work on such scheduled days of rest (if such rate is at least one and one-half times the bona fide rate established for like work during nonovertime hours on other days) may be treated as an overtime premium and thus need not be included in computing the employee's regular rate of pay and may be credited toward overtime payments due under the Act.

(e) Payment of premiums for work performed on the "special day": To qualify as an overtime premium under section 7(e)(6), the premium must be paid because work is performed on the days specified and not for some other reason which would not qualify the premium as an overtime premium under section 7(e)(5), (6), or (7). (For examples distinguishing pay for work on a holiday from idle holiday pay, see § 778.219.) Thus a premium rate paid to an employee only when he received less than 24 hours' notice that he is required to report for work on his regular day of rest is not a premium paid for work on one of the specified days; it is a premium imposed as a penalty upon the employer for failure to give adequate notice to compensate the employee for the inconvenience of disarranging his private life. The extra compensation is not an overtime premium. It is part of his regular rate of pay unless such extra compensation is paid the employee on infrequent and sporadic occasions so as to qualify for exclusion under section 7(e)(2) in which event it need not be included in computing his regular rate of pay, as explained in § 778.222.

§ 778.204 "Clock pattern" premium pay.

(a) *Overtime premiums under section 7(e)(7).* Where a collective bargaining agreement or other applicable employment contract in good faith establishes certain hours of the day as the basic, normal, or regular workday (not exceeding 8 hours) or workweek (not exceeding the maximum hours standard applicable under section 7(a)) and provides for the payment of a premium rate for work outside such hours, the extra compensation provided by such premium rate will be treated as an overtime premium if the premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during the basic, normal or regular workday or workweek.

(b) *Premiums for hours outside established working hours.* To qualify as an overtime premium under section 7(e)(7) the premium must be paid because the work was performed during hours "outside of the hours established * * * as the basic * * * workday or workweek" and not for some other reason. Thus, if the basic workday is established in good faith as the hours from 8 a.m. to 5 p.m. a premium of time and one-half paid for hours between 5 p.m. and 8 a.m. would qualify as an overtime premium. However, where the contract does not provide for the payment of a premium except for work between midnight and 6 a.m. the premium would not qualify under this section since it is not a premium paid for work outside the established workday but only for certain special hours outside the established workday, in most instances because they are undesirable hours. Similarly, where payments of premium rates for work are made after 5 p.m. only if the employee has not had a meal period or rest period, they are not regarded as overtime premiums; they are premiums paid because of undesirable working conditions.

(c) *Payment in pursuance of agreement.* Premiums of the type which section 7(e)(7) authorizes to be treated as overtime premiums must be paid "in pursuance of an applicable employment contract or collective bargaining agreement," and the rates of pay and the daily and weekly work periods referred to must be established in good faith by such contract or agreement. Although as a general rule a collective bargaining agreement is a formal agreement which has been reduced to writing, an employment contract for purposes of section 7(e)(7) may be either written or oral. Where there is a written employment contract and the practices of the parties differ from its provisions, it must be determined whether the practices of the parties have modified the contract. If the practices of the parties have modified the written provisions of the contract, the provisions of the contract as modified by the practices of the parties will be controlling in determining whether the requirements of section 7(e)(7) are satisfied. The determination as to the existence of the requisite provisions in an applicable oral employment contract will necessarily be based on all the facts, including those showing the terms of the oral contract and the actual employment and pay practices thereunder.

§ 778.205 Premiums for weekend and holiday work—example.

The application of section 7(e)(6) may be illustrated by the following example: Suppose an agreement of employment calls for the payment of $2.70 an hour for all hours worked on a holiday or on Sunday in the operation of machines by operators whose maximum hours standard is 40 hours and who are paid a bona fide hourly rate of $1.80 for like work performed during nonovertime hours on other days. Suppose further that the workweek of such an employee begins at 12:01 a.m. Sunday, and in a particular week he works a schedule of 8 hours on Sunday and on each day from Monday through Saturday, making a total of 56 hours worked in the workweek. Tuesday is a holiday. The payment of $115.20 to which the employee is entitled under the employment agreement will satisfy the requirements of the Act since the employer may properly exclude from the regular rate the extra $7.20 paid for work on Sunday and the extra $7.20 paid for holiday work and credit himself with such amount against the statutory overtime premium required to be paid for the 16 hours worked over 40.

§ 778.206 Premiums for work outside basic workday or workweek—examples.

The effect of section 7(e)(7) where "clock pattern" premiums are paid may be illustrated by reference to provisions typical of the applicable collective bargaining agreements traditionally in effect between employers and employees in the longshore and stevedoring industries. These agreements specify straight time rates applicable during the hours established in good faith under the agreement as the basic, normal, or regular workday and workweek. Under one such agreement, for example, such workday and workweek are established as the first 6 hours of work, exclusive of mealtime, each day, Monday through Friday, between the hours of 8 a.m. and 5 p.m. Under another typical agreement, such workday and workweek are established as the hours between 8 a.m. and 12 noon and between 1 p.m. and 5 p.m., Monday through Friday. Work outside such workday and workweek is paid for at premium rates not less than one and one-half times the bona fide straight-time rates applicable to like work when performed during the basic, normal, or regular workday or workweek. The extra compensation provided by such premium rates will be excluded in computing the regular rate at which the employees so paid are employed and may be credited toward overtime compensation due under the Act. For example, if an employee is paid $2 an hour under such an agreement for handling general cargo during the basic, normal, or regular workday and $3 per hour for like work outside of such workday, the extra $1 will be excluded from the regular rate and may be credited to overtime pay due under the Act. Similarly, if the straight time rate established in good faith by the contract should be higher because of handling dangerous or obnoxious cargo, recognition of skill differentials, or similar reasons, so as to be $3 an hour during the hours established as the basic or normal or regular workday or workweek, and a premium rate of $4.50 an hour is paid for the same work performed during other hours of the day or week, the extra $1.50 may be excluded from the regular rate of pay and may be credited toward overtime pay due under the Act. Similar principles are applicable where agreements following this general pattern exist in other industries.

§ 778.207 Other types of contract premium pay distinguished.

(a) *Overtime premiums are those defined by the statute.* The various types of contract premium rates which provide extra compensation qualifying as overtime premiums to be excluded from the regular rate (under section 7(e)(5),

(6), and (7)) and credited toward statutory overtime pay requirements (under section 7(h)) have been described in §§ 778.201 through 778.206. The plain wording of the statute makes it clear that extra compensation provided by premium rates other than those described cannot be treated as overtime premiums. Wherever such other premiums are paid, they must be included in the employee's regular rate before statutory overtime compensation is computed; no part of such premiums may be credited toward statutory overtime pay.

(b) *Nonovertime premiums.* The Act requires the inclusion in the regular rate of such extra premiums as nightshift differentials (whether they take the form of a percent of the base rate or an addition of so many cents per hour) and premiums paid for hazardous, arduous or dirty work. It also requires inclusion of any extra compensation which is paid as an incentive for the rapid performance of work, and since any extra compensation in order to qualify as an overtime premium must be provided by a premium rate per hour, except in the special case of pieceworkers as discussed in § 778.418, lump sum premiums which are paid without regard to the number of hours worked are not overtime premiums and must be included in the regular rate. For example, where an employer pays 8 hours' pay for a particular job whether it is performed in 8 hours or in less time, the extra premium of 2 hours' pay received by an employee who completes the job in 6 hours must be included in his regular rate. Similarly, where an employer pays for 8 hours at premium rates for a job performed during the overtime hours whether it is completed in 8 hours or less, no part of the premium paid qualifies as overtime premium under sections 7(e) (5), (6), or (7). (For a further discussion of this and related problems, see §§ 778.308 to 778.314.)

BONUSES

§ 778.208 Inclusion and exclusion of bonuses in computing the "regular rate."

Section 7(e) of the Act requires the inclusion in the regular rate of all remuneration for employment except seven specified types of payments. Among these excludable payments are discretionary bonuses, gifts and payments in the nature of gifts on special occasions, contributions by the employer to certain welfare plans and payments made by the employer pursuant to certain profit-sharing, thrift and savings plans. These are discussed in §§ 778.211 through 778.214. Bonuses which do not qualify for exclusion from the regular rate as one of these types must be totaled in with other earnings to determine the regular rate on which overtime pay must be based. Bonus payments are payments made in addition to the regular earnings of an employee. For a discussion on the bonus form as an evasive bookkeeping device, see §§ 778.502 and 778.503.

§ 778.209 Method of inclusion of bonus in regular rate.

(a) *General rules.* Where a bonus payment is considered a part of the regular rate at which an employee is employed, it must be included in computing his regular hourly rate of pay and overtime compensation. No difficulty arises in computing overtime compensation if the bonus covers only one weekly pay period. The amount of the bonus is merely added to the other earnings of the employee (except statutory exclusions) and the total divided by total hours worked. Under many bonus plans, however, calculations of the bonus may necessarily be deferred over a period of time longer than a workweek. In such a case the employer may disregard the bonus in computing the regular hourly rate until such time as the amount of the bonus can be ascertained. Until that is done he may pay compensation for overtime at one and one-half times the hourly rate paid by the employee, exclusive of the bonus. When the amount of the bonus can be ascertained, it must be apportioned back over the workweeks of the period during which it may be said to have been earned. The employee must then receive an additional amount of compensation for each workweek that he worked overtime during the period equal to one-half of the hourly rate of pay allocable to the bonus for that week multiplied by the number of statutory overtime hours worked during the week.

(b) *Allocation of bonus where bonus earnings cannot be identified with particular workweeks.* If it is impossible to allocate the bonus among the workweeks of the period in proportion to the amount of the bonus actually earned each week, some other reasonable and equitable method of allocation must be adopted. For example, it may be reasonable and equitable to assume that the employee earned an equal amount of bonus each week of the period to which the bonus relates, and if the facts support this assumption additional compensation for each overtime week of the period may be computed and paid in an amount equal to one-half of the average hourly increase in pay resulting from bonus allocated to the week, multiplied by the number of statutory overtime hours worked in that week. Or, if there are facts which make it inappropriate to assume equal bonus earnings for each workweek, it may be reasonable and equitable to assume that the employee earned an equal amount of bonus each hour of the pay period and the resultant hourly increase may be determined by dividing the total bonus by the number of hours worked by the employee during the period for which it is paid. The additional compensation due for the overtime workweeks in the period may then be computed by multiplying the total number of statutory overtime hours worked in each such workweek during the period by one-half this hourly increase.

§ 778.210 Percentage of total earnings as bonus.

In some instances the contract or plan for the payment of a bonus may also provide for the simultaneous payment of overtime compensation due on the bonus. For example, a contract made prior to the performance of services may provide for the payment of additional compensation in the way of a bonus at the rate of 10 percent of the employee's straight-time earnings, and 10 percent of his overtime earnings. In such instances, of course, payments according to the contract will satisfy in full the overtime provisions of the Act and no recomputation will be required. This is not true, however, where this form of payment is used as a device to evade the overtime requirements of the Act rather than to provide actual overtime compensation, as described in §§ 778.502 and 778.503.

§ 778.211 Discretionary bonuses.

(a) *Statutory provision.* Section 7(e)(3)(a) of the Act provides that the regular rate shall not be deemed to include "sums paid in recognition of services performed during a given period if * * * (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly * * *". Such sums may not, however, be credited toward overtime compensation due under the Act.

(b) *Discretionary character of excluded bonus.* In order for a bonus to qualify for exclusion as a discretionary bonus under section 7(e)(3)(a) the employer must retain discretion both as to the fact of payment and as to the amount until a time quite close to the end of the period for which the bonus is paid. The sum, if any, to be paid as a bonus is determined by the employer without prior promise or agreement. The employee has no contract right, express or implied, to any amount. If the employer promises in advance to pay a bonus, he has abandoned his discretion with regard to it. Thus, if an employer announces to his employees in January that he intends to pay them a bonus in June, he has thereby abandoned his discretion regarding the fact of payment by promising a bonus to his employees. Such a bonus would not be excluded from the regular rate under section 7(e)(3)(a). Similarly, an employer who promises to sales employees that they will receive a monthly bonus computed on the basis of allocating 1 cent for each item sold whenever, in his discretion, the financial condition of the firm warrants such payments, has abandoned discretion with regard to the amount of the bonus though not with regard to the fact of payment. Such a bonus would not be excluded from the regular rate. On the other hand, if a bonus such as the one just described were paid without prior contract, promise or announcement and the decision as to the fact and amount of payment lay in

the employer's sole discretion, the bonus would be properly excluded from the regular rate.

(c) *Promised bonuses not excluded.* The bonus, to be excluded under section 7(e)(3)(a), must not be paid "pursuant to any prior contract, agreement, or promise." For example, any bonus which is promised to employees upon hiring or which is the result of collective bargaining would not be excluded from the regular rate under this provision of the Act. Bonuses which are announced to employees to induce them to work more steadily or more rapidly or more efficiently or to remain with the firm are regarded as part of the regular rate of pay. Attendance bonuses, individual or group production bonuses, bonuses for quality and accuracy of work, bonuses contingent upon the employee's continuing in employment until the time the payment is to be made and the like are in this category. They must be included in the regular rate of pay.

§ 778.212 Gifts, Christmas and special occasion bonuses.

(a) *Statutory provision.* Section 7(e)(1) of the Act provides that the term "regular rate" shall not be deemed to include "sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency * * *". Such sums may not, however, be credited toward overtime compensation due under the Act.

(b) *Gift or similar payment.* To qualify for exclusion under section 7(e)(1) the bonus must be actually a gift or in the nature of a gift. If it is measured by hours worked, production, or efficiency, the payment is geared to wages and hours during the bonus period and is no longer to be considered as in the nature of a gift. If the payment is so substantial that it can be assumed that employees consider it a part of the wages for which they work, the bonus cannot be considered to be in the nature of a gift. Obviously, if the bonus is paid pursuant to contract (so that the employee has a legal right to the payment and could bring suit to enforce it), it is not in the nature of a gift.

(c) *Application of exclusion.* If the bonus paid at Christmas or on other special occasion is a gift or in the nature of a gift, it may be excluded from the regular rate under section 7(e)(1) even though it is paid with regularity so that the employees are led to expect it and even though the amounts paid to different employees or groups of employees vary with the amount of the salary or regular hourly rate of such employees or according to their length of service with the firm so long as the amounts are not measured by or directly dependent upon hours worked, production, or efficiency. A Christmas bonus paid (not pursuant to contract) in the amount of two weeks' salary to all employees and an equal additional amount for each 5 years of service with the firm, for example, would be excludable from the regular rate under this category.

§ 778.213 Profit-sharing, thrift, and savings plans.

Section 7(e)(3)(b) of the Act provides that the term "regular rate" shall not be deemed to include "sums paid in recognition of services performed during a given period if * * * the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Secretary of Labor set forth in appropriate regulations * * *". Such sums may not, however, be credited toward overtime compensation due under the Act. The regulations issued under this section are Parts 547 and 549 of this chapter. Payments in addition to the regular wages of the employee, made by the employer pursuant to a plan which meets the requirements of the regulations in Part 547 or 549 of this chapter, will be properly excluded from the regular rate.

§ 778.214 Benefit plans; including profit-sharing plans or trusts providing similar benefits.

(a) *Statutory provision.* Section 7(e)(4) of the Act provides that the term "regular rate" shall not be deemed to include: "contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old age, retirement, life, accident, or health insurance or similar benefits for employees * * *". Such sums may not, however, be credited toward overtime compensation due under the Act.

(b) *Scope and application of exclusion generally.* Plans for providing benefits of the kinds described in section 7(e)(4) are referred to herein as "benefit plans". It is section 7(e)(4) which governs the status for regular rate purposes of any contributions made by an employer pursuant to a plan for providing the described benefits. This is true irrespective of any other features the plan may have. Thus, it makes no difference whether or not the benefit plan is one financed out of profits or one which by matching employee contributions or otherwise encourages thrift or savings. Where such a plan or trust is combined in a single program (whether in one or more documents) with a plan or trust for providing profit-sharing payments to employees, the profit-sharing payments may be excluded from the regular rate if they meet the requirements of the Profit-Sharing Regulations, Part 549 of this chapter, and the contributions made by the employer for providing the benefits described in section 7(e)(4) of the Act may be excluded from the regular rate if they meet the tests set forth in § 778.215.

(c) *Tests must be applied to employer contributions.* It should be emphasized that it is the employer's contribution made pursuant to the benefit plan that is excluded from or included in the regular rate according to whether or not the requirements set forth in § 778.215 are met. If the contribution is not made as provided in section 7(e)(4) or if the plan does not qualify as a bona fide benefit plan under that section, the contribution is treated the same as any bonus payment which is part of the regular rate of pay, and at the time the contribution is made the amount thereof must be apportioned back over the workweeks of the period during which it may be said to have accrued. Overtime compensation based upon the resultant increases in the regular hourly rate is due for each overtime hour worked during any workweek of the period. The subsequent distribution of accrued funds to an employee on account of severance of employment (or for any other reason) would not result in any increase in his regular rate in the week in which the distribution is made.

(d) *Employer contributions when included in fringe benefit wage determinations under Davis-Bacon Act.* As noted in § 778.6, where certain fringe benefits are included in the wage predeterminations of the Secretary of Labor for laborers and mechanics performing contract work subject to the Davis-Bacon Act and related statutes, the provisions of Public Law 88–349 discussed in § 5.32 of this title should be considered together with the interpretations in this Part 778 in determining the excludability of such fringe benefits from the regular rate of such employees. Accordingly, reference should be made to § 5.32 of this title as well as to § 778.215 for guidance with respect to exclusion from the employee's regular rate of contributions made by the employer to any benefit plan if, in the workweek or workweeks involved, the employee performed work as a laborer or mechanic subject to a wage determination made by the Secretary pursuant to Part 1 of this title, and if fringe benefits of the kind represented by such contributions constitute a part of the prevailing wages required to be paid such employee in accordance with such wage determination.

(e) *Employer contributions or equivalents pursuant to fringe benefit determinations under Service Contract Act of 1965.* Contributions by contractors and subcontractors to provide fringe benefits specified under the McNamara-O'Hara Service Contract Act of 1965, which are of the kind referred to in section 7(e)(4), are excludable from the regular rate under the conditions set forth in § 778.215. Where the fringe benefit contributions specified under such Act are so excludable, equivalent benefits or payments provided by the employer in satisfaction of his obligation to provide the specified benefits are also excludable from the regular rate if authorized under Part 4 of this title, Subpart B, pursuant to the McNamara-O'Hara Act, and their exclusion therefrom is not dependent on whether such equivalents, if separately considered, would meet the requirements of § 778.215. See § 778.7.

§ 778.215 Conditions for exclusion of benefit-plan contributions under section 7(e)(4).

(a) *General rules.* In order for an employer's contribution to qualify for exclusion from the regular rate under section 7(e)(4) of the Act the following conditions must be met:

(1) The contributions must be made pursuant to a specific plan or program adopted by the employer, or by contract as a result of collective bargaining, and communicated to the employees. This may be either a company-financed plan or an employer-employee contributory plan.

(2) The primary purpose of the plan must be to provide systematically for the payment of benefits to employees on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, and the like.

(3) In the plan or trust, either:

(i) The benefits must be specified or definitely determinable on an actuarial basis; or

(ii) There must be both a definite formula for determining the amount to be contributed by the employer and a definite formula for determining the benefits for each of the employees participating in the plan; or

(iii) There must be both a formula for determining the amount to be contributed by the employer and a provision for determining the individual benefits by a method which is consistent with the purposes of the plan or trust under section 7(e)(4) of the Act.

(iv) NOTE: The requirements in subdivisions (ii) and (iii) of this subparagraph for a formula for determining the amount to be contributed by the employer may be met by a formula which requires a specific and substantial minimum contribution and which provides that the employer may add somewhat to that amount within specified limits; provided, however, that there is a reasonable relationship between the specified minimum and maximum contributions. Thus, formulas providing for a minimum contribution of 10 percent of profits and giving the employer discretion to add to that amount up to 20 percent of profits, or for a minimum contribution of 5 percent of compensation and discretion to increase up to a maximum of 15 percent of compensation, would meet the requirement. However, a plan which provides for insignificant minimum contributions and permits a variation so great that, for all practical purposes, the formula becomes meaningless as a measure of contributions, would not meet the requirements.

(4) The employer's contributions must be paid irrevocably to a trustee or third person pursuant to an insurance agreement, trust or other funded arrangement. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the employer be able to recapture any of the contributions paid in nor in any way divert the funds to his own use or benefit. (It should also be noted that in the case of joint employer-employee contributory plans, where the employee contributions are not paid over to a third person or to a trustee unaffiliated with the employer, violations of the Act may result if the employee contributions cut into the required minimum or overtime wages. See §§ 531.35, 531.36, 531.37, and 531.38 of this chapter.) Although an employer's contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the employer of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the employer. In such a case the return by the insurance company to the employer of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the employer, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan.

(5) The plan must not give an employee the right to assign his benefits under the plan nor the option to receive any part of the employer's contributions in cash instead of the benefits under the plan: *Provided, however,* That if a plan otherwise qualifies as a bona fide benefit plan under section 7(e)(4) of the Act, it will still be regarded as a bona fide plan even though it provides, as an incidental part thereof, for the payment to an employee in cash of all or a part of the amount standing to his credit (i) at the time of the severance of the employment relation due to causes other than retirement, disability, or death, or (ii) upon proper termination of the plan, or (iii) during the course of his employment under circumstances specified in the plan and not inconsistent with the general purposes of the plan to provide the benefits described in section 7(e)(4) of the Act.

(b) *Plans under section 401(a) of the Internal Revenue Code.* Where the benefit plan or trust has been approved by the Bureau of Internal Revenue as satisfying the requirements of section 401(a) of the Internal Revenue Code in the absence of evidence to the contrary, the plan or trust will be considered to meet the conditions specified in subparagraphs (1), (4), and (5) of paragraph (a) of this section.

PAYMENTS NOT FOR HOURS WORKED

§ 778.216 The provisions of section 7(e)(2) of the Act.

Section 7(e)(2) of the Act provides that the term "regular rate" shall not be deemed to include "payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment * * *". However, since such payments are not made as compensation for the employee's hours worked in any workweek, no part of such payments can be credited toward overtime compensation due under the Act.

§ 778.217 Reimbursement for expenses.

(a) *General rule.* Where an employee incurs expenses on his employer's behalf or where he is required to expend sums solely by reason of action taken for the convenience of his employer, section 7(e)(2) is applicable to reimbursement for such expenses. Payments made by the employer to cover such expenses are not included in the employee's regular rate (if the amount of the reimbursement reasonably approximates the expenses incurred). Such payment is not compensation for services rendered by the employees during any hours worked in the workweek.

(b) *Illustrations.* Payment by way of reimbursement for the following types of expenses will not be regarded as part of the employee's regular rate:

(1) The actual amount expended by an employee in purchasing supplies, tools, materials, or equipment on behalf of his employer.

(2) The actual or reasonably approximate amount expended by an employee in purchasing, laundering or repairing uniforms or special clothing which his employer requires him to wear.

(3) The actual or reasonably approximate amount expended by an employee, who is traveling "over the road" on his employer's business, for transportation (whether by private car or common carrier) and living expenses away from home, other travel expenses, such as taxicab fares, incurred while traveling on the employer's business.

(4) "Supper money", a reasonable amount given to an employee, who ordinarily works the day shift and can ordinarily return home for supper, to cover the cost of supper when he is requested by his employer to continue work during the evening hours.

(5) The actual or reasonably approximate amount expended by an employee as temporary excess home-to-work travel expenses incurred (i) because the employer has moved the plant to another town before the employee has had an opportunity to find living quarters at the new location or (ii) because the employee, on a particular occasion, is required to report for work at a place other than his regular workplace.

The foregoing list is intended to be illustrative rather than exhaustive.

(c) *Payments excluding expenses.* It should be noted that only the actual or reasonably approximate amount of the expense is excludable from the regular rate. If the amount paid as "reimbursement" is disproportionately large, the

excess amount will be included in the regular rate.

(d) *Payments for expenses personal to the employee.* The expenses for which reimbursement is made must, in order to merit exclusion from the regular rate under this section, be expenses incurred by the employee on the employer's behalf or for his benefit or convenience. If the employer reimburses the employee for expenses normally incurred by the employee for his own benefit, he is, of course, increasing the employee's regular rate thereby. An employee normally incurs expenses in travelling to and from work, buying lunch, paying rent, and the like. If the employer reimburses him for these normal everyday expenses, the payment is not excluded from the regular rate as "reimbursement for expenses." Whether the employer "reimburses" the employee for such expenses or furnishes the facilities (such as free lunches or free housing), the amount paid to the employee (or the reasonable cost to the employer or fair value where facilities are furnished) enters into the regular rate of pay as discussed in § 778.116. See also § 531.37(b) of this chapter.

§ 778.218 Pay for certain idle hours.

(a) *General rules.* Payments which are made for occasional periods when the employee is not at work due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, where the payments are in amounts approximately equivalent to the employee's normal earnings for a similar period of time, are not made as compensation for his hours of employment. Therefore, such payments may be excluded from the regular rate of pay under section 7(e)(2) of the Act and, for the same reason, no part of such payments may be credited toward overtime compensation due under the Act.

(b) *Limitations on exclusion.* This provision of section 7(e)(2) deals with the type of absences which are infrequent or sporadic or unpredictable. It has no relation to regular "absences" such as lunch periods nor to regularly scheduled days of rest. Sundays may not be workdays in a particular plant, but this does not make them either "holidays" or "vacations," or days on which the employee is absent because of the failure of the employer to provide sufficient work. The term holiday is read in its ordinary usage to refer to those days customarily observed in the community in celebration of some historical or religious occasion; it does not refer to days of rest given to employees in lieu of or as an addition to compensation for working on other days.

(c) *Failure to provide work.* The term "failure of the employer to provide sufficient work" is intended to refer to occasional, sporadically recurring situations where the employee would normally be working but for such a factor as machinery breakdown, failure of expected supplies to arrive, weather conditions affecting the ability of the employee to perform the work and similarly unpredictable obstacles beyond the control of the employer. The term does not include reduction in work schedule (as discussed in §§ 778.321 through 778.329), ordinary temporary layoff situations, or any type of routine, recurrent absence of the employee.

(d) *Other similar cause.* The term "other similar cause" refers to payments made for periods of absence due to factors like holidays, vacations, sickness, and failure of the employer to provide work. Examples of "similar causes" are absences due to jury service, reporting to a draft board, attending a funeral of a family member, inability to reach the workplace because of weather conditions. Only absences of a nonroutine character which are infrequent or sporadic or unpredictable are included in the "other similar cause" category.

§ 778.219 Pay for foregoing holidays and vacations.

(a) *Sums payable whether employee works or not.* As explained in § 778.218, certain payments made to an employee for periods during which he performs no work because of a holiday or vacation are not required to be included in the regular rate because they are not regarded as compensation for working. Suppose an employee who is entitled to such a paid idle holiday or paid vacation foregoes his holiday or vacation and performs work for the employer on the holiday or during the vacation period. If, under the terms of his employment, he is entitled to a certain sum as holiday or vacation pay, whether he works or not, and receives pay at his customary rate (or higher) in addition for each hour that he works on the holiday or vacation day, the certain sum allocable to holiday or vacation pay is still to be excluded from the regular rate. It is still not regarded as compensation for hours of work if he is otherwise compensated at his customary rate (or at a higher rate) for his work on such days. Since it is not compensation for work it may not be credited toward overtime compensation due under the Act. Two examples in which the maximum hours standard is 40 hours may serve to illustrate this principle:

(1) An employee whose rate of pay is $2 an hour and who usually works a 6-day 48-hour week is entitled, under his employment contract, to a week's paid vacation in the amount of his usual straight-time earnings—$96. He foregoes his vacation and works 50 hours in the week in question. He is owed $100 as his total straight time earnings for the week, and $96 in addition as his vacation pay. Under the statute he is owed an additional $10 as overtime premium (additional half-time) for the 10 hours in excess of 40. His regular rate of $2 per hour has not been increased by virtue of the payment of $96 vacation pay, but no part of the $96 may be offset against the statutory overtime compensation which is due. (Nothing in this example is intended to imply that the employee has a statutory right to $96 or any other sum as vacation pay. This is a matter of private contract between the parties who may agree that vacation pay will be measured by straight time earnings for any agreed number of hours or days, or by total normal or expected take-home pay for the period or that no vacation pay at all will be paid. The example merely illustrates the proper method of computing overtime for an employee whose employment contract provides $96 vacation pay.)

(2) An employee who is entitled under his employment contract to 8 hours' pay at his rate of $2 an hour for the Christmas holiday, foregoes his holiday and works 9 hours on that day. During the entire week he works a total of 50 hours. He is paid under his contract, $100 as straight time compensation for 50 hours plus $16 as idle holiday pay. He is owed, under the statute, an additional $10 as overtime premium (additional half-time) for the 10 hours in excess of 40. His regular rate of $2 per hour has not been increased by virtue of the holiday pay but no part of the $16 holiday pay may be credited toward statutory overtime compensation due.

(b) *Premiums for holiday work distinguished.* The example in paragraph (a)(2) of this section should be distinguished from a situation in which an employee is entitled to idle holiday pay under the employment agreement only when he is actually idle on the holiday, and who, if he foregoes his holiday also, under his contract, foregoes his idle holiday pay.

(1) The typical situation is one in which an employee is entitled by contract to 8 hours' pay at his rate of $2 an hour for certain named holidays when no work is performed. If, however, he is required to work on such days, he does not receive his idle holiday pay. Instead he receives a premium rate of $3 (time and one-half) for each hour worked on the holiday. If he worked 9 hours on the holiday and a total of 50 hours for the week, he would be owed, under his contract, $27 (9×$3) for the holiday work and $82 for the other 41 hours worked in the week, a total of $109. Under the statute (which does not require premium pay for a holiday) he is owed $110 for a workweek of 50 hours at a rate of $2 an hour. Since the holiday premium is one and one-half times the established rate for nonholiday work, it does not increase the regular rate because it qualifies as an overtime premium under section 7(e)(6), and the employer may credit it toward statutory overtime compensation due and need pay the employee only the additional sum of $1 to meet the statutory requirements. (For a discussion of holiday premiums see § 778.203.)

(2) If all other conditions remained the same but the contract called for the payment of $4 (double time) for each hour worked on the holiday, the employee would receive, under his contract, $36 (9×$4) for the holiday work in addition to $82 for the other 41 hours worked, a total of $118. Since this holiday premium is also an overtime premium under section 7(e)(6), it is excludable from the regular rate and the employer may credit it toward statutory overtime compensation due. Because the total thus paid exceeds the statutory requirements, no additional compensation is due under the Act. In distinguishing this situation from

that in the example in paragraph (a)(2) of this section, it should be noted that the contract provisions in the two situations are different and result in the payment of different amounts. In example (2) the employee received a total of $34 attributable to the holiday: 8 hours' idle holiday pay at $2 an hour, due him whether he worked or not, and $18 pay at the nonholiday rate for 9 hours' work on the holiday. In the situation discussed in this paragraph the employee received $36 pay for working on the holiday—double time for 9 hours of work. Thus, clearly, all of the pay in this situation is paid for and directly related to the number of hours worked on the holiday.

§ 778.220 "Show-up" or "reporting" pay.

(a) *Applicable principles.* Under some employment agreements, an employee may be paid a minimum of a specified number of hours' pay at the applicable straight time or overtime rate on infrequent and sporadic occasions when, after reporting to work at his scheduled starting time on a regular work day or on another day on which he has been scheduled to work, he is not provided with the expected amount of work. The amounts that may be paid under such an agreement over and above what the employee would receive if paid at his customary rate only for the number of hours worked are paid to compensate the employee for the time wasted by him in reporting for work and to prevent undue loss of pay resulting from the employer's failure to provide expected work during regular hours. One of the primary purposes of such an arrangement is to discourage employers from calling their men in to work for only a fraction of a day when they might get full-time work elsewhere. Pay arrangements of this kind are commonly referred to as "show-up" or "reporting" pay. Under the principles and subject to the conditions set forth in Subpart B of this part and §§ 778.201 through 778.207, that portion of such payment which represents compensation at the applicable rates for the straight time or overtime hours actually worked, if any, during such period may be credited as straight time or overtime compensation, as the case may be, in computing overtime compensation due under the Act. The amount by which the specified number of hours' pay exceeds such compensation for the hours actually worked is considered as a payment that is not made for hours worked. As such, it may be excluded from the computation of the employee's regular rate and cannot be credited toward statutory overtime compensation due him.

(b) *Application illustrated.* To illustrate, assume that an employee entitled to overtime pay after 40 hours a week whose workweek begins on Monday and who is paid $2 an hour reports for work on Monday according to schedule and is sent home after being given only 2 hours of work. He then works 8 hours each day on Tuesday through Saturday, inclusive making a total of 42 hours for the week. The employment agreement covering the employees in the plant, who normally work 8 hours a day, Monday through Friday, provides that an employee reporting for scheduled work on any day will receive a minimum of 4 hours' work or pay. The employee thus receives not only the $4 earned in the 2 hours of work on Monday but an extra 2 hours' "show-up" pay, or $4 by reason of this agreement. However, since this $4 in "show-up" pay is not regarded as compensation for hours worked, the employee's regular rate remains $2 and the overtime requirements of the Act are satisfied if he receives, in addition to the $84 straight-time pay for 42 hours and the $4 "show-up" payment, the sum of $2 as extra compensation for the 2 hours of overtime work on Saturday.

§ 778.221 "Call-back" pay.

(a) *General.* In the interest of simplicity and uniformity, the principles discussed in § 778.220 are applied also with respect to typical minimum "call-back" or "call-out" payments made pursuant to employment agreements. Typically, such minimum payments consist of a specified number of hours' pay at the applicable straight time or overtime rates which an employee receives on infrequent and sporadic occasions when, after his scheduled hours of work have ended and without prearrangement, he responds to a call from his employer to perform extra work.

(b) *Application illustrated.* The application of these principles to call-back payments may be illustrated as follows: An employment agreement provides a minimum of 3 hours' pay at time and one-half for any employee called back to work outside his scheduled hours. The employees covered by the agreement, who are entitled to overtime pay after 40 hours a week, normally work 8 hours each day, Monday through Friday, inclusive, in a workweek beginning on Monday, and are paid overtime compensation at time and one-half for all hours worked in excess of 8 in any day or 40 in any workweek. Assume that an employee covered by this agreement and paid at the rate of $2 an hour works 1 hour overtime or a total of 9 hours on Monday, and works 8 hours each on Tuesday through Friday, inclusive. After he has gone home on Friday evening he is called back to perform an emergency job. His hours worked on the call total 2 hours and he receives 3 hours' pay at time and one-half, or $9, under the call-back provision, in addition to $80 for working his regular schedule and $3 for overtime worked on Monday evening. In computing overtime compensation due this employee under the Act, the 43 actual hours (not 44) are counted as working time during the week. In addition to $86 pay at the $2 rate for all these hours, he has received under the agreement a premium of $1 for the 1 overtime hour on Monday and of $2 for the 2 hours of overtime work on the call, plus an extra sum of $3 paid by reason of the provision for minimum call-back pay. For purposes of the Act, the extra premiums paid for actual hours of overtime work on Monday and on the Friday call (a total of $3) may be excluded as true overtime premiums in computing his regular rate for the week and may be credited toward compensation due under the Act, but the extra $3 received under the call-back provision is not regarded as paid for hours worked; therefore, it may be excluded from the regular rate, but it cannot be credited toward overtime compensation due under the Act. The regular rate of the employee, therefore, remains $2, and he has received an overtime premium of $1 an hour for 3 overtime hours of work. This satisfies the requirements of section 7 of the Act. The same would be true, of course, if, in the foregoing example, the employee was called back outside his scheduled hours for the 2-hour emergency job on another night of the week or on Saturday or Sunday, instead of on Friday night.

§ 778.222 Other payments similar to "call-back" pay.

The principles discussed in §§ 778.220–778.221 are also applied with respect to certain types of extra payments which are similar to call-back pay, such as: (a) Extra payments made to employees, on infrequent and sporadic occasions, for failure to give the employee sufficient notice to report for work on regular days of rest or during hours outside of his regular work schedule; and (b) extra payments made, on infrequent and sporadic occasions, solely because the employee has been called back to work before the expiration of a specified number of hours between shifts or tours of duty, sometimes referred to as a "rest period". The extra payment, over and above the employee's earnings for the hours actually worked at his applicable rate (straight time or overtime, as the case may be), is considered as a payment that is not made for hours worked.

§ 778.223 Pay for non-productive hours distinguished.

Under the Act an employee must be compensated for all hours worked. As a general rule the term "hours worked" will include (a) all time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, in such activities as waiting for work, remaining "on call", traveling on the employer's business or to and from workplaces, and in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in Part 785 of this chapter (interpretative bulletin on "hours worked") and Part 790 of this chapter (statement on effect of Portal-to-Portal Act of 1947). To the extent that these hours are regarded as working time, payment made

as compensation for these hours obviously cannot be characterized as "payments not for hours worked." Such compensation is treated in the same manner as compensation for any other working time and is, of course, included in the regular rate of pay. Where payment is ostensibly made as compensation for such of these hours as are not regarded as working time under the Act, the payment is nevertheless included in the regular rate of pay unless it qualifies for exclusion from the regular rate as one of a type of "payments made for occasional periods when no work is performed due to * * * failure of the employer to provide sufficient work, or other similar cause" as discussed in § 778.218 or is excludable on some other basis under section 7(e)(2). For example, an employment contract may provide that employees who are assigned to take calls for specific periods will receive a payment of $2 for each 8-hour period during which they are "on call" in addition to pay at their regular (or overtime) rate for hours actually spent in making calls. If the employees who are thus on call are not confined to their homes or to any particular place, but may come and go as they please, provided that they leave word where they may be reached, the hours spent "on call" are not considered as hours worked. Although the payment received by such employees for such "on call" time is, therefore, not allocable to any specific hours of work, it is clearly paid as compensation for performing a duty involved in the employee's job and is not of a type excludable under section 7(e)(2). The payment must therefore be included in the employee's regular rate in the same manner as any payment for services, such as an attendance bonus, which is not related to any specific hours of work.

§ 778.224 "Other similar payments".

(a) *General.* The preceding sections have enumerated and discussed the basic types of payments for which exclusion from the regular rate is specifically provided under section 7(e)(2) because they are not made as compensation for hours of work. Section 7(e)(2) also authorizes exclusion from the regular rate of "other similar payments to an employee which are not made as compensation for his hours of employment." Since a variety of miscellaneous payments are paid by an employer to an employee under peculiar circumstances, it was not considered feasible to attempt to list them. They must, however, be "similar" in character to the payments specifically described in section 7(e)(2). It is clear that the clause was not intended to permit the exclusion from the regular rate of payments such as bonuses or the furnishing of facilities like board and lodging which, though not directly attributable to any particular hours of work are, nevertheless, clearly understood to be compensation for services.

(b) *Examples of other excludable payments.* A few examples may serve to illustrate some of the types of payments intended to be excluded as "other similar payments":

(1) Sums paid to an employee for the rental of his truck or car.

(2) Loans or advances made by the employer to the employee.

(3) The cost to the employer of conveniences furnished to the employee such as parking space, restrooms, lockers, on-the-job medical care and recreational facilities.

Talent Fees in the Radio and Television Industry

§ 778.225 Talent fees excludable under regulations.

Section 7(e)(3) provides for the exclusion from the regular rate of "talent fees (as such talent fees are defined and delimited by regulations of the Secretary) paid to performers, including announcers, on radio and television programs." Regulations defining "talent fees" have been issued as Part 550 of this chapter. Payments which accord with this definition are excluded from the regular rate.

Subpart D—Special Problems

Introductory

§ 778.300 Scope of subpart.

This subpart applies the principles of computing overtime to some of the problems that arise frequently.

Change in the Beginning of the Workweek

§ 778.301 Overlapping when change of workweek is made.

As stated in § 778.105, the beginning of the workweek may be changed for an employee or for a group of employees if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act. A change in the workweek necessarily results in a situation in which one or more hours or days fall in both the "old" workweek as previously constituted and the "new" workweek. Thus, if the workweek in the plant commenced at 7 a.m. on Monday and it is now proposed to begin the workweek at 7 a.m. on Sunday, the hours worked from 7 a.m. Sunday to 7 a.m. Monday will constitute both the last hours of the old workweek and the first hours of the newly established workweek.

§ 778.302 Computation of overtime due for overlapping workweeks.

(a) *General rule.* When the beginning of the workweek is changed, if the hours which fall within both "old" and "new" workweeks as explained in § 778.301 are hours in which the employee does no work, his statutory compensation for each workweek is, of course, determinable in precisely the same manner as it would be if no overlap existed. If, on the other hand, some of the employee's working time falls within hours which are included in both workweeks, the Department of Labor, as an enforcement policy, will assume that the overtime requirements of section 7 of the Act have been satisfied if computation is made as follows:

(1) Assume first that the overlapping hours are to be counted as hours worked only in the "old" workweek and not in the new; compute straight time and overtime compensation due for each of the 2 workweeks on this basis and total the two sums.

(2) Assume now that the overlapping hours are to be counted as hours worked only in the new workweek and not in the old, and complete the total computation accordingly.

(3) Pay the employee an amount not less than the greater of the amounts computed by methods (1) and (2).

(b) *Application of rule illustrated.* Suppose that, in the example given in § 778.301, the employee, who receives $2 an hour and is subject to overtime pay after 40 hours a week, worked 5 hours on Sunday, March 7, 1965. Suppose also that his last "old" workweek commenced at 7 a.m. on Monday, March 1, and he worked 40 hours March 1 through March 5 so that for the workweek ending March 7 he would be owed straight time and overtime compensation for 45 hours. The proposal is to commence the "new" workweek at 7 a.m. on March 7. If in the "new" workweek of Sunday, March 7, through Saturday, March 13, the employee worked a total of 40 hours, including the 5 hours worked on Sunday, it is obvious that the allocation of the Sunday hours to the old workweek will result in higher total compensation to the employee for the 13-day period. He should, therefore, be paid $95 ($40\times\$2+5\times\$3$) for the period of March 1 through March 7, and $70 ($35\times\$2$) for the period of March 8 through March 13.

(c) *Nonstatutory obligations unaffected.* The fact that this method of compensation is permissable under the Fair Labor Standards Act when the beginning of the workweek is changed will not alter any obligation the employer may have under his employment contract to pay a greater amount of overtime compensation for the period in question.

Additional Pay for Past Period

§ 778.303 Retroactive pay increases.

Where a retroactive pay increase is awarded to employees as a result of collective bargaining or otherwise, it operates to increase the regular rate of pay of the employees for the period of its retroactivity. Thus, if an employee is awarded a retroactive increase of 10 cents per hour, he is owed, under the Act, a retroactive increase of 15 cents for each overtime hour he has worked during the period, no matter what the agreement of the parties may be. A retroactive pay increase in the form of a lump sum for a particular period must be prorated back over the hours of the period to which it is allocable to determine the resultant increases in the regular rate, in precisely the same manner as a lump sum bonus. For a discussion of the method of allocating bonuses based on employment in a prior period to the workweeks covered by the bonus payment, see § 778.209.

HOW DEDUCTIONS AFFECT THE REGULAR RATE

§ 778.304 Amounts deducted from cash wages—general.

(a) The word "deduction" is often loosely used to cover reductions in pay resulting from several causes:

(1) Deductions to cover the cost to the employer of furnishing "board, lodging or other facilities," within the meaning of section 3(m) of the Act.

(2) Deductions for other items such as tools and uniforms which are not regarded as "facilities."

(3) Deductions authorized by the employee (such as union dues) or required by law (such as taxes and garnishments).

(4) Reductions in a fixed salary paid for a fixed workweek in weeks in which the employee fails to work the full schedule.

(5) Deductions for disciplinary reasons.

(b) In general, where such deductions are made, the employee's "regular rate" is the same as it would have been if the occasion for the deduction had not arisen. Also, as explained in §§ 531.27–531.40 of this chapter, the requirements of the Act place certain limitations on the making of some of the above deductions.

§ 778.305 Computation where particular types of deductions are made.

The regular rate of pay of an employee whose earnings are subject to deductions of the types described in subparagraphs (1), (2), and (3) of § 778.304 (a) is determined by dividing his total compensation (except statutory exclusions) before deductions by the total hours worked in the workweek. (See also §§ 531.36–531.40 of this chapter.)

§ 778.306 Salary reductions in short workweeks.

(a) The reductions in pay described in subparagraph (4) of § 778.304(a) are not, properly speaking, "deductions" at all. If an employee is compensated at a fixed salary for a fixed workweek and if this salary is reduced by the amount of the average hourly earnings for each hour lost by the employee in a short workweek, the employee is, for all practical purposes, employed at an hourly rate of pay. This hourly rate is the quotient of the fixed salary divided by the fixed number of hours it is intended to compensate. If an employee is hired at a fixed salary of $80 for a 40-hour week, his hourly rate is $2. When he works only 36 hours he is therefore entitled to $72. The employer makes a "deduction" of $8 from his salary to achieve this result. The regular hourly rate is not altered.

(b) When an employee is paid a fixed salary for a workweek of variable hours (or a guarantee of pay under the provisions of section 7(f) of the Act, as discussed in §§ 778.402 through 778.414), the understanding is that the salary or guarantee is due the employee in short workweeks as well as in longer ones and "deductions" of this type are not made. Therefore, in cases where the understanding of the parties is not clearly shown as to whether a fixed salary is intended to cover a fixed or a variable workweek the practice of making "deductions" from the salary for hours not worked in short weeks will be considered strong, if not conclusive, evidence that the salary covers a fixed workweek.

§ 778.307 Disciplinary deductions.

Where deductions as described in § 778.304(a)(5) are made for disciplinary reasons, the regular rate of an employee is computed before deductions are made, as in the case of deductions of the types in paragraphs (a) (1), (2), and (3) of § 778.304. Thus where disciplinary deductions are made from a piece-worker's earnings, the earnings at piece rates must be totaled and divided by the total hours worked to determine the regular rate before the deduction is applied. In no event may such deductions (or deductions of the type described in § 778.304 (a)(2)) reduce the earnings to an average below the applicable minimum wage or cut into any part of the overtime compensation due the employee. For a full discussion of the limits placed on such deductions, see §§ 531.36 and 531.37 of this chapter. The principles set forth therein with relation to deductions have no application, however, to situations involving refusal or failure to pay the full amount of wages due. See § 531.37 of this chapter; also § 778.306. It should be noted that although an employer may penalize an employee for lateness subject to the limitations stated above by deducting a half hour's straight time pay from his wages, for example, for each half hour, or fraction thereof, of his lateness, the employer must still count as hours worked all the time actually worked by the employee in determining the amount of overtime compensation due for the workweek.

LUMP SUM ATTRIBUTED TO OVERTIME

§ 778.308 The overtime rate is an hourly rate.

(a) Section 7(a) of the Act requires the payment of overtime compensation for hours worked in excess of the applicable maximum hours standard at a rate not less than one and one-half times the regular rate. The overtime rate, like the regular rate, is a rate per hour. Where employees are paid on some basis other than an hourly rate, the regular hourly rate is derived, as previously explained, by dividing the total compensation (except statutory exclusions) by the total hours of work for which the payment is made. To qualify as an overtime premium under section 7(e) (5), (6), or (7), the extra compensation for overtime hours must be paid pursuant to a premium rate which is likewise a rate per hour (subject to certain statutory exceptions discussed in §§ 778.400 through 778.421).

(b) To qualify under section 7(e)(5), the overtime rate must be greater than the regular rate, either a fixed amount per hour or a multiple of the nonovertime rate, such as one and one-third, one and one-half, or two times that rate. To qualify under section 7 (e) (6) or (7), the overtime rate may not be less than one and one-half times the bona fide rate established in good faith for like work performed during nonovertime hours. Thus, it may not be less than time and one-half but it may be more. It may be a standard multiple greater than one and one-half (for example, double time); or it may be a fixed sum of money per hour which is, as an arithmetical fact, at least one and one-half times the nonovertime rate (for example, if the nonovertime rate is $2 per hour, the overtime rate may not be less than $3 but may be set at a higher arbitrary figure such as $3.20 per hour).

§ 778.309 Fixed sum for constant amount of overtime.

Where an employee works a regular fixed number of hours in excess of the statutory maximum each workweek, it is, of course, proper to pay him, in addition to his compensation for nonovertime hours, a fixed sum in any such week for his overtime work, determined by multiplying his overtime rate by the number of overtime hours regularly worked.

§ 778.310 Fixed sum for varying amounts of overtime.

A premium in the form of a lump sum which is paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money may be equal to or greater than the sum owed on a per-hour basis. For example, an agreement that provides for the payment of a flat sum of $30 to employees who work on Sunday does not provide a premium which will qualify as an overtime premium, even though the employee's straight time rate is $2 an hour and the employee always works less than 10 hours on Sunday. Likewise, where an agreement provides for the payment for work on Sunday of either the flat sum of $30 or time and one-half the employee's regular rate for all hours worked on Sunday, whichever is greater, the $30 guaranteed payment is not an overtime premium. The reason for this is clear. If the rule were otherwise, an employer desiring to pay an employee a fixed salary regardless of the number of hours worked in excess of the applicable maximum hours standard could merely label as overtime pay a fixed portion of such salary sufficient to take care of compensation for the maximum number of hours that would be worked. The Congressional purpose to effectuate a maximum hours standard by placing a penalty upon the performance of excessive overtime work would thus be defeated. For this reason, where extra compensation is paid in the form of a lump sum for work performed in overtime hours, it must be included in the regular rate and may not be credited against statutory overtime compensation due.

§ 778.311 Flat rate for special job performed in overtime hours.

(a) *Flat rate is not an overtime premium.* The same reasoning applies where employees are paid a flat rate for a special job performed during overtime

hours, without regard to the time actually consumed in performance. (This situation should be distinguished from "show-up" and "call-back" pay situations discussed in §§ 778.220–778.222 and from payment at a rate not less than one and one-half times the applicable rate to pieceworkers for work performed during overtime hours, as discussed in §§ 778.415 through 778.421). The total amount paid must be included in the regular rate; no part of the amount may be credited toward statutory overtime compensation due.

(b) *Application of rule illustrated.* It may be helpful to give a specific example illustrating the result of paying an employee on the basis under discussion.

(1) An employment agreement calls for the payment of $2 per hour for work during the hours established in good faith as the basic workday or workweek; it provides for the payment of $3 per hour for work during hours outside the basic workday or workweek. It further provides that employees doing a special task outside the basic workday or workweek shall receive 6 hours' pay at the rate of $3 per hour (a total payment of $18) regardless of the time actually consumed in performance. The applicable maximum hours standard is 40 hours in a workweek.

(2) Suppose an employee under such an agreement works the following schedule:

	M	T	W	T	F	S	S
Hours within basic workday	8	8	7	8	8	0	0
Pay under contract	$16	$16	$14	$16	$16	0	0
Hours outside basic workday	2	[1] 2	1	0	0	4	0
Pay under contract	$6	$18	$3	0	0	$12	0

[1] Hours spent in the performance of special work.

(3) To determine the regular rate, the total compensation (except statutory exclusions) must be divided by the total number of hours worked. The only sums to be excluded in this situation are the extra premiums provided by a premium rate (a rate per hour) for work outside the basic workday and workweek, which qualify for exclusion under section 7(e)(7) of the Act, as discussed in § 778.204. The $6 paid on Monday, the $3 paid on Wednesday and the $12 paid on Saturday are paid pursuant to rates which qualify as premium rates under section 7(e)(7) of the Act. The total extra compensation (over the straight time pay for these hours) provided by these premium rates is $7. The sum of $7 should be subtracted from the total of $117 due the employee under the employment agreement. No part of the $18 payment for the special work performed on Tuesday qualifies for exclusion. The remaining $110 must thus be divided by 48 hours to determine the regular rate—$2.29 per hour. The employee is owed an additional one-half this rate under the Act for each of 8 overtime hours worked—$9.16. The extra compensation in the amount of $7 payable pursuant to contract premium rates which qualify as overtime premiums may be credited toward the $9.16 owed as statutory overtime premiums. No part of the $18 payment may be so credited. The employer must pay the employee an additional $2.16 as statutory overtime pay—a total of $119.16 for the week.

"Task" Basis of Payment

§ 778.312 Pay for task without regard to actual hours.

(a) Under some employment agreements employees are paid according to a job or task rate without regard to the number of hours consumed in completing the task. Such agreements take various forms but the two most usual forms are the following:

(1) It is determined (sometimes on the basis of a time study) that an employee (or group) should complete a particular task in 8 hours. Upon the completion of the task the employee is credited with 8 "hours" of work though in fact he may have worked more or less than 8 hours to complete the task. At the end of the week an employee entitled to statutory overtime compensation for work in excess of 40 hours is paid at an established hourly rate for the first 40 of the "hours" so credited and at one and one-half times such rate for the "hours" so credited in excess of 40. The number of "hours" credited to the employee bears no necessary relationship to the number of hours actually worked. It may be greater or less. "Overtime" may be payable in some cases after 20 hours of work; in others only after 50 hours or any other number of hours.

(2) A similar task is set up and 8 hours' pay at the established rate is credited for the completion of the task in 8 hours or less. If the employee fails to complete the task in 8 hours he is paid at the established rate for each of the first 8 hours he actually worked. For work in excess of 8 hours or after the task is completed (whichever occurs first) he is paid one and one-half times the established rate for each such hour worked. He is owed overtime compensation under the Act for hours worked in the workweek in excess of 40 but is paid his weekly overtime compensation at the premium rate for the hours in excess of 40 actual or "task" hours (or combination thereof) for which he received pay at the established rate. "Overtime" pay under this plan may be due after 20 hours of work, 25 or any other number up to 40.

(b) These employees are in actual fact compensated on a daily rate of pay basis. In plans of the first type, the established hourly rate never controls the compensation which any employee actually receives. Therefore, the established rate cannot be his regular rate. In plans of the second type the rate is operative only for the slower employees who exceed the time allotted to complete the task; for them it operates in a manner similar to a minimum hourly guarantee for piece workers, as discussed in § 778.111. On such days as it is operative it is a genuine rate; at other times it is not.

(c) Since the premium rates (at one and one-half times the established hourly rate) are payable under both plans for hours worked within the basic or normal workday (if one is established) and without regard to whether the hours are or are not in excess of 8 per day or 40 per week, they cannot qualify as overtime premiums under section 7(e)(5), (6), or (7) of the Act. They must therefore be included in the regular rate and no part of them may be credited against statutory overtime compensation due. Under plans of the second type, however, where the pay of an employee on a given day is actually controlled by the established hourly rate (because he fails to complete the task in the 8-hour period) and he is paid at one and one-half times the established rate for hours in excess of 8 hours actually worked, the premium rate paid on that day will qualify as an overtime premium under section 7(e)(5).

§ 778.313 Computing overtime pay under the Act for employees compensated on task basis.

(a) An example of the operation of a plan of the second type discussed in § 778.312 may serve to illustrate the effects on statutory overtime computations of payment on a task basis. Assume the following facts: The employment agreement establishes a basic hourly rate of $2 per hour, provides for the payment of $3 per hour for overtime work (in excess of the basic workday or workweek) and defines the basic workday as 8 hours, and the basic workweek as 40 hours, Monday through Friday. It further provides that the assembling of a machine constitutes a day's work. An employee who completes the assembling job in less than 8 hours will be paid 8 hours' pay at the established rate of $2 per hour and will receive pay at the "overtime" rate for hours worked after the completion of the task. An employee works the following hours in a particular week:

	M	T	W	T	F	S	S
Hours spent on task	6	7	7	9	8½	6	0
Day's pay under contract	$16	$16	$16	$16	$16	$24	0
Additional hours	2	----	2	----	½	----	----
Additional pay under contract	$6	----	$6	$3	$3	----	----

(b) In the example in paragraph (a) of this section the employee has actually worked a total of 48 hours and is owed under the contract a total of $122 for the week. The only sums which can be excluded as overtime premiums from this total before the regular rate is determined are the extra $1 payments for the extra hour on Thursday and Friday made because of work actually in excess of 8 hours. The payment of the other premium rates under the contract is either without regard to whether or not the hours they compensated were in excess of a bona fide daily or weekly standard or without regard to the number of overtime hours worked. Thus only the sum of $2 is excluded from the total. The remaining $120 is divided by 48 hours to determine the regular rate—$2.50 per hour. One-half this rate is due under the Act as extra compensation for each of

the 8 overtime hours—$10. The $2 payment under the contract for actual excess hours may be credited and the balance—$8—is owed in addition to the $122 due under the contract.

§ 778.314 Special situations.

There may be special situations in which the facts demonstrate that the hours for which contract overtime compensation is paid to employees working on a "task" or "stint" basis actually qualify as overtime hours under section 7(e) (5), (6), or (7). Where this is true, payment of one and one-half times an agreed hourly rate for "task" or "stint" work may be equivalent to payment pursuant to agreement of one and one-half time a piece rate. The alternative methods of overtime pay computation permitted by section 7(g) (1) or (2), as explained in §§ 778.415 through 778.421 may be applicable in such a case.

Effect of Failure To Count or Pay for Certain Working Hours

§ 778.315 Payment for all hours worked in overtime workweek is required.

In determining the number of hours for which overtime compensation is due, all hours worked (see § 778.223) by an employee for an employer in a particular workweek must be counted. Overtime compensation, at a rate not less than one and one-half times the regular rate of pay, must be paid for each hour worked in the workweek in excess of the applicable maximum hours standard. This extra compensation for the excess hours of overtime work under the Act cannot be said to have been paid to an employee unless all the straight time compensation due him for the nonovertime hours under his contract (express or implied) or under any applicable statute has been paid.

§ 778.316 Agreements or practices in conflict with statutory requirements are ineffective.

While it is permissible for an employer and an employee to agree upon different base rates of pay for different types of work, it is settled under the Act that where a rate has been agreed upon as applicable to a particular type of work the parties cannot lawfully agree that the rate for that work shall be lower merely because the work is performed during the statutory overtime hours, or during a week in which statutory overtime is worked. Since a lower rate cannot lawfully be set for overtime hours it is obvious that the parties cannot lawfully agree that the working time will not be paid for at all. An agreement that only the first 8 hours of work on any days or only the hours worked between certain fixed hours of the day or only the first 40 hours of any week will be counted as working time will clearly fail of its evasive purpose. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be compensated unless authorized in advance, will not impair the employee's right to compensation for work which he is actually suffered or permitted to perform.

§ 778.317 Agreements not to pay for certain nonovertime hours.

An agreement not to compensate employees for certain nonovertime hours stands on no better footing since it would have the same effect of diminishing the employee's total overtime compensation. An agreement, for example, to pay an employee whose maximum hours standard for the particular workweek is 40 hours, $2 an hour for the first 35 hours, nothing for the hours between 35 and 40 and $3 an hour for the hours in excess of 40 would not meet the overtime requirements of the Act. Under the principles set forth in § 778.315, the employee would have to be paid $10 for the 5 hours worked between 35 and 40 before any sums ostensibly paid for overtime could be credited toward overtime compensation due under the Act.

§ 778.318 Productive and nonproductive hours of work.

(a) *Failure to pay for nonproductive time worked.* Some agreements provide for payment only for the hours spent in productive work; the work hours spent in waiting time, time spent in travel on the employer's behalf or similar nonproductive time are not made compensable and in some cases are neither counted nor compensated. Payment pursuant to such an agreement will not comply with the Act; such nonproductive working hours must be counted and paid for.

(b) *Compensation payable for nonproductive hours worked.* The parties may agree to compensate nonproductive hours worked at a rate (at least the minimum) which is lower than the rate applicable to productive work. In such a case, the regular rate is the weighted average of the two rates, as discussed in § 778.115 and the employee whose maximum hours standard is 40 hours is owed compensation at his regular rate for all of the first 40 hours and at a rate not less than one and one-half times this rate for all hours in excess of 40. (See § 778.415 for the alternative method of computing overtime pay on the applicable rate.) In the absence of any agreement setting a different rate for nonproductive hours, the employee would be owed compensation at the regular hourly rate set for productive work for all hours up to 40 and at a rate at least one and one-half times that rate for hours in excess of 40.

(c) *Compensation attributable to both productive and nonproductive hours.* The situation described in paragraph (a) of this section is to be distinguished from one in which such nonproductive hours are properly counted as working time but no special hourly rate is assigned to such hours because it is understood by the parties that the other compensation received by the employee is intended to cover pay for such hours. For example, while it is not proper for an employer to agree with his pieceworkers that the hours spent in down-time (waiting for work) will not be paid for or will be neither paid for nor counted, it is permissible for the parties to agree that the pay the employees will earn at piece rates is intended to compensate them for all hours worked, the productive as well as the nonproductive hours. If this is the agreement of the parties, the regular rate of the pieceworker will be the rate determined by dividing the total piecework earnings by the total hours worked (both productive and nonproductive) in the workweek. Extra compensation (one-half the rate as so determined) would, of course, be due for each hour worked in excess of the applicable maximum hours standard.

Effect of Paying for But Not Counting Certain Hours

§ 778.319 Paying for but not counting hours worked.

In some contracts provision is made for payment for certain hours, which constitute working time under the Act, coupled with a provision that these hours will not be counted as working time. Such a provision is a nullity. If the hours in question are hours worked, they must be counted as such in determining whether more than the applicable maximum hours have been worked in the workweek. If more hours have been worked, the employee must be paid overtime compensation at not less than one and one-half times his regular rate for all overtime hours. A provision that certain hours will be compensated only at straight time rates is likewise invalid. If the hours are actually hours worked in excess of the applicable maximum hours standard, extra half-time compensation will be due regardless of any agreement to the contrary.

§ 778.320 Hours that would not be hours worked if not paid for.

In certain cases an agreement provides for compensation for hours spent in certain types of activities which would not be regarded as working time under the Act if no compensation were provided. Preliminary and postliminary activities, time spent in travel outside the hours of the normal workday and time spent in eating meals between working hours fall in this category. The agreement of the parties to provide compensation for such hours implies an agreement to regard them as working time although they are not otherwise required to be so regarded under the Act. The agreement of the parties will be respected if reasonable. Thus, for example, payments for such hours, although not excluded from the regular rate, will not have the mathematical effect of increasing the regular rate of an employee if the hours are treated as working time under the agreement and compensated at the same rate as other working hours, and the requirements of section 7(a) of the Act will be considered to be met where overtime compensation at one and one-half times such rate is paid for the hours so compensated in the workweek which are in excess of the statutory maximum. Of course, under the principles set forth in

§ 778.319, where the payments are made for time spent in an activity which, if compensable under contract, custom, or practice, is required to be counted as hours worked under the Act by virtue of section 4 of the Portal-to-Portal Act of 1947 (see Parts 785 and 790 of this chapter), no agreement by the parties to exclude such compensable time from hours worked would be valid. In the case of time spent in activity which would not be hours worked under the Act if not compensated and would not become hours worked under the Portal-to-Portal Act even if made compensable by contract, custom, or practice, the parties may reasonably agree that the time will be paid for but will not be counted as hours worked. Since, however, such payments are part of the employee's remuneration for his employment, section 7(e) of the Act requires that the compensation paid for such hours be included in his regular rate of pay, unless it appears from all the pertinent facts that the payments are of a type qualifying for exclusion therefrom under the provision of section 7(e)(2), as explained in §§ 778.216 to 778.224. The payments for such hours cannot, of course, qualify as overtime premiums creditable toward overtime compensation under section 7(h) of the Act.

REDUCTION IN WORKWEEK SCHEDULE WITH NO CHANGE IN PAY

§ 778.321 Decrease in hours without decreasing pay—general.

Since the regular rate of pay is the average hourly rate at which an employee is actually employed, and since this rate is determined by dividing his total remuneration for employment (except statutory exclusions) for a given workweek by the total hours worked in that workweek for which such remuneration was paid, it necessarily follows that if the schedule of hours is reduced while the pay remains the same, the regular rate has been increased.

§ 778.322 Reducing the fixed workweek for which a salary is paid.

If an employee whose maximum hours standard is 40 hours was hired at a salary of $80 for a fixed workweek of 40 hours, his regular rate at the time of hiring was $2 per hour. If his workweek is later reduced to a fixed workweek of 35 hours while his salary remains the same, it is the fact that it now takes him only 35 hours to earn $80, so that he earns his salary at the average rate of $2.29 per hour. His regular rate thus becomes $2.29 per hour; it is no longer $2 an hour. Overtime pay is due under the Act only for hours worked in excess of 40, not 35, but if the understanding of the parties is that the salary of $80 now covers 35 hours of work and no more, the employee would be owed $2.29 per hour under his employment contract for each hour worked between 35 and 40. He would be owed not less than one and one-half times $2.29 ($3.44) per hour, under the statute, for each hour worked in excess of 40 in the workweek. In weeks in which no overtime is worked only the provisions of section 6 of the Act, requiring the payment of not less than the applicable minimum wage for each hour worked, apply so that the employee's right to receive $2.29 per hour is enforceable only under his contract. However, in overtime weeks the Administrator has the duty to insure the payment of at least one and one-half times the employee's regular rate of pay for hours worked in excess of 40 and this overtime compensation cannot be said to have been paid until all straight time compensation due the employee under the statute or his employment contract has been paid. Thus if the employee works 41 hours in a particular week, he is owed his salary for 35 hours—$80, 5 hours pay at $2.29 per hour for the 5 hours between 35 and 40—$11.45, and 1 hour's pay at $3.44 for the 1 hour in excess of 40—$3.44, or a total of $94.89 for the week.

§ 778.323 Effect if salary is for variable workweek.

The discussion in the prior section sets forth one result of reducing the workweek from 40 to 35 hours. It is not either the necessary result or the only possible result. As in all cases of employees hired on a salary basis, the regular rate depends in part on the agreement of the parties as to what the salary is intended to compensate. In reducing the customary workweek schedule to 35 hours the parties may agree to change the basis of the employment arrangement by providing that the salary which formerly covered a fixed workweek of 40 hours now covers a variable workweek up to 40 hours. If this is the new agreement, the employee receives $80 for workweeks of varying lengths, such as 35, 36, 38, or 40 hours. His rate thus varies from week to week, but in weeks of 40 hours or over, it is $2 per hour (since the agreement of the parties is that the salary covers up to 40 hours and no more) and his overtime rate, for hours in excess of 40, thus remains $3 per hour. Such a salary arrangement presumably contemplates that the salary will be paid in full for any workweek of 40 hours or less. The employee would thus be entitled to his full salary if he worked only 25 or 30 hours. No deductions for hours not worked in short workweeks would be made. (For a discussion of the effect of deductions on the regular rate, see §§ 778.304 to 778.307.)

§ 778.324 Effect on hourly rate employees.

A similar situation is presented where employees have been hired at an hourly rate of pay and have customarily worked a fixed workweek. If the workweek is reduced from 40 to 35 hours without reduction in total pay, the average hourly rate is thereby increased as in § 778.322. If the reduction in work schedule is accompanied by a new agreement altering the mode of compensation from an hourly rate basis to a fixed salary for a variable workweek up to 40 hours, the results described in § 778.323 follow.

§ 778.325 Effect on salary covering more than 40 hours' pay.

The same reasoning applies to salary covering straight time pay for a longer workweek. If an employee whose maximum hours standard is 40 hours was hired at a fixed salary of $110 for 55 hours of work, he was entitled to a statutory overtime premium for the 15 hours in excess of 40 at the rate of $1 per hour (half-time) in addition to his salary, and to statutory overtime pay of $3 per hour (time and one-half) for any hours worked in excess of 55. If the scheduled workweek is later reduced to 50 hours, with the understanding between the parties that the salary will be paid as the employee's nonovertime compensation for each workweek of 55 hours or less, his regular rate in any overtime week of 55 hours or less is determined by dividing the salary by the number of hours worked to earn it in that particular week, and additional half-time, based on that rate, is due for each hour in excess of 40. In weeks of 55 hours or more, his regular rate remains $2 per hour and he is due, in addition to his salary, extra compensation of $1 for each hour over 40 but not over 55 and full time and one-half, or $3, for each hour worked in excess of 55. If, however, the understanding of the parties is that the salary now covers a fixed workweek of 50 hours, his regular rate is $2.20 per hour in all weeks. This assumes that when an employee works less than 50 hours in a particular week, deductions are made at a rate of $2.20 per hour for the hours not worked.

§ 778.326 Reduction of regular overtime workweek without reduction of take-home pay.

The reasoning applied in the foregoing sections does not, of course, apply to a situation in which the former earnings at both straight time and overtime are paid to the employee for the reduced workweek. Suppose an employee was hired at an hourly rate of $2 an hour and regularly worked 50 hours, earning $110 as his total straight time and overtime compensation, and the parties now agree to reduce the workweek to 45 hours without any reduction in take-home pay. The parties in such a situation may agree to an increase in the hourly rate from $2 per hour to $2.32 so that for a workweek of 45 hours (the reduced schedule) the employee's straight time and overtime earnings will be $110.20. The parties cannot, however, agree that the employee is to receive exactly $110.20 as total compensation (including overtime pay) for a workweek varying, for example, up to 50 hours, unless he does so pursuant to contracts specifically permitted in section 7(f) of the Act, as discussed in §§ 778.402 through 778.414. An employer cannot otherwise discharge his statutory obligation to pay overtime compensation to an employee who does not work the same fixed hours each week by paying a fixed amount purporting to cover both straight time and overtime compensation for an "agreed" number of hours. To permit such a practice without proper statutory safeguards would result in sanctioning the circumvention of the provisions of the Act which require that an employee who works more than 40 hours in any workweek be compensated, in accordance with express congressional intent, at a

rate not less than one and one-half times his regular rate of pay for the burden of working long hours. In arrangements of this type, no additional financial pressure would fall upon the employer and no additional compensation would be due to the employee under such a plan until the workweek exceeded 50 hours.

§ 778.327 Temporary or sporadic reduction in schedule.

(a) The problem of reduction in the workweek is somewhat different where a temporary reduction is involved. Reductions for the period of a dead or slow season follow the rules announced above. However, reduction on a more temporary or sporadic basis presents a different problem. It is obvious that as a matter of simple arithmetic an employer might adopt a series of different rates for the same work, varying inversely with the number of overtime hours worked in such a way that the employee would earn no more than his straight time rate no matter how many hours he worked. If he set the rate at $2 per hour for all workweeks in which the employee worked 40 hours or less, approximately $1.98 per hour for workweeks of 41 hours, approximately $1.97 for workweeks of 42 hours, approximately $1.87 for workweeks of 50 hours, and so on, the employee would always receive (for straight time and overtime at these "rates") $2 an hour regardless of the number of overtime hours worked. This is an obvious bookkeeping device designed to avoid the payment of overtime compensation and is not in accord with the law. See Walling v. Green Head Bit & Supply Co., 138 F. 2d 453. The regular rate of pay of this employee for overtime purposes is, obviously, the rate he earns in the normal nonovertime week—in this case, $2 per hour.

(b) The situation is different in degree but not in principle where employees who have been at a bona fide $2 rate usually working 50 hours and taking home $110 as total straight time and overtime pay for the week are, during occasional weeks, cut back to 42 hours. If the employer raises their rate to $2.50 for such weeks so that their total compensation is $107.50 for a 42-hour week the question may properly be asked, when they return to the 50-hour week, the $2 rate and the gross pay of $110 whether the $2 rate is really their regular rate. Are they putting in 8 additional hours of work for that extra $2.50 or is their "regular" rate really now $2.50 an hour since this is what they earn in the short workweek? It seems clear that where different rates are paid from week to week for the same work and where the difference is justified by no factor other than the number of hours worked by the individual employee—the longer he works the lower the rate—the device is evasive and the rate actually paid in the shorter or nonovertime week is his regular rate for overtime purposes in all weeks.

§ 778.328 Plan for gradual permanent reduction in schedule.

In some cases, pursuant to a definite plan for the permanent reduction of the normal scheduled workweek from say, 48 hours to 40 hours, an agreement is entered into with a view to lessening the shock caused by the expected reduction in take-home wages. The agreement may provide for a rising scale of rates as the workweek is gradually reduced. The varying rates established by such agreement will be recognized as bona fide in the weeks in which they are respectively operative provided that (a) the plan is bona fide and there is no effort made to evade the overtime requirements of the Act; (b) there is a clear downward trend in the duration of the workweek throughout the period of the plan even though fluctuations from week-to-week may not be constantly downward; and (c) the various rates are operative for substantial periods under the plan and do not vary from week-to-week in accordance with the number of hours which any particular employee or group happens to work.

§ 778.329 Alternating workweeks of different fixed lengths.

In some cases an employee is hired on a salary basis with the understanding that his weekly salary is intended to cover the fixed schedule of hours (and no more) and that this fixed schedule provides for alternating workweeks of different fixed lengths. For example, many offices operate with half staff on Saturdays and, in consequence, employees are hired at a fixed salary covering a fixed working schedule of 7 hours a day Monday through Friday and 5 hours on alternate Saturdays. The parties agree that extra compensation is to be paid for all hours worked in excess of the schedule in either week, at the base rate for hours between 35 and 40 in the short week and at time and one-half such rate for hours in excess of 40 in all weeks. Such an arrangement results in the employee's working at two different rates of pay—one thirty-fifth of the salary in short workweeks and one-fortieth of the salary in the longer weeks. If the provisions of such a contract are followed, if the nonovertime hours are compensated in full at the applicable regular rate in each week and overtime compensation is properly computed for hours in excess of 40 at time and one-half the rate applicable in the particular workweek, the overtime requirements of the Fair Labor Standards Act will be met. While this situation bears some resemblance to the one discussed in § 778.327 there is this significant difference; the arrangement is permanent, the length of the respective workweeks and the rates for such weeks are fixed on a permanent-schedule basis far in advance and are therefore not subject to the control of the employer and do not vary with the fluctuations in business. In an arrangement of this kind, if the employer required the employee to work on Saturday in a week in which he was scheduled for work only on the Monday through Friday schedule, he would be paid at his regular rate for all the Saturday hours in addition to his salary.

Prizes as Bonuses

§ 778.330 Prizes or contest awards generally.

All compensation (except statutory exclusions) paid by or on behalf of an employer to an employee as remuneration for employment must be included in the regular rate, whether paid in the form of cash or otherwise. Prizes are therefore included in the regular rate if they are paid to an employee as remuneration for employment. If therefore it is asserted that a particular prize is not to be included in the regular rate, it must be shown either that the prize was not paid to the employee for employment, or that it is not a thing of value which is part of wages.

§ 778.331 Awards for performance on the job.

Where a prize is awarded for the quality, quantity or efficiency of work done by the employee during his customary working hours at his normal assigned tasks (whether on the employer's premises or elsewhere) it is obviously paid as additional remuneration for employment. Thus prizes paid for cooperation, courtesy, efficiency, highest production, best attendance, best quality of work, greatest number of overtime hours worked, etc., are part of the regular rate of pay. If the prize is paid in cash, the amount paid must be allocated (for the method of allocation see § 778.209) over the period during which it was earned to determine the resultant increase in the average hourly rate for each week of the period. If the prize is merchandise, the cost to the employer is the sum which must be allocated. Where the prize is either cash or merchandise, with the choice left the employee, the amount to be allocated is the amount (or the cost) of the actual prize he accepts.

§ 778.332 Awards for activities not normally part of employee's job.

(a) Where the prize is awarded for activities outside the customary working hours of the employee, beyond the scope of his customary duties or away from the employer's premises, the question of whether the compensation is remuneration for employment will depend on such factors as the amount of time, if any, spent by the employee in competing, the relationship between the contest activities and the usual work of the employee, whether the competition involves work usually performed by other employees for employers, whether an employee is specifically urged to participate or led to believe that he will not merit promotion or advancement unless he participates.

(b) By way of example, a prize paid for work performed in obtaining new business for an employer would be regarded as remuneration for employment. Although the duties of the employees who participate in the contest may not normally encompass this type of work, it is work of a kind normally performed by salesmen for their employers, and the time spent by the employee in competing for such a prize (whether successfully or not) is working time and

must be counted as such in determining overtime compensation due under the Act. On the other hand, a prize or bonus paid to an employee when a sale is made by the company's sales representative to a person whom he recommended as a good sales prospect would not be regarded as compensation for services if in fact the prize-winner performed no work in securing the name of the sales prospect and spent no time on the matter for the company in any way.

§ 778.333 Suggestion system awards.

The question has been raised whether awards made to employees for suggestions submitted under a suggestion system plan are to be regarded as part of the regular rate. There is no hard and fast rule on this point as the term "suggestion system" has been used to describe a variety of widely differing plans. It may be generally stated, however, that prizes paid pursuant to a bona fide suggestion system plan may be excluded from the regular rate at least in situations where it is the fact that:

(a) The amount of the prize has no relation to the earnings of the employee at his job but is rather geared to the value to the company of the suggestion which is submitted; and

(b) The prize represents a bona fide award for a suggestion which is the result of additional effort or ingenuity unrelated to and outside the scope of the usual and customary duties of any employee of the class eligible to participate and the prize is not used as a substitute for wages; and

(c) No employee is required or specifically urged to participate in the suggestion system plan or led to believe that he will not merit promotion or advancement (or retention of his existing job) unless he submits suggestions; and

(d) The invitation to employees to submit suggestions is general in nature and no specific assignment is outlined to employees (either as individuals or as a group) to work on or develop; and

(e) There is no time limit during which suggestions must be submitted; and

(f) The employer has, prior to the submission of the suggestion by an employee, no notice or knowledge of the fact that an employee is working on the preparation of a suggestion under circumstances indicating that the company approved the task and the schedule of work undertaken by the employee.

Subpart E—Exceptions From the Regular Rate Principles

Computing Overtime Pay on an "Established" Rate

§ 778.400 The provisions of section 7(g)(3) of the Act.

Section 7(g)(3) of the Act provides the following exception from the provisions of section 7(a):

> (g) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection—
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> * * * * *
>
> (3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided*, That the rate so established shall be authorized by regulation by the Secretary of Labor as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;
>
> and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additonal pay required to be included in computing the regular rate.

§ 778.401 Regulations issued under section 7(g)(3).

Regulations issued pursuant to section 7(g)(3) of the Act are published as Part 548 of this chapter. Payments made in conformance with these regulations satisfy the overtime pay requirements of the Act.

Guaranteed Compensation Which Includes Overtime Pay

§ 778.402 The statutory exception provided by section 7(f) of the Act.

Section 7(f) of the Act provides the following exception from the provisions of section 7(a):

> (f) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifices a regular rate of pay of not less than the minimum hourly rate provided in subsection (a) or (b) of section 6 (whichever may be applicable) and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provides a weekly guaranty of pay for not more than 60 hours based on the rates so specified.

§ 778.403 Constant pay for varying workweeks including overtime is not permitted except as specified in section 7(f).

Section 7(f) is the only provision of the Act which allows an employer to pay the same total compensation each week to an employee who works overtime and whose hours of work vary from week to week. (See in this connection the discussion in §§ 778.207, 778.321–778.329, and 778.308–778.315.) Unless the pay arrangements in a particular situation meet the requirements of section 7(f) as set forth, all the compensation received by the employee under a guaranteed pay plan is included in his regular rate and no part of such guaranteed pay may be credited toward overtime compensation due under the Act. Section 7(f) is an exemption from the overtime provisions of the Act. No employer will be exempt from the duty of computing overtime compensation for an employee under section 7(a) unless the employee is paid pursuant to a plan which actually meets all the requirements of the exemption. These requirements will be discussed separately in the ensuing sections.

§ 778.404 Purposes of exemption.

The exception to the requirements of section 7(a) provided by section 7(f) of the Act is designed to provide a means whereby the employer of an employee whose duties necessitate irregular hours of work and whose total wages if computed solely on an hourly rate basis would of necessity vary widely from week to week, may guarantee the payment, week-in, week-out, of at least a fixed amount based on his regular hourly rate. Section 7(f) was proposed and enacted in 1949 with the stated purpose of giving express statutory validity, subject to prescribed limitations, to a judicial "gloss on the Act" by which an exception to the usual rule as to the actual regular rate had been recognized by a closely divided Supreme Court as permissible with respect to employment in such situations under so-called "Belo" contracts. See McComb v. Utica Knitting Co., 164 F. 2d 670, rehearing denied 164 F. 2d 678 (C.A. 2); Walling v. A. H. Belo Co., 316 U.S. 624; Walling v. Halliburton Oil Well Cementing Co., 331 U.S. 17; 95 Cong. Rec. 11893, 12365, 14938, A2396, A5233, A5476. Such a contract affords to the employee the security of a regular weekly income and benefits the employer by enabling him to anticipate and control in advance at least some part of his labor costs. A guaranteed wage plan also provides a means of limiting overtime computation costs so that wide leeway is provided for working employees overtime without increasing the cost to the employer, which he would otherwise incur under the Act for working employees in excess of the statutory maximum hours standard. Recognizing both the inherent advantages and disadvantages of guaranteed wage plans, when viewed in this light, Congress sought to strike a balance between them which would, on the one hand, provide a feasible method of guaranteeing pay to employees who needed this protection without, on the other hand, nullifying the overtime requirements of the Act. The provisions of section 7(f) set forth the conditions under which, in the view of Congress, this may be done. Plans which do not meet these conditions were not thought to provide sufficient advantage to the employee to justify Congress in relieving employers of the overtime liability of section 7(a).

§ 778.405 What types of employees are affected.

The type of employment agreement permitted under section 7(f) can be made only with (or by his representatives on behalf of) an employee whose "duties * * * necessitate irregular hours of work". It is clear that no contract

made with an employee who works a regularly scheduled workweek or whose schedule involves alternating fixed workweeks will qualify under this subsection. Even if an employee does in fact work a variable workweek, the question must still be asked whether his duties necessitate irregular hours of work. The subsection is not designed to apply in a situation where the hours of work vary from week to week at the discretion of the employer or the employee, nor to a situation where the employee works an irregular number of hours according to a predetermined schedule. The nature of the employee's duties must be such that neither he nor his employer can either control or anticipate with any degree of certainty the number of hours he must work from week to week. Furthermore, for the reasons set forth in § 778.406, his duties must necessitate significant variations in weekly hours of work both below and above the statutory weekly limit on nonovertime hours. Some examples of the types of employees whose duties may necessitate irregular hours of work would be outside buyers, on-call servicemen, insurance adjusters, newspaper reporters and photographers, propmen, script girls and others engaged in similar work in the motion picture industry, firefighters, troubleshooters and the like. There are some employees in these groups whose hours of work are conditioned by factors beyond the control of their employer or themselves. However, the mere fact that an employee is engaged in one of the jobs just listed, for example, does not mean that his duties necessitate irregular hours. It is always a question of fact whether the particular employee's duties do or do not necessitate irregular hours. Many employees not listed here may qualify. Although office employees would not ordinarily qualify, some office employees whose duties compel them to work variable hours could also be in this category. For example, the confidential secretary of a top executive whose hours of work are irregular and unpredictable might also be compelled by the nature of her duties to work variable and unpredictible hours. This would not ordinarily be true of a stenographer or file clerk, nor would an employee who only rarely or in emergencies is called upon to work outside a regular schedule qualify for this exemption.

§ 778.406 Nonovertime hours as well as overtime hours must be irregular if section 7(f) is to apply.

Any employment in which the employee's hours fluctuate only in the overtime range above the maximum workweek prescribed by the statute lacks the irregularity of hours for which the Supreme Court found the so-called "Belo" contracts appropriate and so fails to meet the requirements of section 7(f) which were designed to validate, subject to express statutory limitations, contracts of a like kind in situations of the type considered by the Court (see § 778.404). Nothing in the legislative history of section 7(f) suggests any intent to suspend the normal application of the general overtime provisions of section 7(a) in situations where the weekly hours of an employee fluctuate only when overtime work in excess of the prescribed maximum weekly hours is performed. Section 7(a) was specifically designed to deal with such a situation by making such regular resort to overtime more costly to the employer and thus providing an inducement to spread the work rather than to impose additional overtime work on employees regularly employed for a workweek of the maximum statutory length. The "security of a regular weekly income" which the Supreme Court viewed as an important feature of the "Belo" wage plan militating against a holding that the contracts were invalid under the Act is, of course, already provided to employees who regularly work at least the maximum number of hours permitted without overtime pay under section 7(a). Their situation is not comparable in this respect to employees whose duties cause their weekly hours to fluctuate in such a way that some workweeks are short and others long and they cannot, without some guarantee, know in advance whether in a particular workweek they will be entitled to pay for the regular number of hours of nonovertime work contemplated by section 7(a). It is such employees whose duties necessitate "irregular hours" within the meaning of section 7(f) and whose "security of a regular weekly income" can be assured by a guarantee under that section which will serve to increase their hourly earnings in short workweeks under the statutory maximum hours. It is this benefit to the employee that the Supreme Court viewed, in effect, as a quid pro quo which could serve to balance a relaxation of the statutory requirement, applicable in other cases, that any overtime work should cost the employer 50 percent more per hour. In the enactment of section 7(f), as in the enactment of section 7(b)(1) and (2), the benefits that might inure to employees from a balancing of long workweeks against short workweeks under prescribed safeguards would seem to be the reason most likely to have influenced the legislators to provide express exemptions from the strict application of section 7(a). Consequently, where the fluctuations in an employee's hours of work resulting from his duties involve only overtime hours worked in excess of the statutory maximum hours, the hours are not "irregular" within the purport of section 7(f) and a payment plan lacking this factor does not qualify for the exemption. (See Goldberg v. Winn-Dixie Stores (S.D. Fla.), 15 WH Cases 641; Wirtz v. Midland Finance Co. (N.D. Ga.), 16 WH Cases 141; Trager v. J. E. Plastics Mfg. Co. (S.D.N.Y.), 13 WH Cases 621; McComb v. Utica Knitting Co., 164 F. 2d 670; Foremost Dairies v. Wirtz, 381 F. 2d 653 (C.A.5)).

§ 778.407 The nature of the section 7(f) contract.

Payment must be made "pursuant to a bona fide individual contract or pursuant to an agreement made as a result of collective bargaining by representatives of employees." It cannot be a one-sided affair determinable only by examination of the employer's books. The employee must not only be aware of but must have agreed to the method of compensation in advance of performing the work. Collective bargaining agreements in general are formal agreements which have been reduced to writing, but an individual employment contract may be either oral or written. While there is no requirement in section 7(f) that the agreement or contract be in writing, it is certainly desirable to reduce the agreement to writing, since a contract of this character is rather complicated and proof both of its existence and of its compliance with the various requirements of the section may be difficult if it is not in written form. Furthermore, the contract must be "bona fide." This implies that both the making of the contract and the settlement of its terms were done in good faith.

§ 778.408 The specified regular rate.

(a) To qualify under section 7(f), the contract must specify "a regular rate of pay of not less than the minimum hourly rate provided in subsection (a) or (b) of section 6 (whichever may be applicable)". The word "regular" describing the rate in this provision is not to be treated as surplusage. To understand the nature of this requirement it is important to consider the past history of this type of agreement in the courts. In both of the two cases before it, the Supreme Court found that the relationship between the hourly rate specified in the contract and the amount guaranteed was such that the employee in a substantial portion of the workweeks of the period examined by the court worked sufficient hours to earn in excess of the guaranteed amount and in those workweeks was paid at the specified hourly rate for the first 40 hours and at time and one-half such rate for hours in excess of 40 (Walling v. A. H. Belo Company, 316 U.S. 624, and Walling v. Halliburton Oil Well Cementing Company, 331 U.S. 17). The fact that section 7(f) requires that a contract, to qualify an employee for exemption under section 7(f), must specify a "regular rate," indicates that this criterion of these two cases is still important.

(b) The regular rate of pay specified in the contract may not be less than the applicable minimum rate. There is no requirement, however, that the regular rate specified be equal to the regular rate at which the employee was formerly employed before the contract was entered into. The specified regular rate may be any amount (at least the applicable minimum wage) which the parties agree to and which can reasonably be expected to be operative in controlling the employee's compensation.

(c) The rate specified in the contract must also be a "regular" rate which is operative in determining the total amount of the employee's compensation. Suppose, for example, that the compensation of an employee is normally made up in part by regular bonuses, commissions, or the like. In the past he has been employed at an hourly rate of $2 per hour in addition to which he has received a cost-of-living bonus of $5 a week and a

2-percent commission on sales which averaged $10 per week. It is now proposed to employ him under a guaranteed pay contract which specifies a rate of $2 per hour and guarantees $90 per week, but he will continue to receive his cost-of-living bonus and commissions in addition to the guaranteed pay. Bonuses and commissions of this type are, of course, included in the "regular rate" as defined in section 7(e). It is also apparent that the $2 rate specified in the contract is not a "regular rate" under the requirements of section 7(f) since it never controls or determines the total compensation he receives. For this reason, it is not possible to enter into a guaranteed pay agreement of the type permitted under section 7(f) with an employee whose regular weekly earnings are made up in part by the payment of regular bonuses and commissions of this type. This is so because even in weeks in which the employee works sufficient hours to exceed, at his hourly rate, the sum guaranteed, his total compensation is controlled by the bonus and the amount of commissions earned as well as by the hourly rate.

(d) In order to qualify as a "regular rate" under section 7(f) the rate specified in the contract together with the guarantee must be the actual measure of the regular wages which the employee receives. However, the payment of extra compensation, over and above the guaranteed amount, by way of extra premiums for work on holidays, or for extraordinarily excessive work (such as for work in excess of 16 consecutive hours in a day, or for work in excess of 6 consecutive days of work), yearend bonuses and similar payments whic hare not regularly paid as part of the employee's usual wages, will not invalidate a contract which otherwise qualifies under section 7(f).

§ 778.409 Provision for overtime pay.

The section 7(f) contract must provide for compensation at not less than one and one-half times the specified regular rate for all hours worked in excess of the applicable maximum hours standard for the particular workweek. All excessive hours, not merely those covered by the guarantee, must be compensated at one and one-half times (or a higher multiple) of the specified regular rate. A contract which quaranteed a weekly salary of $95, specified a rate of $2 per hour, and provided that not less than one and one-half times such rate would be paid only for all hours up to and including 46⅔ hours would not qualify under this section. The contract must provide for payment at time and one-half (or more) for all hours in excess of the applicable maximum hours standard in any workweek. A contract may provide a specific overtime rate greater than one and one-half times the specified rate, for example, double time. If it does provide a specific overtime rate it must provide that such rate will be paid for all hours worked in excess of the applicable maximum hours standard.

§ 778.410 The guaranty under section 7(f).

(a) The statute provides that the guaranty must be a weekly guaranty. A guaranty of monthly, semimonthly, or biweekly pay (which would allow averaging wages over more than one workweek) does not qualify under this paragraph. Obviously guarantees for periods less than a workweek do not qualify. Whatever sum is guaranteed must be paid in full in all workweeks, however short, in which the employee performs any amount of work for the employer. The amount of the guaranty may not be subject to proration or deduction in short weeks.

(b) The contract must provide a guaranty of pay. The amount must be specified. A mere guaranty to provide work for a particular number of hours does not qualify under this section.

(c) The pay guaranteed must be "for not more than 60 hours based on the rates so specified."

§ 778.411 Sixty-hour limit on pay guaranteed by contract.

The amount of weekly pay guaranteed may not exceed compensation due at the specified regular rate for the applicable maximum hours standard and at the specified overtime rate for the additional hours, not to exceed a total of 60 hours. Thus, if the maximum hours standard is 40 hours and the specified regular rate is $2 an hour the weekly guaranty cannot be greater than $140. This does not mean that an employee employed pursuant to a guaranteed pay contract under this section may not work more than 60 hours in any week; it means merely that pay in an amount sufficient to compensate for a greater number of hours cannot be covered by the guaranteed pay. If he works in excess of 60 hours he must be paid, for each hour worked in excess of 60, overtime compensation as provided in the contract, in addition to the guaranteed amount.

§ 778.412 Relationship between amount guaranteed and range of hours employee may be expected to work.

While the guaranteed pay may not cover more than 60 hours, the contract may guarantee pay for a lesser number of hours. In order for a contract to qualify as a bona fide contract for an employee whose duties necessitate irregular hours of work, the number of hours for which pay is guaranted must bear a reasonable relation to the number of hours the employee may be expected to work. A guaranty of pay for 60 hours to an empolyee whose duties necessitate irregular hours of work which can reasonably be expected to range no higher than 50 hours would not qualify as a bona fide contract under this section. The rate specified in such a contract would be wholly fictitious and therefore would not be a "regular rate" as discussed above. When the parties enter into a guaranteed pay contract, therefore, they should determine, as far as possible, the range of hours the employee is likely to work. In deciding the amount of the guaranty they should not choose a guaranty of pay to cover the maximum number of hours which the employee will be likely to work at any time but should rather select a figure low enough so that it may reasonably be expected that the rate will be operative in a significant number of workweeks. In both Walling v. A. H. Belo Co., 316 U.S. 624 and Walling v. Halliburton Oil Well Cementing Co., 331 U.S. 17 the court found that the employees did actually exceed the number of hours (60 and 84 respectively) for which pay was guaranteed on fairly frequent occasions so that the hourly rate stipulated in the contract in each case was often operative and did actually control the compensation received by the employees. In cases where the guaranteed number of hours has not been exceeded in a significant number of workweeks, this fact will be weighed in the light of all the other facts and circumstances pertinent to the agreement before reaching a conclusion as to its effect on the validity of the pay arrangement. By a periodic review of the actual operation of the contract the employer can determine whether a stipulated contract rate reasonably expected by the parties to be operative in a significant number of workweeks is actually so operative or whether adjustments in the contract are necessary to ensure such an operative rate.

§ 778.413 Guaranty must be based on rates specified in contract.

The guaranty of pay must be "based on the rate so specified," in the contract. If the contract specifies a regular rate of $2 and an overtime rate of $3 and guarantees pay for 50 hours and the maximum hours standard is 40 hours, the amount of the guaranty must be $110, if it is to be based on the rates so specified. A guaranty of $125 in such a situation would not, obviously, be based on the rates specified in the contract. Moreover, a contract which provides a variety of different rates for shift differentials, arduous or hazardous work, stand-by time, piece-rate incentive bonuses, commissions or the like in addition to a specified regular rate and a specified overtime rate with a guaranty of pay of, say, $125 from all sources would not qualify under this section, since the guaranty of pay in such a case is not based on the regular and overtime rates specified in the contract.

§ 778.414 "Approval" of contracts under section 7(f).

(a) There is no requirement that a contract, to qualify under section 7(f), must be approved by the Secretary of Labor or the Administrator. The question of whether a contract which purports to qualify an employee for exemption under section 7(f) meets the requirements is a matter for determination by the courts. This determination will in all cases depend not merely on the wording of the contract but upon the actual practice of the parties thereunder. It will turn on the question of whether the duties of the employee in fact necessitate

irregular hours, whether the rate specified in the contract is a "regular rate"—that is, whether it was designed to be actually operative in determining the employee's compensation—whether the contract was entered into in good faith, whether the guaranty of pay is in fact based on the regular and overtime rates specified in the contract. While the Administrator does have the authority to issue an advisory opinion as to whether or not a pay arrangement accords with the requirements of section 7(f) he can do so only if he has knowledge of these facts.

(b) As a guide to employers, it may be helpful to describe a fact situation in which the making of a guaranteed salary contract would be appropriate and to set forth the terms of a contract which would comply, in the circumstances described, with the provisions of section 7(f).

Example: An employee is employed as an insurance claims adjuster; because of the fact that he must visit claimants and witnesses at their convenience, it is impossible for him or his employer to control the hours which he must work to perform his duties. During the past 6 months his weekly hours of work have varied from a low of 30 hours to a high of 58 hours. His average workweek for the period was 48 hours. In about 80 percent of the workweeks he worked less than 52 hours. It is expected that his hours of work will continue to follow this pattern. The parties agree upon a regular rate of $2 per hour. In order to provide for the employee the security of a regular weekly income the parties further agree to enter into a contract which provides a weekly guaranty of pay. If the applicable maximum hours standard is 40 hours, guaranty of pay for a workweek somewhere between 48 hours (his average week) and 52 would be reasonable. In the circumstances described the following contract would be appropriate.

The X Company hereby agrees to employ John Doe as a claims adjuster at a regular hourly rate of pay of $2 per hour for the first 40 hours in any workweek and at the rate of $3 per hour for all hours in excess of 40 in any workweek, with a guarantee that John Doe will receive, in any week in which he performs any work for the company, the sum of $110 as total compensation, for all work performed up to and including 50 hours in such workweek.

(c) The situation described in paragraph (b) of this section is merely an example and nothing herein is intended to imply that contracts which differ from the example will not meet the requirements of section 7(f).

COMPUTING OVERTIME PAY ON THE RATE APPLICABLE TO THE TYPE OF WORK PERFORMED IN OVERTIME HOURS (SEC. 7(g) (1) AND (2))

§ 778.415 The statutory provisions.

Sections 7(g) (1) and (2) of the Act provide:

(g) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection—

(1) In the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) In the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours;

* * * * *

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

§ 778.416 Purpose of provisions.

The purpose of the provisions set forth in § 778.415 is to provide an exception from the requirement of computing overtime pay at not less than one and one-half times the regular rate for hours worked in excess of the applicable maximum hours standard for a particular workweek and to allow, under specified conditions, a simpler method of computing overtime pay for employees paid on the basis of a piece rate, or at a variety of hourly rates or piece rates, or a combination thereof. This provision is not designed to exclude any group of employees from the overtime benefits of the Act. The intent of the provision is merely to simplify the method of computation while insuring the receipt by the affected employees of substantially the same amount of overtime compensation.

§ 778.417 General requirements of section 7(g).

The following general requirements must be met in every case before the overtime computation authorized under section 7(g) (1) or (2) may be utilized.

(a) First, in order to insure that the method of computing overtime pay permitted in this section will not in any circumstances be seized upon as a device for avoiding payment of the minimum wage due for each hour, the requirement must be met that employee's average hourly earnings for the workweek (exclusive of overtime pay and of all other pay which is excluded from the regular rate) are not less than the minimum. This requirement insures that the employer cannot pay subminimum nonovertime rates with a view to offsetting part of the compensation earned during the overtime hours against the minimum wage due for the workweek.

(b) Second, in order to insure that the method of computing overtime pay permitted in this section will not be used to circumvent or avoid the payment of proper overtime compensation due on other sums paid to employees, such as bonuses which are part of the regular rate, the section requires that extra overtime compensation must be properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

§ 778.418 Pieceworkers.

(a) Under section 7(g)(1), an employee who is paid on the basis of a piece rate for the work performed during nonovertime hours may agree with his employer in advance of the performance of the work that he shall be paid at a rate not less than one and one-half times this piece rate for each piece produced during the overtime hours. No additional overtime pay will be due under the Act provided that the general conditions discussed in § 778.417 are met and:

(1) The piece rate is a bona fide rate;

(2) The overtime hours for which the overtime rate is paid qualify as overtime hours under section 7(e) (5), (6), or (7);

(3) The number of overtime hours for which such overtime piece rate is paid equals or exceeds the number of hours worked in excess of the applicable maximum hours standard for the particular workweek; and

(4) The compensation paid for the overtime hours is at least equal to pay at one and one-half times the applicable minimum rate for the total number of hours worked in excess of the applicable maximum hours standard.

(b) The piece rate will be regarded as bona fide if it is the rate actually paid for work performed during the nonovertime hours and if it is sufficient to yield at least the minimum wage per hour.

(c) If a pieceworker works at two or more kinds of work for which different straight time piece rates have been established, and if by agreement he is paid at a rate not less than one and one-half whichever straight time piece rate is applicable to the work performed during the overtime hours, such piece rate or rates must meet all the tests set forth in this section and the general tests set forth in § 778.417 in order to satisfy the overtime requirements of the Act under section 7(g)(2).

§ 778.419 Hourly workers employed at two or more jobs.

(a) Under section 7(g)(2) an employee who performs two or more different kinds of work, for which different straight time hourly rates are established, may agree with his employer in advance of the performance of the work that he will be paid during overtime hours at a rate not less than one and one-half times the hourly nonovertime rate established for the type of work he is performing during such overtime hours. No additional overtime pay will be due under the act provided that the general requirements set forth in § 778.417 are met and:

(1) The hourly rate upon which the overtime rate is based is a bona fide rate;

(2) The overtime hours for which the overtime rate is paid qualify as overtime hours under section 7(e) (5), (6), or (7); and

(3) The number of overtime hours for which the overtime rate is paid equals or exceeds the number of hours worked in

excess of the applicable maximum hours standard.

(b) An hourly rate will be regarded as a bona fide rate for a particular kind of work if it is equal to or greater than the applicable minimum rate therefor and if it is the rate actually paid for such work when performed during nonovertime hours.

§ 778.420 Combined hourly rates and piece rates.

Where an employee works at a combination of hourly and piece rates, the payment of a rate not less than one and one-half times the hourly or piece rate applicable to the type of work being performed during the overtime hours will meet the overtime requirements of the Act if the provisions concerning piece rates (as discussed in § 778.418) and those concerning hourly rates (as discussed in § 778.419) are respectively met.

§ 778.421 Offset hour for hour.

Where overtime rates are paid pursuant to statute or contract for hours in excess of 8 in a day, or in excess of the applicable maximum hours standard, or in excess of the employees' normal working hours or regular working hours (as under section 7(e)(5)) or for work on "special days" (as under section 7(e)(6)), or pursuant to an applicable employment agreement for work outside of the hours established in good faith by the agreement as the basic, normal, or regular workday (not exceeding 8 hours) or workweek (not exceeding the applicable maximum hours standard) (under section 7(e)(7)), the requirements of section 7(g)(1) and 7(g)(2) will be met if the number of such hours during which overtime rates were paid equals or exceeds the number of hours worked in excess of the applicable maximum hours standard for the particular workweek. It is not necessary to determine whether the total amount of compensation paid for such hours equals or exceeds the amount of compensation which would be due at the applicable rates for work performed during the hours after the applicable maximum in any workweek.

Subpart F—Pay Plans Which Circumvent the Act

Devices To Evade the Overtime Requirements

§ 778.500 Artificial regular rates.

(a) Since the term "regular rate" is defined to include all remuneration for employment (except statutory exclusions) whether derived from hourly rates, piece rates, production bonuses or other sources, the overtime provisions of the act cannot be avoided by setting an artificially low hourly rate upon which overtime pay is to be based and making up the additional compensation due to employees by other means. The established hourly rate is the "regular rate" to an employee only if the hourly earnings are the sole source of his compensation. Payment for overtime on the basis of an artificial "regular" rate will not result in compliance with the overtime provisions of the Act.

(b) It may be helpful to describe a few schemes that have been attempted and to indicate the pitfalls inherent in the adoption of such schemes. The device of the varying rate which decreases as the length of the workweek increases has already been discussed in §§ 778.321–778.329. It might be well, however, to re-emphasize that the hourly rate paid for the identical work during the hours in excess of the applicable maximum hours standard cannot be lower than the rate paid for the nonovertime hours nor can the hourly rate vary from week to week inversely with the length of the workweek. It has been pointed out that, except in limited situations under contracts which qualify under section 7(f), it is not possible for an employer lawfully to agree with his employees that they will receive the same total sum, comprising both straight time and overtime compensation, in all weeks without regard to the number of overtime hours (if any) worked in any workweek. The result cannot be achieved by the payment of a fixed salary or by the payment of a lump sum for overtime or by any other method or device.

(c) Where the employee is hired at a low hourly rate supplemented by facilities furnished by the employer, bonuses (other than those excluded under section 7(e)), commissions, pay ostensibly (but not actually) made for idle hours, or the like, his regular rate is not the hourly rate but is the rate determined by dividing his total compensation from all these sources in any workweek by the number of hours worked in the week. Payment of overtime compensation based on the hourly rate alone in such a situation would not meet the overtime requirements of the Act.

(d) One scheme to evade the full penalty of the Act was that of setting an arbitrary low hourly rate upon which overtime compensation at time and one-half would be computed for all hours worked in excess of the applicable maximum hours standard; coupled with this arrangement was a guarantee that if the employee's straight time and overtime compensation, based on this rate, fell short, in any week, of the compensation that would be due on a piece-rate basis of x cents per piece, the employee would be paid on the piece-rate basis instead. The hourly rate was set so low that it never (or seldom) was operative. This scheme was found by the Supreme Court to be violative of the overtime provisions of the Act in the case of Walling v. Youngerman-Reynolds Hardwood Co., 325 U.S. 427. The regular rate of the employee involved was found to be the quotient of total piece-rate earnings paid in any week divided by the total hours worked in such week.

(e) The scheme is no better if the employer agrees to pay straight time and overtime compensation on the arbitrary hourly rates and to make up the difference between this total sum and the piece-rate total in the form of a bonus to each employee. (For further discussion of the refinements of this plan, see §§ 778.502 and 778.503.)

§ 778.501 The "split-day" plan.

(a) Another device designed to evade the overtime requirements of the Act was a plan known as the "Poxon" or "split-day" plan. Under this plan the normal or regular workday is artificially divided into two portions one of which is arbitrarily labeled the "straight time" portion of the day and the other the "overtime" portion. Under such a plan, an employee who would ordinarily command an hourly rate of pay well in excess of the minimum for his work is assigned a low hourly rate (often the minimum) for the first hour (or the first 2 or 4 hours) of each day. This rate is designated as the regular rate; "time and one-half" based on such rate is paid for each additional hour worked during the workday. Thus, for example, an employee is arbitrarily assigned an hourly rate of $2 per hour under a contract which provides for the payment of so-called "overtime" for all hours in excess of 4 per day. Thus, for the normal or regular 8-hour day the employee would receive $8 for the first 4 hours and $12 for the remaining 4 hours; and a total of $20 for 8 hours. (This is exactly what he would receive at the straight time rate of $2.50 per hour.) On the sixth 8-hour day the employee likewise receives $20 and the employer claims to owe no additional overtime pay under the statute since he has already compensated the employee at "overtime" rates for 20 hours of the workweek.

(b) Such a division of the normal 8-hour workday into 4 straight time hours and 4 overtime hours is purely fictitious. The employee is not paid at the rate of $2 an hour and the alleged overtime rate of $3 per hour is not paid for overtime work. It is not geared either to hours "in excess of the employee's normal working hours or regular working hours" (section 7(e)(5)) or for work "outside of the hours established in good faith * * * as the basic, normal, or regular workday" (section 7(e)(7)) and it cannot therefore qualify as an overtime rate. The regular rate of pay of the employee in this situation is $2.50 per hour and he is owed additional overtime compensation, based on this rate, for all hours in excess of the applicable maximum hours standard. This rule was settled by the Supreme Court in the case of Walling v. Helmerich & Payne, 323 U.S. 37, and its validity has been reemphasized by the definition of the term "regular rate" in section 7(e) of the Act as amended.

Pseudo-Bonuses

§ 778.502 Artificially labeling part of the regular wages a "bonus".

(a) The term "bonus" is properly applied to a sum which is paid as an addition to total wages, usually because of extra effort of one kind or another, or as a reward for loyal service or as a gift. The term is improperly applied if it is used to designate a portion of regular wages which the employee is entitled to receive under his regular wage contract.

(b) For example, if an employer has agreed to pay an employee $100 a week

without regard to the number of hours worked, the regular rate of pay of the employee is determined each week by dividing the $100 salary by the number of hours worked in the week. The situation is not altered if the employer continues to pay the employee, whose applicable maximum hours standard is 40 hours, the same $100 each week but arbitrarily breaks the sum down into wages for the first 40 hours at an hourly rate of $1.60 an hour, overtime compensation at $2.40 per hour and labels the balance a "bonus" (which will vary from week to week, becoming smaller as the hours increase and vanishing entirely in any week in which the employee works 55 hours or more). The situation is in no way bettered if the employer, standing by the logic of his labels, proceeds to compute and pay overtime compensation due on this "bonus" by prorating it back over the hours of the workweek. Overtime compensation has still not been properly computed for this employee at his regular rate.

(c) An illustration of how the plan works over a 3-week period may serve to illustrate this principle more clearly:

(1) In the first week the employee whose applicable maximum hours standard is 40 hours works 40 hours and receives $100. The books show he has received $64 (40 hours × $1.60 an hour) as wages and $36 as bonus. No overtime has been worked so no overtime compensation is due.

(2) In the second week he works 45 hours and receives $100. The books show he has received $64 for the first 40 hours and $12 (5 hours × $2.40 an hour) for the 5 hours over 40, or a total of $76 as wages, and the balance as a bonus of $24. Overtime compensation is then computed by the employer by dividing $24 by 45 hours to discover the average hourly increase resulting from the bonus—53⅓ cents per hour—and half this rate is paid for the 5 overtime hours—$1.33. This is improper. The employee's regular rate in this week is $2.22 per hour. He is owed $105.45, not $101.33.

(3) In the third week the employee works 50 hours and is paid $100. The books show that the employee received $64 for the first 40 hours and $24 (10 hours × $2.40 per hour) for the 10 hours over 40, or a total of $88, and the balance as a bonus of $12. Overtime pay due on the "bonus" is found to be $1.20. This is improper. The employee's regular rate in this week is $2 and he is owed $110, not $101.20.

(d) Similar schemes have been devised for piece-rate employees. The method is the same. An employee is assigned an arbitrary hourly rate (usually the minimum) and it is agreed that his straight time and overtime earnings will be computed on a piece-rate basis of "x" cents ings do not amount to the sum he would have earned had his earnings been computed on a piecerate basis of "x" cents per piece, he will be paid the difference as a "bonus." The subterfuge does not serve to conceal the fact that this employee is actually compensated on a piece-rate basis, that there is no bonus and that his regular rate is the quotient of piece-rate earnings divided by hours worked (Walling v. Youngerman-Reynolds Hardwood Company, 325 U.S. 419).

(e) The general rule may be stated that wherever the employee is guaranteed a fixed or determinable sum as his wages each week, no part of this sum is a true bonus and the rules for determining overtime due on bonuses do not apply.

§ 778.503 Pseudo "percentage bonuses".

(a) (1) The device does not improve when it becomes more complex. If no true bonus in a flat sum amount can be legitimately separated out of the employee's wages, certainly no bonus in the form of a percentage of total earnings can be so derived. Yet some employers, seeking to evade the overtime requirements of the Act entirely while apparently complying with every requirement, have devised schemes of this kind. Like the employer described in § 778.502, such an employer pays his employee $100 a week without regard to the number of hours worked. He sets up a fictitious regular rate of $1.62 an hour. In a week in which the employee whose applicable maximum hours standard is 40 hours works 48 hours, his records show the following:

(The material in brackets does not usually appear in the final records.)

Straight time for 40 hours at $1.62 an hour	$64.80
Overtime for 8 hours at $2.43 an hour	19.44
	84.24
[$100−$84.24=$15.76, total amount to be distributed as a bonus.]	
[$15.76/$84.24=18.7%]	
Percentage of total earnings bonus at 18.7% of $84.24	15.76
Total	100.00

(2) Obviously, this employee can no more be said to be receiving proper overtime than the employee in the examples in § 778.502. This employee's regular rate in this week is $2.08 per hour and he is owed a total of $108.16 for the week.

(b) (1) No better claim of compliance can be made by an employer who arbitrarily pieces out a bonus from all or part of group wages. The scheme tends to be more complex, but the principle is the same and the same results follow.

(2) One relatively simple example of such a scheme is the following: Two employees are hired as salesmen on an hourly-rate-plus-commission basis. Each is hired at the rate of $2 an hour for the first 40 hours and $3 an hour for overtime and, in addition, is entitled to a share in commissions earned by each at the rate of one percent of sales. In a given week one employee works 40 hours and the other works 50. Together they sell $1,900 worth of merchandise and are thus entitled to $19 as commissions. In order to avoid payment of overtime on the commissions, the employer decides to distribute the $19 in the form of a percentage of total earnings. The total wages of the two employees are $190 in the particular week. The $19 commissions represent 10 percent of this figure. The employer therefore pays a 10 percent "bonus" to each employee on his total earnings. One receives $8 as bonus, the other, $11. The employer claims that no additional overtime is due because the "bonus" was a percentage of total earnings and the percentage was determined before the amount due any individual employee had been determined.

(3) If the commissions were a "bonus" at all, the method of distribution might be proper. But a bonus, as has been stated, is a sum paid in addition to regular wages and not as a part of such wages. The employees have contracted to work on a wage-plus-group-commission basis. No extra pay over and above the contract wage is involved. As a regular part of their duties, the employees make sales and regularly receive a one percent commission on the amount of the sale. Moreover, since the employees are owed the commissions in an amount related only to the amount of total sales and without regard to the number of hours worked, no part of such commissions is paid as overtime compensation.

(c) (1) In the example just given the employer sought only to relieve himself of the burden of paying proper overtime on part of the wages. The example must grow more complex but the principle does not change when the employer seeks to relieve himself of the entire burden of overtime by a fictitious division of regular group wages into hourly earnings and "bonus." This scheme is usually tried with respect to employees who work solely on a group piece rate or group commission basis. For simplicity we will assume that the two employees in the previous example receive no base hourly rate but are working solely on a commission basis—11 percent of total sales. In order for the scheme to function the employer must provide a minimum hourly guarantee. A low rate such as $1.64 is best suited to his purpose for it provides a greater leeway as to the number of hours that may be worked without the payment of any additional overtime compensation whatever. In a week in which the total sales amount to $1,558 the two employees are together entitled to $171.38 (11 percent). They will receive this amount regardless of the number of hours they have worked individually or collectively. If they work the same number of hours, each will get half—$85.69. This would be true whether the hours worked by each were 40, 43, or 48 hours. Only the bookkeeping is altered. If each works 40 hours the record will show for each:

Wages at $1.64 per hour	$65.60
Bonus	20.09
Total	85.69

If each works 45 hours, the record will show:

Wages at $1.64 per hour for 40 hours	$65.60
Overtime pay at $2.46 per hour for 5 hours	12.30
Bonus at 10 percent of total earnings (10 percent of $77.90)	7.79
Total	85.69

(2) The total amount earned by each employee is exactly the same in each of the 2 weeks because it is determined not

by the hours he works nor by the established rate but only by two unrelated factors: The total amount of sales and the relation between his hours of work and those of the other employees; not the total hours worked b, either or both but merely the ratio of the two.

(3) This will become apparent if we look at a workweek in which one works 40 hours and the other 50. The books then read this way:

1st employee:	
Wages at $1.64 per hour for 40 hours	$65.60
Bonus at 10 percent of total earnings	6.56
Total	72.16
2d employee:	
Wages at $1.64 per hour for 40 hours	65.60
Overtime pay at $2.46 per hour for 10 hours	24.60
Bonus at 10 percent of total earnings (10% of $90.20)	9.02
Total	99.22

(4) Note that in each case, as long as the amount of sales remains constant, the two employees together earn $171.38 regardless of whether either works overtime, or both do, and regardless of the number of hours of overtime worked. The first employee worked 40 hours in the first week and received $85.69, yet he received only $72.16 for a 40-hour week in the third week of the series. The only reason for this was that in the third week the other employee worked 10 hours of overtime for which someone had to pay. The employer had invented the scheme so that he, the employer, would not have to pay. The burden would devolve in part on the overtime worker himself. The latter worked 10 hours of overtime yet he received only $13.53 more than he received in a 40-hour week.

(5) The system is an ingenious bookkeeping device but obviously it must fail of its purpose. It is only a more elaborate method of claiming that a rate—whether a salary or a piece rate or a commission—somehow "includes" overtime even though it is paid regularly when no overtime is worked and without regard to the amount of overtime worked.

(d) The examples dealt with two employees. It is the same for 2 as for 1 or for 20. A "bonus" which is derived by subtraction of compensation, based on an assigned rate, from the total amount agreed to be paid to an employee or a group is not a bonus and cannot be treated as such.

(e) Regardless of bookkeeping devices, the regular rate of pay of employees employed on group piece rates or commissions is determined first by ascertaining the total amount which is due a particular employee under the contract and then dividing this sum by the number of hours he worked in the week. Extra overtime compensation, at half the rate thus determined, is due for each hour in excess of the maximum hours standard applicable.

Subpart G—Miscellaneous

§ 778.600 Veterans' subsistence allowances.

Subsistence allowances paid under Public Law 346 (commonly known as the G.I. bill of rights) to a veteran employed in on-the-job training program work may not be used to offset the wages to which he is entitled under the Fair Labor Standards Act. The subsistence allowances provided by Public Law 346 for payment to veterans are not paid as compensation for services rendered to an employer nor are they intended as subsidy payments for such employer. In order to qualify as wages under either section 6 or section 7 of the Act, sums paid to an employee must be paid by or on behalf of the employer. Since veterans' subsistence allowances are not so paid, they may not be used to make up the minimum wage or overtime pay requirements of the Act nor are they included in the regular rate of pay under section 7.

§ 778.601 Special overtime provisions available for hospital employees under section 7(j).

(a) *The statutory provision.* Section 7(j) of the Act provides, for hospital employment, under prescribed conditions, an exemption from the general requirement of section 7(a) that overtime compensation be computed on a workweek basis. It permits a 14-day period to be established for the purpose by an agreement or understanding between an employer engaged in the operation of a hospital and any of his employees employed in connection therewith. The exemption provided by section 7(j) applies—

if, pursuant to an agreement or understanding arrived at between the employer and employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for purposes of overtime computation and if, for his employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(b) *Conditions for application of exemption.* As conditions for use of the 14-day period in lieu of the workweek in computing overtime, section 7(j) requires, first, an agreement or understanding between the employer and the employee before performance of the work that such period is to be used, and second, the payment to the employee of overtime compensation at a rate not less than one and one-half times his regular rate for all hours worked in excess of eight in any workday within such period and in excess of 80 during the period as a whole.

(c) *The agreement or understanding.* The agreement or understanding between the employer and employee to use the 14-day period for computing overtime must be entered into before the work to which it is intended to apply is performed. It may be arrived at directly with the employee or through his representative. It need not be in writing, but if it is not, a special record concerning it must be kept as required by § 516.23 of this chapter. The 14-day period may begin at any hour of any day of the week; it need not commence at the beginning of a calendar day. It consists of 14 consecutive 24-hour periods, at the end of which a new 14-day period begins. The election to use the 14-day period in lieu of the workweek must, like selection of an employee's workweek (§ 778.105) be with the intent to use such period permanently or for a substantial period of time. Changes from such period to the workweek and back again to take advantage of less onerous overtime pay liabilities with respect to particular work schedules under one system than under the other are not permissible.

(d) *Payment for overtime under the special provisions.* If the parties have the necessary agreement or understanding to use the 14-day period, computation of overtime pay on the workweek basis as provided in section 7(a) is not required so long as the employee receives overtime compensation at a rate not less than one and one-half times his regular rate of pay "for his employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period." Such compensation is required for all hours in such period in excess of eight in any workday or workdays therein which are worked by the employee, whether or not more than 80 hours are worked in the period. The first workday in the period, for purposes of this computation, begins at the same time as the 14-day period and ends 24 hours later. Each of the 13 consecutive 24-hour periods following constitutes an additional workday of the 14-day period. Overtime compensation at the prescribed time and one-half rate is also required for all hours worked in excess of 80 in the 14-day period, whether or not any daily overtime is worked during the first 80 hours. However, under the provisions of section 7(h) and 7(e)(5) of the Act, any payments at the premium rate for daily overtime hours within such period may be credited toward the overtime compensation due for overtime hours in excess of 80.

(e) *Use of 14-day period in lieu of workweek.* Where the 14-day period is used as authorized in section 7(j), such period is used in lieu of the workweek in computing the regular rate of pay of employees to whom it applies (i.e., those of the hospital's employees with whom the employer has elected to enter into the necessary agreement or understanding as explained in paragraph (c) of this section). With this exception, the computation of the regular rate and the application of statutory exclusions therefrom is governed by the general principles set forth in this Part 778.

§ 778.602 Special overtime provisions under section 7 (b), (c), and (d).

(a) *Daily and weekly overtime standards.* The general overtime pay requirements of the Act provide for such pay only when the number of hours worked exceeds the standard specified for the workweek; no overtime compensation on

a daily basis is required. However, section 7 of the Act, in subsections (b), (c), and (d), provides certain partial exemptions from the general overtime provisions, each of which is conditioned upon the payment to the employee of overtime compensation at a rate not less than one and one-half times his regular rate of pay for his hours worked in the workweek in excess of daily, as well as weekly, standards specified in the subsection. Under these provisions, when an employee works in excess of both the daily and weekly maximum hours standards in any workweek for which such an exemption is claimed, he must be paid at such overtime rate for all hours worked in the workweek in excess of the applicable daily maximum or in excess of the applicable weekly maximum, whichever number of hours is greater. Thus, if his total hours of work in the workweek which are in excess of the daily maximum are 10, and his hours in excess of the weekly maximum are 8, overtime compensation is required for 10 hours, not 18.

(b) *Standards under section 7(b).* The partial exemptions provided by section 7(b) apply to an employee under the conditions specified in clause (1), (2), or (3) of the subsection "if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed." As an example, suppose an employee is employed under the other conditions specified for an exemption under section 7(b) at an hourly rate of $2.40 and works the following schedule:

Hours	M	T	W	T	F	S	S	Total
Worked	14	9	10	15	12	8	0	68

Number of overtime hours: Daily, 5 (hours over 12); weekly, 12 (hours over 56).

Since the weekly overtime hours are greater, the employee is entitled to pay for 12 hours at $3.60 an hour ($1\frac{1}{2}\times\$2.40$), a total of $43.20 for the overtime hours, and to pay at his regular rate for the remaining 56 hours ($56\times\$2.40$) in the amount of $134.40, or a total of $177.60 for the week. If the employee had not worked the 8 hours on Saturday, his total hours worked in the week would have been 60, of which five were daily overtime hours, and there would have been no weekly overtime hours under the section 7(b) standard. For such a schedule the employee would be entitled to 5 hours of overtime pay at time and one-half ($5\times1\frac{1}{2}\times\$2.40=\$18$) plus the pay at his regular rate for the remaining 55 hours ($55\times\$2.40=\$132$), making a total of $150 due him for the week.

(c) *Standards under section 7(c).* The partial exemption from the general overtime provisions provided by section 7(c) applies to an employee employed by an employer in work subject to such exemption "if such employee * * * receives compensation for employment by such employer in excess of 10 hours in any workday, or for employment by such employer in excess of 50 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed." This may be illustrated by such an employee working the following schedule, whose regular hourly rate is $2.

Hours	M	T	W	T	F	S	S	Total
Worked	10	12	12	12	8	0	0	54

Number of overtime hours: Daily, 6 (hours over 10); weekly, 4 (hours over 50).

Since the daily overtime hours are greater, the employee must receive overtime compensation of $3 an hour for 6 hours ($1\frac{1}{2}\times\$2\times6=\$18$) in addition to his pay at his regular rate for the remaining 48 hours ($\$2\times48=\$96$) or a total of $114 for the week. If the employee had worked 12 hours instead of eight on Friday, making a total of 58 hours in the week, his daily overtime hours and weekly overtime hours for the week would be equal in number—8 hours for each—in which event $24 would be due for these overtime hours at the $3 rate and $100 would be due for the remaining 50 hours at the regular rate of $2, so that his total pay required for the week would be $124.

(d) *Standards under section 7(d).* The partial exemptions from the general overtime provisions provided by section 7(d) apply to an employee employed by an employer in work subject to such an exemption "if such employee * * * receives compensation for employment by such employer in excess of 10 hours in any workday, or for employment in excess of 48 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed." To illustrate the application of this provision, assume that such an employee whose regular rate is $2 an hour works the following schedules:

Hours	M	T	W	T	F	S	S	Total
Worked	14	14	14	14	10	0	0	66

Number of overtime hours: Daily, 16 (hours over 10); weekly, 18 (hours over 48).

Hours	M	T	W	T	F	S	S	Total
Worked	16	14	14	14	6	0	0	64

Number of overtime hours: Daily, 18 (hours over 10) weekly, 16 (hours over 48).

Following the method of computation used in the examples in paragraphs (b) and (c) above of this section, the employee in the first of these weeks would be entitled to pay of $150 ($18\times1\frac{1}{2}\times\$2=\$54$ for overtime plus $48\times\$2=\$96$), and in the second week must be paid $146 ($18\times1\frac{1}{2}\times\$2=\$54$ for overtime plus $46\times\$2=\$92$) in order to satisfy the requirements of section 7(d).

(e) *Application of section 7(a) in lieu of special provisions.* An employer's agreement with his employees' collective bargaining representative under section 7(b) (1) or (2) must include a provision requiring payment, during the period covered by the agreement, for overtime in excess of 12 hours in a workday or 56 hours in a workweek as specified in section 7(b) if the exemption from the general overtime pay requirements of section 7(a) is to apply. (Cabunac v. National Terminals Corp., 139 F. 2d 853.) Under section 7(b)(3) and under section 7 (c) or (d), an employee otherwise qualified for the partial exemption in any workweek who does not receive the daily or weekly overtime compensation specified in the applicable subsection is required to be paid overtime compensation as prescribed in section 7(a). (Wirtz v. Osceola Farms Co., 372 F. 2d 584 (C.A. 5); Holtville Alfalfa Mills v. Wyatt, 230 F. 2d 398).

§ 778.603 Special overtime provisions for residential care establishments under section 13(b)(8) and for bowling establishments under section 13(b)(19).

The Act provides partial exemptions from its general overtime provisions for any employee employed by an establishment which is a residential care institution (other than a hospital) described in section 13(b)(8) or a bowling establishment as set forth in section 13(b)(19), if such employee "receives compensation for employment in excess of 48 hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed." These provisions permit employment of such an employee for as many as 48 hours in any workweek without payment of extra compensation for overtime, if the employee is paid at least one and one-half times his regular rate for all hours worked in excess of that number. The regular rate is determined in the same manner as under section 7(a) of the Act in accordance with the principles discussed in this part. An employee otherwise qualified for the partial overtime exemption under one of these provisions who does not receive the specified overtime compensation for hours worked in excess of 48 in any workweek is required to be paid overtime compensation as prescribed in section 7(a) for hours worked in excess of the maximum workweek applicable under that subsection.

Signed at Washington, D.C., this 18th day of January 1968.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 68-892; Filed, Jan. 25, 1968; 8:45 a.m.]

Title 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

SUBCHAPTER W—AIR FORCE PROCUREMENT INSTRUCTIONS

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

Subchapter W of Chapter VII of Title 32 of the Code of Federal Regulations is amended as follows:

PART 1003—PROCUREMENT BY NEGOTIATION

Subpart I—Subcontracting Policies and Procedures

§§ 1003.902—1003.903–54 [Deleted]

1. Subpart I, Subcontracting Policies and Procedures, is deleted.

PART 1006—FOREIGN PURCHASES

Subpart H—Balance of Payments Program—Procurement of Supplies and Services for Use Outside the United States and Procurement of Scientific and Technical Knowledge Involving Foreign Expenditures

2. The heading of Subpart H is revised as set forth above; the title of § 1006.850 is revised; and in § 1006.850–6, paragraph (b) is amended by revising the title of subparagraph (3) to read as follows:

§ 1006.850 Balance of payments program—offshore procurement.

* * * * *

§ 1006.850–6 Format for BUSH contract.

* * * * *

(b) * * *

(3) *Office of Administration.* (August 1967.)

* * * * *

PART 1007—CONTRACT CLAUSES

Subpart NN—Special Clauses

§ 1007.4014 [Amended]

3. Section 1007.4014 is amended by changing the reference in the second line to read "§ 14.306".

§§ 1007.4017—1007.4019 [Deleted]

4. Sections 1007.4017, 1007.4018 and 1007.4019 are deleted.

PART 1016—PROCUREMENT FORMS

Subpart C—Purchase and Delivery Order Forms

§ 1016.303 [Amended]

5. Section 1016.303 is amended by adding the words "and/or using DD Form 1155 in conjunction with DD Form 1155r–1" between "1155" and "are" in the last sentence.

PART 1018—PROCUREMENT OF CONSTRUCTION AND CONTRACTING FOR ARCHITECT-ENGINEER SERVICES

Subpart A—General Provisions

6. A new § 1018.105 is added; and § 1018.150 is amended by revising paragraph (a)(4) to read as follows:

§ 1018.105 Time of performance.

If at the time of issuing an invitation for bids it is known that the issuance of a Notice to Proceed will be delayed because of the construction season, or for other known reasons, the following statement will be included in the invitation for bids:

The Government contemplates issuance of a notice to proceed for this requirement on or about_____.
(Date)

§ 1018.150 Material Approval Submittal Form (AFPI Form 1).

(a) * * *

(4) Insofar as practicable and prior to the commencement of work, the contracting officer with advance information from the construction activity will inform the contractor of the materials or articles requiring approval. See §§ 7.602–9 of this title and 1007.602–9 of this subchapter.

* * * * *

PART 1030—APPENDIXES TO AIR FORCE PROCUREMENT INSTRUCTION

§§ 1030.2, 1030.3 [Deleted]

7. Sections 1030.2, *Appendix B—Manual for control of Government property in possession of contractors;* and 1030.3, *Appendix C—Manual for control of Government property in possession of non-profit research and development contractors,* are deleted.

PART 1053—CONTRACTS; GENERAL

Subpart Y—Procurement of Communication Services

§§ 1053.2500—1053.2512 [Deleted]

8. Subpart Y—Procurement of Communication Services, is deleted.

(Sec. 8012, 70A Stat. 488, secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 8012, 2301–2314) [AFPI Rev. No. 84, Nov. 30, 1967]

By order of the Secretary of the Air Force.

LUCIAN M. FERGUSON,
Colonel, U.S. Air Force, Chief, Special Activities Group, Office of The Judge Advocate General.

[F.R. Doc. 68–971; Filed, Jan. 25, 1968; 8:45 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 742—CODE OF ETHICAL CONDUCT

Specific Classes of Employees

Correction

In F.R. Doc. 68–578, appearing at page 570 of the issue for Wednesday, January 17, 1968, in amendatory paragraph I, the reference to "§ 742.735–53" should read "§ 742.735–52".

Title 46—SHIPPING

Chapter I—Coast Guard, Department of Transportation

[CGFR 67–90]

FIRE PROTECTION FOR TANK AND CARGO VESSELS

1. Pursuant to the notice of proposed rule making published in the FEDERAL REGISTER of January 24, 1967 (32 F.R. 795–807), and the Merchant Marine Council Public Hearing Agenda dated March 20, 1967 (CG–249), the Merchant Marine Council held a public hearing on March 20, 1967, for the purpose of receiving comments, views, and data. The proposals considered were identified as Items PH 1–67 to PH 13–67, inclusive. Item PH 6–67 (CG–249, pages 117 to 125, inclusive) contained proposals regarding fire protection for tank and cargo vessels. These proposals are adopted and set forth in this document.

2. Interested persons have been afforded an opportunity to participate in the consideration of these proposals. The Merchant Marine Council's actions with respect to comments received and proposals in Item PH 6–67 are approved.

3. As stated in 46 CFR 30.01–15 and various sections in Part 92 the amendments in this document are not retroactive in effect. Existing structure arrangements and materials previously approved will be considered satisfactory so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. The requirements in these amendments apply to new vessels contracted for on or after the effective date of these changes and to new installations or major alterations on existing vessels made on or after the effective date of these changes. As described in the regulations, the fire-fighting equipment amendments to 46 CFR Parts 34, 95, and 97 apply to both new and existing vessels. The amendments to the rules and regulations in this document shall be effective on and after July 1, 1968; however, the regulations in this document may be complied with in lieu of existing requirements prior to that date.

4. By virtue of the authority vested in me as Commandant, U.S. Coast Guard, by section 632 of Title 14, United States Code, and the delegation of authority in 49 CFR 1.4(a)(2) to prescribe rules and regulations in accordance with the laws cited with the regulations below:

SUBCHAPTER D—TANK VESSELS

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

Subpart 32.57—Structural Fire Protection for Tank Vessels Contracted for On or After January 1, 1963

5. Section 32.57–5 is amended by adding a new paragraph (g) reading as follows:

§ 32.57–5 Definitions—TB/ALL.

* * * * *

(g) *Stairtower.* A stairtower is a stairway which penetrates more than a single deck within the same enclosure.

6. Section 32.57–10(d) is amended by revising subparagraphs (2), (4), and (9) to read as follows:

§ 32.57–10 Construction—TB/ALL.

* * * * *

(d) * * *

(2) Stairtowers, elevator, dumbwaiter, and other trunks shall be of "A" Class construction.

* * * * *

(4) The integrity of any deck in way of a stairway opening, other than a stairtower, shall be maintained by means of "A" or "B" Class bulkheads and doors at one level. The integrity of a stairtower shall be maintained by "A" Class doors at every level. The doors shall be of the self-closing type. Such doors shall be fitted with a suitable kickout panel in the lower half. Holdback hooks, or other means of permanently holding the door open will not be permitted. However, magnetic holdbacks operated from the bridge or from other suitable remote control positions are acceptable.

* * * * *

(9) Bulkheads, linings and ceilings may have a combustible veneer within a room not to exceed 2/28 of an inch in thickness. However, combustible veneers, trim, decorations, etc., shall not be used in corridors or hidden spaces. This is not intended to preclude the use of an approved interior finish or a reasonable number of coats of paint.

* * * * *

(R.S. 4405, as amended, 4417a, as amended, 4462, as amended; 46 U.S.C. 375, 391a, 416. Interpret or apply sec. 3, 68 Stat. 675, sec. 6(b)(1), 80 Stat. 938; 50 U.S.C. 198, 49 U.S.C. 1655(b); E.O. 11239, July 31, 1965, 30 F.R. 9671, 3 CFR, 1965 Supp.; 49 CFR 1.4(a)(2))

PART 34—FIREFIGHTING EQUIPMENT

7. The authority note for Part 34 is amended to read as follows:

AUTHORITY: The provisions of this Part 34 issued under R.S. 4405, as amended, 4417a, as amended, 4462, as amended; 46 U.S.C. 375, 391a, 416. Interpret or apply R.S. 4488, as amended, sec. 3, 68 Stat. 675, sec. 6(b)(1), 80 Stat. 938; 46 U.S.C. 481, 50 U.S.C. 198, 49 U.S.C. 1655(b); E.O. 11239, July 31, 1965, 30 F.R. 9671, 3 CFR, 1965 Supp.; 49 CFR 1.4(a)(2).

Subpart 34.05—Firefighting Equipment, Where Required

8. Section 34.05–5(a)(7) is amended to read as follows:

§ 34.05–5 Fire-extinguishing systems—T/ALL.

(a) * * *

(7) *Internal combustion installations.* Fire-extinguishing systems shall be provided for internal combustion installations in accordance with the following:

(i) If a fire-extinguishing system is installed to protect an internal combustion installation, the system shall be of the carbon dioxide type.

(ii) On vessels of 1,000 gross tons and over on an international voyage, the construction or conversion of which is contracted for on or after May 26, 1965, a fixed carbon dioxide system shall be installed in all spaces containing internal combustion or gas turbine main propulsion machinery, auxiliaries with an aggregate power of 1,000 b.h.p. or greater, or their fuel oil units, including purifiers, valves, and manifolds.

(iii) On vessels of 1,000 gross tons and over, the construction, conversion or automation of which is contracted for on or after January 1, 1968, a fixed carbon dioxide system shall be installed in all spaces containing internal combustion or gas turbine main propulsion machinery, auxiliaries with an aggregate power of 1,000 b.h.p. or greater, or their fuel oil units, including purifiers, valves and manifolds.

* * * * *

SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS

PART 90—GENERAL PROVISIONS

9. The authority note for Part 90 is amended to read as follows:

AUTHORITY: The provisions of this Part 90 issued under R.S. 4405, as amended, 4462, as amended; 46 U.S.C. 375, 416. Interpret or apply R.S. 4399, as amended, 4400, as amended, 4426, as amended, 4427, as amended, sec. 14, 29 Stat. 690, as amended, sec. 10, 35 Stat. 428, as amended, 41 Stat. 305, as amended, secs. 1, 2, 49 Stat. 1544, 1545, as amended, sec. 17, 54 Stat. 166, as amended, sec. 3, 68 Stat. 675, sec. 6(b)(1), 80 Stat. 938; 46 U.S.C. 361, 362, 404, 405, 366, 395, 363, 367, 526p, 50 U.S.C. 198, 49 U.S.C. 1655(b); E.O. 11239, July 31, 1965, 30 F.R. 9671, 3 CFR, 1965 Supp.; 49 CFR 1.4(a)(2).

Subpart 90.10—Definition of Terms Used in This Subchapter

10. Subpart 90.10 is amended by revising § 90.10–15 and redesignating it as § 90.10–14, and by adding new §§ 90.10–15 and 90.10–16, which read as follows:

§ 90.10–14 Headquarters.

This term means the Office of the Commandant, U.S. Coast Guard, Department of Transportation, Washington, D.C. 20591.

§ 90.10–15 Industrial personnel.

This term means every person carried on board an industrial vessel for the sole purpose of carrying out the industrial business or functions of the industrial vessel. Examples of industrial personnel include tradesmen, such as mechanics, plumbers, electricians, and welders; laborers, such as wreckers and construction workers; and other persons, such as supervisors, engineers, technicians, drilling personnel, and divers.

§ 90.10–16 Industrial vessel.

This term means every vessel which by reason of its special outfit, purpose, design, or function engages in certain industrial ventures. Included in this classification are such vessels as drill rigs, missile range ships, dredges, cable layers, derrick barges, pipe lay barges, construction and wrecking barges. Excluded from this classification are vessels carrying freight for hire or engaged in oceanography, limnology, or the fishing industry.

PART 92—CONSTRUCTION AND ARRANGEMENT

11. The authority note for Part 92 is amended to read as follows:

AUTHORITY: The provisions of this Part 92 issued under R.S. 4405, as amended, 4462, as amended; 46 U.S.C. 375, 416. Interpret or apply R.S. 4417, as amended, 4418, as amended, 4426, as amended, 4488, as amended, 4490, as amended, sec. 10, 35 Stat. 428, as amended, 41 Stat. 305, as amended, secs. 1, 2, 49 Stat. 1544, 1545, as amended, sec. 3, 68 Stat. 675, sec. 6(b)(1), 80 Stat. 938; 46 U.S.C. 391, 392, 404, 481, 482, 395, 363, 367, 50 U.S.C. 198, 49 U.S.C. 1655(b); E.O. 11239, July 31, 1965, 30 F.R. 9671, 3 CFR, 1965 Supp.; 49 CFR 1.4(a)(2); unless otherwise noted.

Subpart 92.01—Hull Structure

§ 92.01–5 [Amended]

12. The authority note following § 92.01–5 *Vessels subject to load line* is amended by deleting "Treasury Department Order 167–48, October 19, 1962, 27 F.R. 10504".

Subpart 92.07—Structural Fire Protection

13. Section 92.07–1 is amended to read as follows:

§ 92.07–1 Application.

(a) The provisions of this subpart, with the exception of § 92.07–90, shall apply to all vessels of 4,000 gross tons and over contracted for on or after January 1, 1962. Such vessels contracted for prior to January 1, 1962, shall meet the requirements of § 92.07–90(a).

(b) The provisions of this subpart, with the exception of § 92.07–90, shall apply to all industrial vessels of 300 gross tons and over but less than 4,000 gross tons, contracted for on or after July 1, 1968, which carry in excess of 12 industrial personnel. Such vessels contracted for prior to July 1, 1968, shall meet the requirements of § 92.07–90(b).

14. Section 92.07–5 is amended by adding a new paragraph (g) reading as follows:

§ 92.07–5 Definitions.

* * * * *

(g) *Stairtower.* A stairtower is a stairway which penetrates more than a single deck within the same enclosure.

15. Section 92.07–10(d) is amended by revising subparagraphs (2), (4), and (9) to read as follows:

§ 92.07–10 Construction.

* * * * *

(d) * * *

(2) Stairtowers, elevator, dumbwaiter, and other trunks shall be of "A" Class construction.

* * * * *

(4) The integrity of any deck in way of a stairway opening, other than a stairtower, shall be maintained by means of "A" or "B" class bulkheads and doors at one level. The integrity of a stairtower shall be maintained by "A" Class doors at every level. The doors shall be of self-closing type. Holdback hooks, or other means of permanently holding the door open will not be permitted. However, magnetic holdbacks operated from the bridge or from other suitable remote control positions are acceptable.

* * * * *

(9) Bulkheads, linings, and ceilings may have a combustible veneer within a room not to exceed 2/28 of an inch in thickness. However, combustible veneers, trim, decorations, etc., shall not be used in corridors or hidden spaces. This is not intended to preclude the use of an approved interior finish or a reasonable number of coats of paint.

* * * * *

16. Section 92.07–90 is amended to read as follows:

§ 92.07–90 Vessels contracted for prior to July 1, 1968.

(a) For all vessels of 4,000 gross tons and over contracted for prior to January 1, 1962, existing structure arrangements and materials previously approved will be considered satisfactory so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction. Major alterations and conversions shall be in compliance with the provisions of this subpart to the satisfaction of the Officer in Charge, Marine Inspection.

(b) For industrial vessels of 300 gross tons and over but less than 4,000 gross tons, contracted for prior to July 1, 1968, which carry in excess of 12 industrial personnel, existing structure arrangements and materials previously approved will be considered satisfactory so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction. Major alterations and conversions shall be in compliance with this subpart to the satisfaction of the Officer in Charge, Marine Inspection.

PART 95—FIRE PROTECTION EQUIPMENT

17. The authority note for Part 95 is amended to read as follows:

AUTHORITY: The provisions of this Part 95 issued under R.S. 4405, as amended, 4462, as amended; 46 U.S.C. 375, 416. Interpret or apply R.S. 4417, as amended, 4418, as amended, 4426, as amended, 4488, as amended, sec. 10, 35 Stat. 428, as amended, 41 Stat. 305, as amended, secs. 1, 2, 49 Stat. 1544, 1545, as amended, sec. 17, 54 Stat. 166, as amended, sec. 3, 68 Stat. 675, sec. 6(b)(1), 80 Stat. 938; 50 U.S.C. 198, 49 U.S.C. 1655(b); E.O. 11239, July 31, 1965, 30 F.R. 9671, 3 CFR, 1965 Supp.; 49 CFR 1.4(a)(2).

Subpart 95.05—Fire Detecting and Extinguishing Equipment, Where Required

18. Section 95.05–10(e) is amended to read as follows:

§ 95.05–10 Fixed fire extinguishing systems.

* * * * *

(e) Fire extinguishing systems shall be provided for internal combustion installations in accordance with the following:

(1) If a fixed fire-extinguishing system is installed to protect an internal combustion propelling machinery installation, the system shall be of the carbon dioxide type.

(2) On vessels of 1,000 gross tons and over on an international voyage, the construction or conversion of which is contracted for on or after May 26, 1965, a fixed carbon dioxide system shall be installed in all spaces containing internal combustion or gas turbine main propulsion machinery, auxiliaries with an aggregate power of 1,000 b. hp. or greater, or their fuel oil units, including purifiers, valves, and manifolds.

(3) On vessels, the construction, conversion or automation of which is contracted for on or after July 1, 1968, the systems shall be in accordance with the following:

(i) A fixed carbon dioxide system shall be installed in any space containing machinery using fuel having a flashpoint of less than 110° F.

(ii) On vessels of 1,000 gross tons and over, a fixed carbon dioxide system shall be installed in all spaces containing internal combustion or gas turbine main propulsion machinery, auxiliaries with an aggregate power of 1,000 b. hp. or greater, or their fuel oil units, including purifiers, valves, and manifolds.

* * * * *

PART 97—OPERATIONS

19. The authority note for Part 97 is amended to read as follows:

AUTHORITY: The provisions of this Part 97 issued under R.S. 4405, as amended, 4462, as amended; 46 U.S.C. 375, 416. Interpret or apply R.S. 4417, as amended, 4418, as amended, 4426, as amended, 4453, as amended, sec. 10, 35 Stat. 428, as amended, 41 Stat. 305, as amended, secs. 1, 2, 49 Stat. 1544, 1545, as amended, sec. 3, 68 Stat. 675, sec. 6(b)(1), 80 Stat. 938; 46 U.S.C. 391, 392, 404, 435, 395, 363, 367, 50 U.S.C. 198, 49 U.S.C. 1655(b); E.O. 11239, July 31, 1965, 30 F.R. 9671, 3 CFR, 1965 Supp.; 49 CFR 1.4(a)(2); unless otherwise noted.

20. The authority notes for Subparts 97.07, 97.13, 97.14, 97.15, 97.33, 97.34, 97.37, 97.55, and 97.70 and for §§ 97.60–1 and 97.75–1 are amended by deleting references to Treasury Department Orders 120, 167–38, and 167–46.

Subpart 97.70—Power-Operated Industrial Trucks

21. Section 97.70–30(b) is amended to read as follows:

§ 97.70–30 Stowage of power-operated industrial trucks aboard a vessel.

* * * * *

(b) Power-operated industrial trucks not meeting the conditions set forth in paragraph (a) of this section shall be stowed on the open deck except for intervals such as lunch hours, between work shifts, interdock and intraport movements. If stowed in a fixed metal enclosure located on or above the weather deck, such enclosure, in addition to having the carbon dioxide extinguishing system required by § 95.05–10(c) of this subchapter, shall have access from the weather deck only and shall have adequate ventilation, so arranged as to remove vapors from both the upper and lower portions of the space.

(R.S. 4417a, as amended, 4472, as amended, 4488, as amended, 4491, as amended; 46 U.S.C. 391a, 170, 481, 489)

Dated: January 17, 1968.

W. J. SMITH,
Admiral, U.S. Coast Guard, Commandant.

[F.R. Doc. 68–970; Filed, Jan. 25, 1968; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 991]

[Docket No. A0 357-A1]

HOPS OF DOMESTIC PRODUCTION

Notice of Hearing With Respect to Proposed Amendment of Marketing Order; Correction

The notice of hearing with respect to a proposed amendment, F.R. Doc. 68-162, appearing at page 149 of the January 5, 1968, issue of the FEDERAL REGISTER contains the following inadvertent errors: (a) Omission of reference to the tentative marketing agreement in the title; (b) omission of reference to the tentative marketing agreement in the preamble; and (c) omission or reference to the tentative marketing agreement in paragraph numbered 3. These errors are corrected as follows:

1. In the title of said document after the word "of" the words "The Tentative Marketing Agreement And" are inserted.

2. Between the 14th and 15th lines in the preamble, the following words are inserted "the tentative marketing agreement and".

3. In paragraph numbered 3, line one after the word "the" insert, the words "tentative marketing agreement and".

4. In paragraph numbered 3, line three, after the word "marketing" insert, "agreement and".

Dated: January 23, 1968.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 68-978; Filed, Jan. 25, 1968; 8:45 a.m.]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[27 CFR Part 5]

LABELING AND ADVERTISING OF DISTILLED SPIRITS

Notice of Hearing

Notice is hereby given, pursuant to the provisions of section 5 of the Federal Alcohol Administration Act (49 Stat. 981 as amended; 27 U.S.C. 205), of a public hearing to begin at 9:30 a.m., e.s.t., on Monday, April 1, 1968, in Room 3313, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, D.C., at which time and place all interested parties will be afforded opportunity to be heard, in person or by authorized representative, concerning regulatory changes in 27 CFR Part 5. In the interest of orderly procedure the subjects will be heard separately and in the numerical order set forth below:

1. *Natural flavor components.* The introduction of new processes and techniques and the use of improved distilling equipment in the production of distilled spirits have caused questions to be raised as to the reliability of distillation proofs as an infallible guide for distinguishing between distilled spirits products. For these reasons and in order to insure that a product will possess the taste, aroma, and characteristics generally attributed to products of that class and type, it is proposed that an additional factor, based on the number of "natural flavor components" in the product, be established for use, under certain circumstances, as a complement to proof of distillation. Natural flavor components would be defined as meaning those volatile materials in the product consisting of esters, acids, and higher alcohols. The new criterion would be applicable (except in the case of vodka) at the time of the production gauge. The natural flavor component criteria proposed for the respective distillation proof limitations follow:

Product	Proof of distillation	Natural flavor components
A. Neutral spirits or alcohol.	At or above 190° proof.	Less than 8 grams per 100 liters at 100° proof.
B. Vodka	At or above 190° proof.	Less than 4 grams per 100 liters at 100° proof when bottled.
C. Whisky (generic).	Less than 190° proof.	Not less than 8 grams per 100 liters at 100° proof.
D. Light whisky.	At more than 160° and less than 190° proof.	Not less than 8 grams and not more than 124 grams per 100 liters at 100° proof.
E. Whisky (American type).	Not exceeding 160° proof.	Not less than 125 grams per 100 liters at 100° proof.
F. Brandy (generic).	Less than 190° proof.	Not less than 8 grams per 100 liters at 100° proof.
G. Neutral brandy.	More than 170° proof.	Less than 40 grams per 100 liters at 100° proof.
H. Rum	Less than 190° proof.	Not less than 8 grams per 100 liters at 100° proof.

NOTE: It is intended that this natural flavor component criterion would be used to verify product classification when (a) unusual or atypical distilling methods or procedures are employed, or (b) the proof of distillation approaches the regulatory maximums or minimums so closely that a more precise determination is required to insure that the distillate will have the characteristics generally attributed to that class and type.

2. *Vodka.* Vodka is a neutral spirits product without distinctive character, aroma, or taste. Present regulations prescribe several specific methods for the production of such product but grant the Director, Alcohol and Tobacco Tax Division, authority to approve other methods of production which will result in a product equally without distinctive character, aroma, or taste. In order to relieve producers from unnecessary steps in production and from obtaining approval thereof, as required, it is proposed to redefine vodka so as to include any product regardless of production method which is without distinctive character and which contains less than 4 grams of natural flavor components. The proposal would not change the consumer concept of the product. A new definition for vodka is proposed to read substantially as follows:

"Vodka" is neutral spirits, so distilled or so treated after distillation with charcoal or other materials, as to be without distinctive character, aroma, taste, or color and containing, when bottled, less than 4 grams of natural flavor components consisting of esters, acids, and higher alcohols per 100 liters at 100° proof, and bottled at not less than 80° proof.

3. *Gin.* The present regulatory distinction between "distilled gin" and "compound gin" was drawn shortly after repeal to differentiate the distilled product from that made by mixing flavors and essences with alcohol, which then was considered to be of inferior quality. Since then, there have been improvements in the art of compounding which result in the production of gin of comparable quality. In order to avoid stigmatizing such products with the unfavorable word "compound", a single standard is proposed for "gin" whether produced by distillation or compounding. Gins could of course bear the designations "distilled" or "compound", where applicable, if the bottler so desires. A new definition for gin is proposed to read substantially as follows:

"Gin" is a product obtained by original distillation from mash, or by redistillation of distilled spirits, or by mixing neutral spirits, with or over juniper berries and other aromatics, or with or over extracts derived from infusions, percolations, or maceration of such materials. It shall derive its main characteristic flavor from juniper berries and be reduced at time of bottling to not less than 80° proof. Gin produced by original distillation or by redistillation may be further designated as "distilled."

4. *Blended apple brandy.* Laird and Co., Eatontown, N.J., has petitioned that the class "brandy" be revised to add a new type designation for "blended apple brandy" or "blended applejack" in order to offer the consumer a lighter apple brandy product. The new type designation proposed by Laird and Co. reads substantially as follows:

"Blended apple brandy (applejack)," or "apple brandy (applejack), a blend," is a mixture which contains at least 20 percent by volume of 100° proof apple brandy (applejack) and not more than

80 percent of neutral spirits if such mixture at the time of bottling is not less than 80° proof.

The neutral spirits component could be derived from any commodity, including grain. The label would be required to show the percentage of neutral spirits and the name of the commodity from which distilled.

5. *Rum.* "New England rum" is presently defined as any rum distilled in the United States at less than 160° proof. The featuring of this area designation with the class designation may likely mislead the consumer into believing that the rum was in fact produced in New England. In view of the possibility of consumer deception, it is proposed to grant the request of Felton & Son, Inc., the only producer of New England rum, that the deletion of this standard be considered.

6. *Flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky.* Consumer demand for flavored distilled spirits products, especially flavored brandy and flavored gin, has increased to such a degree as to make it advisable to standardize these products in order to maintain product identity and quality. The proposed regulatory definition would in general follow, with some additional restrictions if wine is used, the administrative rules now observed in considering labels for these products. It would read substantially as follows:

"Flavored brandy," "flavored gin," "flavored rum," "flavored vodka," and "flavored whisky" are brandy, gin, rum, vodka, and whisky, to which have been added natural flavoring materials, with or without the addition of sugar, and bottled at not less than 70° proof. If the finished product contains more than 2½ percent by volume of wine, the kinds and percentages by volume of wine must be stated as a part of the designation, except that a flavored brandy may contain not in excess of 15 percent by volume of wine, without a label statement, if such wine is produced from the same kind of fruit.

7. *Definition of distilled spirits.* In recent years a number of products have been made containing as little as 5 percent distilled spirits and as much as 95 percent wine to which have been added some flavoring ingredients. These specialties have been bottled at 48° proof or less but under the present regulatory definition are classified as distilled spirits and are packaged, labeled, and strip stamped as distilled spirits notwithstanding the fact that they are essentially wine products. It is proposed to amend the definition of "distilled spirits" so as to exclude a mixture of wine and distilled spirits, bottled at 48° proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis. Specialties containing more than 50 percent wine could, of course, continue to be marketed if properly labeled and sold as wine products.

8. *Mandatory information, net contents, proof statements, qualifying words, and alcoholic ingredients.* In order to lessen the possibility of consumer deception by making it easier for him to locate and to better understand key items of information describing the contents of containers, it is proposed:

A. To require that all mandatory information be printed on labels in such a manner as to be generally parallel to the base on which the container rests as it is designed to be displayed (a similar provision is found in the Model State Regulation Pertaining to Packages adopted by the National Conference on Weights and Measures);

B. To require the alcoholic content (proof) to appear on the brand label of the product;

C. To prohibit net contents statements from being qualified by any descriptive term such as, "jumbo," "full," "giant;"

D. To require the net contents to appear on the brand label except in the case of distilled spirits packaged in containers conforming to the standards of fill; and

E. To require that any statement, other than required information, on a label as to any of the alcoholic components of the product include the name and percentage of all the alcoholic components, except alcoholic coloring, flavoring, or blending ingredients used in minute quantities.

As used above "brand label" means the label carrying, in the usual distinctive design, the brand name of the distilled spirits, and any other label appearing on the same side of the bottle as such brand label.

9. *Treatment of distilled spirits.* Under current regulations, the addition of any coloring, flavoring, or blending materials to any class or type of distilled spirits, except as otherwise specifically provided, alters the class and type thereof. The removal of constituents from distilled spirits can also alter the class and type thereof. In recent years proprietors have repeatedly requested authority to treat whisky prior to bottling with large quantities of carbon and/or charcoal, or by leaching and other processes. It is proposed to amend the regulations to add a counterpart to the present limitations on the addition of materials which would cover the extraction of materials. The proposed addition to the regulations would read substantially as follows:

The removal from any distilled spirits of any constituents to such an extent that the product does not possess the taste, aroma and characteristics generally attributed to that class or type of distilled spirits alters the class or type thereof and the product shall be redesignated accordingly. In addition, in the case of straight whisky the removal of any substance whatsoever, except such as results from authorized stabilization of the product within the limitation prescribed under section 5025(j), Internal Revenue Code, shall be deemed to alter the class or type thereof, and in the case of any other whisky the reduction of the natural flavor components below the minimum prescribed in the standard of identity for that class or type shall be deemed to alter the class or type.

10. *Labeling of bulk imports.* Importations of bulk spirits are increasing and they are often bottled by a person other than the person responsible for the importation. Under present regulations, when bottled by such a person, the label must show the name and address of the preson responsible for the importation, and in addition either (a) the name of the bottler and the place where bottled, or (b) that the distilled spirits were bottled in the United States for the person responsible for the importation, e.g. "imported by and bottled in the United States for _____." Compliance with the requirement for showing the name and address of the person responsible for the importation has proved unnecessarily burdensome in many instances, particularly where the identity of such person has become meaningless as a result of numerous transfers of the goods. The statute requires that the identity of the manufacturer, bottler, or importer be disclosed. In recognition of the fact that the bottler is, under normal circumstances, responsible for the product he bottles, the regulations do not require that the name of the manufacturer of domestic distilled spirits be stated if the name of the domestic bottler appears. Equal treatment requires that a similar option be available in the case of domestically bottled imported goods. It is accordingly proposed to amend the regulations to make optional the showing of the name and address of the person responsible for the importation when the name of the bottler and the place where bottled are shown.

11. *Age certificates.* Imported whiskies less than 4 years old and brandies less than 2 years old must bear an age statement on the label; age statements are optional for all other imported whiskies and brandies. Under current regulations, age certificates, issued by a duly authorized official of the appropriate foreign government, are required only where the labeling of the product bears a statement of age. Although in most cases age certificates are voluntarily furnished, an age certificate should be required to establish that the product is in fact sufficiently matured so that the age statement may be omitted. It is proposed to amend the regulations to require age certificates for all imported whiskies and brandies.

12. *References to supervision.* Present regulations prohibit labels from stating or indicating that the distilled spirits were distilled, blended, made, bottled, or sold under, or in accordance with any governmental authorization, law, or regulations, unless such statement is required or specifically authorized by such government. Since several foreign countries, notably Canada and the United Kingdom, have specifically authorized distilled spirits exported to this country to bear certain statements of this nature, The Bourbon Institute, New York, N.Y., and Schenley Industries, Inc., New York, N.Y., have requested that the regulations be amended so as to permit the label on

domestic spirits to bear truthful statements that the spirits were distilled, barreled, warehoused, blended, proofed, or bottled, as the case may be, under supervision of the U.S. Government.

Necessarily involved in the consideration of this proposal are the questions (1) as to whether any such statement should be authorized to appear on imported products if its appearance is not permitted when sold for consumption in the country of origin, and (2) as to whether statements of this character should not be barred on the labels of imported spirits if the present regulations are not amended so as to authorize the use of similar statements on domestic spirits.

Also appropriate for consideration in connection with this proposal is the question as to whether foreign products should be permitted to bear the words "bond," "bonded," "bottled in bond," or like phrases, if modified by the name of the country of origin on any label when the laws of the country in which the spirits are produced authorize the bottling of spirits in bond and require or authorize the spirits to be so labeled. Under present regulations foreign products in order to be so labeled must also meet all the requirements of U.S. law providing for the bottling of domestic distilled spirits in bond. Such references on labels would of course include references on official stamps.

Requests to present oral testimony. All persons who desire to present oral testimony should so advise the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D.C. 20224, not later than Friday, March 22, 1968. Requests shall be submitted in an original and three copies and must include (1) the name and address of the party submitting the request, (2) the name and address of the person or persons who will present oral testimony, (3) identification of the subject or subjects to which the testimony will be directed, and (4) the approximate length of time desired for the presentation of testimony on each subject.

Submission of written material. Any interested party may submit to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D.C. 20224, in an original and nine copies, relevant and material written data, views, or arguments for incorporation into the record of hearing. The subject to which the comments are directed must be specifically identified. Written material must be received not later than Wednesday, March 27, 1968.

At the conclusion of the hearing a reasonable time will be afforded interested parties for examination of the record and submission of written arguments and briefs.

[SEAL] HAROLD A. SERR,
Director, Alcohol and Tobacco Tax Division, Internal Revenue Service.

[F.R. Doc. 68-982; Filed, Jan. 25, 1968; 8:45 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Part 689]

[Administrative Order No. 600]

REVIEW COMMITTEE FOR SUGAR MANUFACTURING INDUSTRY IN PUERTO RICO

Appointment; Convention; Hearing

Section 6(c)(2)(B) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(c)(2)(B)), as amended by the Fair Labor Standards Amendments of 1966 (Public Law 89-601, 80 Stat. 830) requires, with respect to employees in Puerto Rico and the Virgin Islands, that, effective April 2, 1968, the rate or rates applicable to them under the most recent wage order issued by the Secretary of Labor prior to February 1, 1967, be increased by 28 per centum, unless such rate or rates are superseded by a rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a review committee appointed under section 6(c)(2)(C) of the Act.

Pursuant to section 6(c) and section 5 of the Act and to Reorganization Plan No. 6 of 1950 (3 CFR, 1949-53 Comp. p. 1004) I hereby appoint Review Committee No. 11 for the sugar manufacturing industry in Puerto Rico. Pursuant to section 8 of the Act and to Reorganization Plan No. 6 of 1950, I hereby convene the committee, refer to it the question of the minimum wage rate or rates to be fixed for the sugar manufacturing industry in Puerto Rico, and give notice of the hearing to be held by the committee.

For the purpose of this order, the sugar manufacturing industry in Puerto Rico (29 CFR Part 689) is defined as follows: The production of raw sugar, cane juice, molasses, and refined sugar, and incidental byproducts; all railroad transportation activities carried on by a producer of any of these products (or by any firm owned or controlled by or owning and controlling such producer, or by any firm owned or controlled by the parent company of such producer) where the railroad transportation activities are in whole or in part used for the production or shipment of the products of the industry; and any transportation activities by truck, vessel, or other vehicle performed by a producer of products of the industry in connection with the production or shipment of such products by such producer: *Provided, however,* That the industry shall not include any transportation activity covered by the wage order for the communications, utilities, and transportation industry in Puerto Rico (29 CFR Part 671), or any transportation activity to which the agricultural exemption contained in section 13(a)(6) of the Act was applicable prior to February 1, 1967.

Review Committee No. 11 shall meet in executive session at 9:30 a.m., on February 19, 1968, in the office of the Wage and Hour and Public Contracts Divisions, U.S. Department of Labor, Condominio San Alberto Building, 1200 Ponce de Leon Avenue, Santurce, P.R., and shall commence its hearing at 1:30 p.m., on the same date at the same place.

The review committee shall investigate conditions in the sugar manufacturing industry in Puerto Rico, and the committee, or any authorized subcommittee thereof, shall hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under the Act. The committee shall recommend to the Administrator of the Wage and Hour and Public Contracts Divisions of the U.S. Department of Labor the highest minimum wage rates which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the sugar manufacturing industry in Puerto Rico and will not give any industry in Puerto Rico a competitive advantage over any industry in the United States outside of Puerto Rico, the Virgin Islands, and American Samoa.

Whenever the committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in the sugar manufacturing industry in Puerto Rico than may be determined for other employees in the industry, the committee shall recommend such reasonable classifications within the industry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate (not in excess of $1.60 an hour) that can be determined for it under the principles set forth herein which will not give a competitive advantage to any group in the industry. No classification shall be made, however, and no minimum wage rate shall be fixed solely on a regional basis or on the basis of age or sex. In determining whether there should be classifications within the sugar manufacturing industry in Puerto Rico, in making such classifications, and in determining the minimum wage rates for such classifications, the committee shall consider, among other relevant factors, the following: (1) Competitive conditions as affected by transportation, living, and production costs; (2) wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and (3) wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

The Administrator of the Wage and Hour and Public Contracts Divisions shall prepare an economic report for the committee, containing such data as he is able to assemble pertinent to the matters referred to the committee. Copies of the report may be obtained at the National and Puerto Rican offices of the U.S. Department of Labor as soon as they are completed and prior to the hearing. The committee shall take official notice of the facts stated in the economic report. Parties, however, shall be afforded an opportunity to refute such facts by evidence received at the hearing.

The procedure for Review Committee No. 11 shall be governed by 29 CFR Part 512, as amended on October 17, 1967 (32 F.R. 14324). Part 512 makes 29 CFR Part 511 applicable to the procedure of review committees and the general method for issuance of wage orders pursuant to their recommendations, except insofar as Part 511 may be inconsistent with Part 512 or the Fair Labor Standards Amendments of 1966. As a prerequisite to participation in the hearing of Review Committee No. 11 interested persons shall file prehearing statements containing the data specified in 29 CFR 511.8 not later than February 12, 1968.

Signed at Washington, D.C., this 22d day of January 1968.

W. WILLARD WIRTZ,
Secretary of Labor.

[F.R. Doc. 68-979; Filed, Jan. 25, 1968; 8:45 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 1]

FROZEN DESSERTS

Proposed Exemption From Certain Requirements of Fair Packaging and Labeling Act

Notice is given that the International Association of Ice Cream Manufacturers, Suite 1105, 910 17th Street NW., Washington, D.C. 20005, has submitted a petition requesting that the regulations for the enforcement of the Fair Packaging and Labeling Act (21 CFR Part 1) be amended to exempt frozen desserts packaged in standardized 8-, 16-, 32-, and 64-fluid ounce containers from certain requirements as proposed below.

Grounds in the petition in support of the requested exemption are that such products are sold in a limited number of standardized package sizes which consumers readily recognize by size and shape as ½-pint, 1-pint, 1-quart, and ½-gallon packages; therefore, it is unnecessary for consumer protection for the net contents statement to appear within the bottom 30 percent of the principal display panel of such containers or for the net contents to be declared in both ounces and the larger units.

The petitioner also requested exemption of frozen desserts from certain other requirements; however, these are not included in this proposal since reasonable grounds therefor were not given.

Accordingly, pursuant to the provisions of the Fair Packaging and Labeling Act (secs. 5(b), 6(a), 80 Stat. 1298, 1299; 15 U.S.C. 1453, 1455) and the Federal Food, Drug, and Cosmetic Act (sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 371), and under the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (21 CFR 2.120), it is proposed that § 1.1c(a) be amended by adding thereto a new subparagraph, as follows:

§ 1.1c Exemptions from required label statements.

* * * * *

(a) *Foods.* * * *

(__) (i) Ice cream, french ice cream, ice milk, fruit sherbets, water ices, quiescently frozen confections (with or without dairy ingredients), special dietary frozen desserts, and products made in semblance of the foregoing, when packaged in standardized[1] 8-fluid-ounce and 64-fluid-ounce containers are exempt from the requirements of § 1.8b(b)(2) to the extent that net contents of 8-fluid ounces and 64-fluid ounces (or 2 quarts) may be expressed as ½ pint and ½ gallon, respectively.

(ii) The foods named in subdivision (i) of this subparagraph, when packaged in standardized[1] 16-, 32-, and 64-fluid-ounce containers, are exempt from the dual net-contents declaration requirement of § 1.8b(j).

(iii) The foods named in subdivision (i) of this subparagraph, when packaged in standardized[1] 8-, 16-, 32-, and 64-fluid-ounce containers, are exempt from the requirement of § 1.8b(f) that the declaration of net contents be located within the bottom 30 percent of the principal display panel.

All interested persons are invited to submit their views in writing, preferably in quintuplicate, regarding this proposal within 60 days following the date of publication of this notice in the FEDERAL REGISTER. Such views and comments should be addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, and may be accompanied by a memorandum or brief in support thereof.

Dated: January 18, 1968.

JAMES L. GODDARD,
Commissioner of Food and Drugs.

[F.R. Doc. 68-997; Filed, Jan. 25, 1968; 8:47 a.m.]

[1] "National Bureau of Standards Handbook 44," Third Edition (1965).

[21 CFR Part 130]

NEW DRUGS

Submission of Supplemental Applications

The Food and Drug Administration has studied the form of submission of a number of supplemental applications to approved new-drug applications and concludes that to expedite the handling of such submissions and to facilitate machine processing of the information contained therein the subject matter of such supplemental applications should be limited to essentially one kind of change per communication.

Accordingly, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 505, 701(a), 52 Stat. 1052, as amended, 1055; 21 U.S.C. 355, 371(a)) and under the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (21 CFR 2.120), it is proposed that § 130.9 be amended by redesignating the text of paragraph (a) as paragraph (a)(1) and by adding thereto a new subparagraph (2) reading as follows:

§ 130.9 Supplemental applications.

(a) (1) * * *

(2) The supplemental application shall be submitted as follows: A communication proposing a change in a new-drug application should provide for no more than one of the following kinds of changes:

(i) Revision in labeling; such as, updating information pertaining to effects, dosages, and side effects and contraindications, which include side effects, warnings, precautions, and contraindications.

(ii) Addition of claim.

(iii) Revision in manufacturing or control procedures; for example, changes in components, composition, method of manufacture, analytical control procedures, package or tablet size, etc.

(iv) Change in manufacturing facilities.

(v) Provision for outside firm to participate in the preparation, distribution, or packaging of a new drug (new distributor, packer, supplier, manufacturer, etc.); one firm per submission.

Any number of changes may be submitted at any one time; but if they fall into different categories as listed in subdivisions (i) through (v) of this subparagraph, the proposed changes should be covered by separate communications. Where, however, a change necessitates an overlap in categories, it should be submitted in a single communication. For example, a change in tablet potency would require other changes such as in components, composition, and labeling and should be submitted in a single communication.

Any interested person may, within 30 days from the date of publication of this notice 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 comments, preferably in quintuplicate, on this proposal. Comments may be accompanied by a memorandum or brief in support thereof.

Dated: January 18, 1968.

JAMES L. GODDARD,
Commissioner of Food and Drugs.

[F.R. Doc. 68-998; Filed, Jan. 25, 1968; 8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 87]

[Docket No. 17967; FCC 68-50]

AVIATION SERVICES

Aeronautical En Route Frequency Available for Assignment to Stations in Alaska

1. Notice of proposed rule making in the above-entitled matter is hereby given.

2. The instant proposal is intended to provide for the orderly and timely conversion from the present frequency allotment plan as contained in appendix 26 to the Radio Regulations of the International Telecommunication Union (ITU) to the frequencies in the revised allotment plan defined in appendix 27 of the ITU Radio Regulations. The revision of the allotment plan for the aeronautical mobile (R) service, as contained in appendix 27 of the ITU Radio Regulations was developed by the Extraordinary Administrative Radio Conference, Geneva, 1966 and ratified by the Congress on July 27, 1967. With the coming into force of the revised frequency allotment plan for the aeronautical mobile (R) service the existing frequency plan, from which the frequencies presently in use in Alaska were available for assignment to stations, will be abrogated.

3. The proposed amendment to the rules, as set forth below, provides for the conversion to the revised available frequencies, in a manner determined to be least likely to create interference, by providing replacement (and additional) frequencies and the exact date and hour of the conversion for each frequency. This timing for conversion is in accordance with a world-wide plan coordinated with the ITU and the International Civil Aviation Organization (ICAO).

4. The proposed amendment to the rules, as set forth below is issued pursuant to authority contained in sections 4(i) and 303 (c), (h), and (r) of the Communications Act of 1934, as amended.

5. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before February 26, 1968, and reply comments on or before March 6, 1968. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other than relevant information before it, in addition to the specific comments invited by this Notice.

6. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

Adopted: January 17, 1968.

Released: January 22, 1968.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

Section 87.297 is amended to read as follows:

§ 87.297 Alaska.

(a) The following frequencies are available for assignment to aeronautical en route stations in Alaska. The provisions of § 87.291(b) do not apply to stations operating on frequencies in accordance with this paragraph.

Frequencies available before conversion date (kc/s)	Frequencies available after conversion date (kc/s)	Conversion date
3411.5	3411	[2] Sept. 19, 1968
4668.5	[1] 4696	
	4668	[2] Sept. 17, 1970

[1] Daytime only.
[2] 0001 Greenwich mean time.

(b) The following frequencies are available for assignment to aeronautical en route stations in Alaska, only when serving scheduled air carriers as defined by the Civil Aeronautics Board. In filing an application for the use of these frequencies, the applicant must show that in addition to complying with the provisions of § 87.291 the station will provide communications only along the routes served by the scheduled operations of such carriers.

(1) *Alaska Aleutian chain and feeders.*

Frequencies available before conversion date (kc/s)	Frequencies available after conversion date (kc/s)	Conversion date
2945	2924	[1] Sept. 17, 1970
6567	6568	
11328	3446	[1] Sept. 19, 1968
	11295	[1] Sept. 18, 1969
	11319	

[1] 0001 Greenwich mean time.

(2) *Central Alaska chain and feeders (west of 141° W. longitude).*

Frequencies available before conversion date (kc/s)	Frequencies available after conversion date (kc/s)	Conversion date
2945	2924	[1] Sept. 17, 1970
5611.5	5631	
	6647	
	3481	[1] Sept. 19, 1968

[1] 0001 Greenwich mean time.

(3) *Southeastern Alaska chain and feeders (east of 141° W. longitude).* The following frequencies are available for assignment (power on the frequency 2910 kc/s in Alaska is limited to 325 watts; however, powers in excess of 325 watts may be authorized provided that an adequate showing is made that such additional power is required and that harmful interference will not be caused to any service or any station which in the discretion of the Commission may be entitled to protection:

Frequencies available before conversion date (kc/s)	Frequencies available after conversion date (kc/s)	Conversion date
2910	2875[1]	[2] Sept. 19, 1968
6567	6568	
	10041	[2] Sept. 18, 1969

[1] Daytime only.
[2] 0001 Greenwich mean time.

(c) The following frequencies are shared with the Federal Aviation Administration and are available for licensing by the Commission subject to the provisions of paragraph (b) of this section at locations where an applicant justifies the need for service and the Government is not prepared to render this service:

Frequencies available before conversion date (kc/s)	Frequencies available after conversion date (kc/s)	Conversion date
2931	2861	[1] Sept. 17, 1970
5544	5547	[1] Sept. 17, 1970

[1] 0001 Greenwich mean time.

Section 87.307 is amended to read as follows:

§ 87.307 United States-Alaska, via Canada.

Frequencies available for assignment to serve the United States-Alaska, via Canada, air routes are:

Frequencies available before conversion date (kc/s)	Frequencies available after conversion date (kc/s)	Conversion date
2973	[1] 2987	[2] Sept. 19, 1968.
5499	5454	[2] Sept. 17, 1970.
8871	8868	
	8917	
	8924	
11356.5	11359	[2] Sept. 18, 1969.
	11383	

[1] East of 180° only.
[2] 0001 Greenwich mean time.

[F.R. Doc. 68-954; Filed, Jan. 25, 1968; 8:45 a.m.]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

[Rev. 7]

SMALL BUSINESS SIZE STANDARDS

Definition of Small Business Construction Contractor for Purpose of Government Procurement and Receiving Financial Assistance

On November 30, 1967, the Small Business Administration, pursuant to a notice published in the FEDERAL REGISTER on November 2, 1967, held a hearing on the definition of small business construction contractor for the purpose of bidding on Government procurements and receiving SBA business loans.

It had been suggested that SBA establish a separate and smaller size standard for certain special trade construction contractors. The hearing was for the purpose of obtaining information concerning competition between special trade construction contractors and general construction contractors, the desirability of establishing one or more separate size standards for special trade construction contractors and the appropriate size standard for special trade construction contractors.

Based on an analysis of all comments submitted at or in connection with the hearing, and all information material to the issue, it has been determined that the existing size standards are appropriate for the purpose of identifying small business construction contractors, including special trade construction contractors. Accordingly, it has been determined not to establish separate size standards for special trade construction contractors.

Dated: January 15, 1968.

ROBERT C. MOOT,
Administrator.

[F.R. Doc. 68-974; Filed, Jan. 25, 1968; 8:45 a.m.]

Notices

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

PERFORMANCE MEASUREMENT FOR SELECTED ACQUISITIONS

The Assistant Secretary of Defense (Comptroller) approved the following on December 22, 1967:

References:

(a) DoD Directive 7000.1, "Resource Management Systems of the Department of Defense," August 22, 1966.[1]

(b) DoD Directive 3200.9, "Initiation of Engineering and Operational Systems Development," July 1, 1965.[1]

(c) Armed Services Procurement Regulation (1963 Edition) (32 CFR 1–39).

(d) MIL–STD–881 (to be published).[2]

I. *Purpose and applicability.* This Instruction sets forth objectives and criteria and authorizes the publication of a guide,[3] within the purview of reference (a), for the application of uniform DoD requirements for contractors' management control systems to selected Defense contracts. The provisions of this Instruction require the use of Cost/Schedule Control Systems Criteria (C/SCSC) in selected acquisitions and apply to all Military Departments and Defense Agencies (hereinafter referred to as DoD components) which are responsible for acquisitions during engineering development, operational systems development, and production.

II. *Scope.* A. The acquisitions governed by this instruction will be in selected contracts within programs which are estimated in the 5-Year Defense Program to require (1) a total cumulative financing for Research, Development, Test and Evaluation in excess of $25 million or (2) cumulative production investment in excess of $100 million. Firm fixed-price contracts will be excluded.

B. Subcontracts within applicable programs, excluding those that are firm fixed-price, will be selected for application of these criteria by mutual agreement between prime contractors and the contracting DoD component, according to the criticality of the subcontract to the program. Coverage of certain critical subcontracts may be directed by the DoD subject to the changes article of the contracts.

III. *Objective.* A. DoD contractors should be continuously alert to advances being developed in management control systems to improve their contract performance, and to serve DoD and their best interests. It is an objective of this Instruction to bring to the attention of and encourage DoD contractors to accept and install management control systems and procedures which are most effective in meeting their requirements.

B. To provide an adequate basis for responsible decision making by both contractor management and DoD components, contractors' internal management control systems must provide data which (1) indicate work progress (2) properly relate cost, schedule, and technical performance, (3) are valid, timely, and auditable, and (4) supply DoD managers with a practicable level of summarization.

IV. *Policy and procedures*—A. *Policy.* It shall be the general policy to (1) require application of the DoD criteria as stated in Enclosure 1 to programs that are within the scope of section II above, (2) require no changes in contractors' existing management control systems except those necessary to meet the criteria, and (3) require the contractor to use data from his own management control system in reports to the Government.

B. *Procedures.* The procedures contained herein will not be construed as requiring the use of specific systems, or changes in accounting systems which will adversely affect the equitable distribution of costs to all contracts. To avoid the proliferation of demands on contractors for demonstrations of their management systems, the criteria outlined in Enclosure 1 shall be incorporated in a basic agreement between the DoD and the contractor wherever feasible and will apply to more than one contract. However, agreements concerning the acceptability and use of contractors' management control systems may be accomplished by the use of basic agreements, or through separate procurement contracts.

1. *Basic agreement.* a. The use of a basic agreement contemplates the execution of a written instrument which includes C/SCSC and negotiated provisions which (1) reflect an understanding between the contractor and the DoD of the requirements of the DoD criteria, and (2) identify the specific system(s) which the contractor intends to use on applicable contracts with DoD components. The basic agreement will include a written description of the system(s) validated in a demonstration review in sufficient detail to permit adequate surveillance by all interested parties. The use of a basic agreement in these circumstances is preferred where a number of separate contracts between one or more DoD component(s) and the contractor may be entered into during the term of the basic agreement. It contemplates the delegation of authority to the cognizant DoD component negotiating the basic agreement by all other DoD components in order that it represent an understanding between the contractor and all prospective DoD contracting components. The basic agreements will be entered into pursuant to section 3–410 of the Armed Services Procurement Regulation (reference (c)).

b. Action to develop a basic agreement may be initiated:

(1) Unilaterally by the contractor;

(2) By a DoD component request to the contractor;

(3) By either the contractor or the DoD component, as the result of a contractor's response to a Request for Proposal (RFP).

c. A basic agreement may be arrived at after evaluation of the contractor's management control system in the context of the criteria, within the contractor's present or proposed operating environment and not necessarily in response to an RFP. The management control system(s) identified in the basic agreement will also be subjected to a demonstration review which may occur within the contractor's present operating environment, or in conjunction with the contractor's implementation of a separate DoD procurement contract.

2. *Separate procurement contracts.* As a result of either the requirement normally placed in an RFP or an action initiated by DoD components, the contractor will provide a response which describes the integration of the basic subsystems to provide control of cost, schedule, and technical performance. This involves:

a. *Evaluation.* The contracting DoD component will conduct a design review as a part of normal procurement procedures to insure that the systems meet established criteria. When the systems have been evaluated and the contract awarded, the contracting DoD component will notify the contractor of the results.

b. *Demonstration.* DoD personnel will conduct an in-plant demonstration review of the contractor's management control systems. The purpose of systems demonstration is to verify that the contractor is operating systems which meet the criteria. Upon completion of this demonstration, a written description of the system validated will be provided by the contractor in sufficient detail to permit adequate surveillance.

3. *Demonstration teams.* a. The team conducting a demonstration review will ordinarily include representatives from the Army, Navy, Air Force (except where a Service requests nonparticipation due to noninvolvement), and the cognizant Defense Contract Audit Agency (DCAA) Auditor. The contracting or cognizant

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[1] Filed as part of original. Copies available from Publications Counter, Room 3B200, Pentagon 20301, or call OX 52167.

[2] After publication copies will be available from the Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention: Code 300.

[3] To be published. Call OX 77514 for information on availability.

DoD component will provide the team leader and will be responsible for all matters concerning the conduct of the demonstration review.

b. A detailed discussion of the team composition, tests, and guidance for the conduct of the review is contained in the Guide for Performance Measurement established under section VI below.

4. *Reexamination.* a. In the event the contractor's system fails to pass the demonstration review, the cognizant DoD component will discuss the specific shortcomings with the contractor and require the contractor to submit proposals for correcting deficiencies. Subsequent to official notification by the cognizant DoD component of a failure, the portion(s) of the management control system that failed may be subjected to a followup review. Specific guidance and procedures concerning determination and resolution of failures are contained in the Guide for Performance Measurement.

b. Upon successful completion of demonstration review, contractors will not be subjected to reexamination (other than through normal surveillance), unless there are positive indications that the contractor's system no longer meets the criteria.

V. *Responsibilities.* The DCAA will review the contractor's accounting system and determine the accuracy and reliability of the financial data contained in the reports prepared from the contractor's management control systems. Reviews of the technical considerations in the contractor's systems and reported data will be accomplished by the cognizant plant representative. The cognizant auditor and the plant representative will collaborate in reviewing areas of joint interest.

A. The surveillance reviews will consist of (1) recurring evaluations of the effectiveness of the contractor's policies and procedures to produce valid data consistent with the intent of this Instruction, and (2) selective tests of reported data.

B. The cognizant auditor will submit a formal report of any deficiencies that cannot be resolved with the contractor, to the contracting DoD component(s) through the local plant representative.

VI. *Guide.* A. The Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)) will publish, revise as necessary, and distribute the Guide for Performance Measurement separately from this Instruction.

B. The OASD(C) will maintain surveillance over the procedures prescribed in the Guide for Performance Measurement and insure implementation and continuous operation in a uniform manner throughout the Department of Defense.

C. Until the Guide for Performance Measurement is published, application of the criteria to ongoing or proposed programs and associated reporting requirements will be subject to prior approval by the Assistant Secretary of Defense (Comptroller) (ASD(C)) or his designee for the purpose, with the concurrence of the Director of Defense Research and Engineering and the Assistant Secretary of Defense (Installations and Logistics).

VII. *Effective date and implementation.* This Instruction is effective immediately. Two (2) copies of the proposed implementation documents will be forwarded to the ASD(C) within ninety (90) days after the date of this Instruction. Implementing instructions will not be published until thirty (30) days after their submission to ASD(C) for their review.

ENCLOSURE 1—COST/SCHEDULE CONTROL SYSTEMS CRITERIA

1. *General.* Any system used by the contractor in planning and controlling the performance of the contract shall meet the criteria set forth in 3. below. Information which is required by the Department of Defense must be produced from the contractor's system. Data requirements of the DoD are specified in a separate data requirements list accompanying each RFP. Nothing in these criteria is intended to affect the basis on which costs are reimbursed and progress payments are made and nothing within will be construed as requiring the use of any single system, or specific method of management control or evaluation of performance. The contractor's internal systems need not be changed, provided they satisfy these criteria.

a. An element in the evaluation of proposals will be the proposer's system for planning and controlling contract performance. The proposer will fully describe the system to be used. The prospective contractor's cost/schedule control system proposal will be evaluated to determine that it meets these criteria. The prospective contractor will agree to operate such a system throughout the period of contract performance if awarded the contract. The DoD will agree to rely on the contractor's system and therefore will not impose a separate planning and control system.

b. The Cost/Schedule Control Systems Criteria (C/SCSC) must be included as a requirement in Requests for Proposals leading to contracts implementing those programs which are estimated in the 5-Year Defense Program to require (1) a total cumulative financing for Research, Development, Test and Evaluation in excess of $25 million or (2) cumulative production investment in excess of $100 million. Firm fixed priced contracts will be excluded. When a basic agreement has been entered into between the DoD and a contractor, setting forth conditions pertaining to the contractor's control systems, the contractor's response in an RFP should cite the basic agreement and any planned substantive changes thereto and state that it will be applicable to the contract resulting from the RFP. In these circumstances this response will satisfy the C/SCSC requirement in the RFP.

2. *Definitions*—a. *Applied direct costs.* (1) The amounts recognized in the time period associated with the consumption of labor, material and other direct resources, without regard to the date of commitment or the date of payment. These amounts are to be charged to work-in-process in the time period that any one of the following takes place:

(a) When labor, material and other direct resources are actually consumed; or

(b) When material resources are received that are uniquely identified to the contract and scheduled for use either within the same accounting period or not later than the next accounting period; or

(c) When material resources, such as major components, are received that are specifically and uniquely identified to a single serially numbered end item.

(2) Under this definition, certain material costs are considered as applied when the articles are received even though temporarily stored in inventory areas so long as these costs meet the above criteria and government furnished material is excluded.

b. *Direct costs.* See ASPR 15 202 (reference (c)).

c. *Indirect costs.* See ASPR 15 203 (reference (c)).

d. *Incurred costs.* See ASPR E–509.5 (reference (c)).

e. *Latest revised estimate of cost at completion.* Applied direct costs, plus indirect costs allocable to the contract, plus the estimate of costs for work remaining.

f. *Management reserve.* The algebraic difference between the contract price and the sum of all the budgeted costs.

g. *Organizational element.* Any defined unit within the contractor's organization structure which is responsible for accomplishing the work.

h. *Original budget.* The budget prepared at, or near, the time the contract was signed, and consistent with the contract price.

i. *Overhead (indirect costs).* See ASPR 3–701.3 (reference (c)).

j. *Project summary work breakdown structure.* The Work Breakdown Structure for a specific defense materiel item which has been prepared by DoD components in accordance with MIL–STD–881 [2] by selecting (based on systems engineering during concept formulation or its equivalent) applicable elements from one or more Summary Work Breakdown Structures (see MIL–STD–881 [2] draft).

k. *Related resources.* The labor, materials, and services required to perform work.

l. *Work breakdown structure.* A product-oriented family tree division of hardware, software, services, and other work tasks which organizes, defines, and graphically displays the product to be produced as well as the work to be accomplished in order to achieve the specified product.

m. *Work package.* A delineation of work required to complete a particular job. It may be established at any level within the work breakdown structure where all the following characteristics are present:

(1) It represents units of work at levels where performance is managed.

(2) It has scheduled start and completion dates and is definable in terms of scope of work and budgets (expressed in

labor hours, dollars, or other meaningful units).

(3) It is measurable in the same terms as set forth in 2.m.(2) above.

(4) It is such that responsibility for performing the work is assignable to a single organizational element.

(5) Its size and duration is established to reflect the foregoing, the type of work involved, and the necessity of using relatively short spans of time to minimize the requirements to use estimates, arbitrary formulae or other less objective means of evaluating status of work in process.

(6) It is integrated with detailed engineering, manufacturing, and other schedules as applicable.

n. *Work performed.* Includes completed work packages and the completed portion of work packages begun and not yet completed.

3. *Criteria.* The contractor's system will include policies, procedures, and methods which are designed to insure that it will accomplish the following:

a. *Organization.* (1) Define all the authorized work and related resources to meet the requirements of the contract, using the framework of the contractor's extension of an appropriate work breakdown structure.

(2) Identify the authorized work within the following categories:

(a) Discrete work packages with a defined end result; or

(b) Level of effort or apportioned-effort work packages whose completion does not produce a definable end result.

(3) Identify the internal organizational elements and the major subcontractors responsible for accomplishing the authorized work.

(4) Identify the managerial positions responsible for controlling overhead (indirect costs).

(5) Identify overhead (indirect costs) and the methods used for its allocation.

b. *Planning and budgeting.* (1) Describe, plan, and schedule the work.

(2) Identify physical products, milestones, technical performance goals, or other indicators that will be used to measure output.

(3) Establish budgets for all authorized work.

(4) To the extent the authorized work has been identified in the categories described in 3.a.(2) above, establish budgets for these categories in terms of dollars, hours or other acceptable units.

(5) Establish overhead budgets for the total costs of each significant organizational component whose expenses will become indirect costs. Reflect in the contract budgets at the appropriate level, the amounts accumulated in overhead pools that will be allocated to the contract as indirect costs.

(6) Identify management reserves, if used.

(7) Provide that the contract price plus the estimated undefinitized price of authorized but unpriced changes and unpriced work is reconciled with the sum of all internal contract budgets and management reserves.

(8) Retain the original budgets for those elements of the work breakdown structure identified as priced line items in the contract and for those elements at the lowest level of the DoD Project Summary Work Breakdown Structure as a traceable basis against which contract performance can be compared.

c. *Accounting.* (1) Record applied direct costs on a basis consistent with the budgets in a formal system that is controlled by the general books of account.

(2) Record indirect costs all or part of which will be allocated to the contract.

(3) These formal records in (1) and (2) above should make it possible to determine unit or lot costs for priced line items.

(4) Summarize applied direct costs and overhead allocations in the accounting records for (a) those elements of the work breakdown structure identified as priced line items in the contract, and (b) those elements at the lowest level of the DoD Project Summary Work Breakdown Structure.

(5) Identify the bases for allocating the cost of level of effort or apportioned-effort work packages to appropriate cost accounts.

(6) Provide a basis for auditing records of incurred costs, applied direct costs, and overhead (indirect costs).

d. *Reporting.* (1) Identify on a monthly basis or more often at the discretion of the contractor in the detail needed by management for effective control, using data from, or reconcilable with, the accounting system:

(a) Applied direct costs for work performed and the budget costs for the same work.

(b) Actual indirect costs and budgeted indirect costs.

(c) Budgeted costs for work performed and budgeted costs for work scheduled.

(d) Significant variances resulting from the above comparisons classified in terms of labor, material, overhead, and any other appropriate elements, together with the reasons therefor.

(2) Identify, on a monthly basis or more often at the discretion of the contractor significant differences between actual and planned schedule and actual and planned technical performance, together with the reasons therefor.

(3) Identify managerial actions that are made necessary by the above.

e. *Revisions.* (1) Estimate the effect of both authorized changes and internal replanning actions on technical performance, schedule, and cost provisions of the contract, and record the effects of authorized changes and internal replanning actions in schedules and budgets.

(2) Reconcile original budgets for those elements of the work breakdown structure identified as priced line items in the contract, and for those elements at the lowest level of the DoD Project Summary Work Breakdown Structure, with current budgets in terms of (a) changes to the authorized work and (b) internal replanning in the detail needed by management for effective control.

(3) Prohibit retroactive changes to records pertaining to work performed that will change previously reported amounts for applied direct costs, indirect costs, and budgets, except for normal accounting adjustments or for reasons agreed to by the contracting parties.

(4) Based on performance to date and on estimates of future conditions, develop latest revised estimates of cost at completion and reconcile these with:

(a) Original budgets for those elements of the Work Breakdown Structure identified as priced line items in the contract,

(b) Original budgets for those elements at the lowest level of the DoD Project Summary Work Breakdown Structure,

(c) Current budgets,

(d) Contract price,

(e) The contractor's latest statement of fund requirements reported to the Government.

MAURICE W. ROCHE,
Director, Correspondence and Directives Division OASD (Administration).

[F.R. Doc. 68-972; Filed, Jan. 25, 1968; 8:45 a.m.]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. B-424]

COAST CANNING & PROCESSING FISH CO., INC.

Notice of Loan Application

JANUARY 22, 1968.

Coast Canning & Processing Fish Co., Inc., 31 Scott's Wharf, Newport, R.I. 02840, has applied for a loan from the Fisheries Loan Fund to aid in financing the construction of a new 60-foot steel vessel to engage in the fishery for scup, mackerel, squid, butterfish, whiting, and herring.

Notice is hereby given pursuant to the provisions of Public Law 89-85 and Fisheries Loan Fund Procedures (50 CFR Part 250, as revised Aug. 11, 1965) that the above-entitled application is being considered by the Bureau of Commercial Fisheries, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, Bureau of Commercial Fisheries, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operations of the vessel will or will not cause such economic hardship or injury.

WILLIAM M. TERRY,
Acting Director,
Bureau of Commercial Fisheries.

[F.R. Doc. 68-1006; Filed, Jan. 25, 1968; 8:47 a.m.]

[Docket No. A-452]

JAMES F. DOBBS

Notice of Loan Application

JANUARY 22, 1968.

James F. Dobbs, Post Office Box 594, Homer, Alaska 99603, has applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a used 30-foot registered length wood vessel to engage in the fishery for salmon, crab, and halibut.

Notice is hereby given pursuant to the provisions of Public Law 89-85 and Fisheries Loan Fund Procedures (50 CFR Part 250, as revised Aug. 11, 1965) that the above-entitled application is being considered by the Bureau of Commercial Fisheries, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, Bureau of Commercial Fisheries, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

WILLIAM M. TERRY,
Acting Director,
Bureau of Commercial Fisheries.

[F.R. Doc. 68-1007; Filed, Jan. 25, 1968; 8:47 a.m.]

[Docket No. A-449]

CURTIS G. AND FREDERICK O. MILLER

Notice of Loan Application

JANUARY 22, 1968.

Curtis G. Miller and Frederick O. Miller, Box 257, Yakutat, Alaska 99689, have applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a used 39.4-foot registered length wood vessel to engage in the fishery for salmon.

Notice is hereby given pursuant to the provisions of Public Law 89-85 and Fisheries Loan Fund Procedures (50 CFR Part 250, as revised Aug. 11, 1965) that the above-entitled application is being considered by the Bureau of Commercial Fisheries, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, Bureau of Commercial Fisheries, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operations of the vessel will or will not cause such economic hardship or injury.

J. L. MCHUGH,
Acting Director,
Bureau of Commercial Fisheries.

[F.R. Doc. 68-1008; Filed, Jan. 25, 1968; 8:48 a.m.]

National Park Service

GLACIER BAY NATIONAL MONUMENT, ALASKA

Notice of Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), 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 Glacier Bay Lodge, Inc., authorizing it to provide concession facilities and services for the public at Glacier Bay National Monument, Alaska, for a period of five (5) years from January 1, 1968, through December 31, 1972.

The foregoing concessioner has performed its obligations under the 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 renewal of the contract and in the negotiation of a new contract. However, under the Act cited above, the Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted within 30 days after the publication date of this notice.

Interested parties should contact the Chief of Concessions Management, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

Dated: January 18, 1968.

EDWARD A. HUMMEL,
Assistant Director,
National Park Service.

[F.R. Doc. 68-973; Filed, Jan. 25, 1968; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

LIVESTOCK FEED PROGRAM

Notice of Designation of Emergency Areas

Notice is hereby given that, pursuant to the provisions of section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427, 63 Stat. 1055), and the Act of September 21, 1959, as amended (sections 1-4, 73 Stat. 574), the Secretary of Agriculture has designated the counties listed below as emergency areas for purposes of the Livestock Feed Program (7 CFR Part 1425, as amended). Feed grains will be made available for sale to livestock owners in such counties in accordance with the terms and conditions in the regulations for such program. The designated counties are as follows:

ARIZONA

Apache.	Navajo.
Coconino.	Yavapai.

COLORADO

Archuleta.	La Plata.
Dolores.	Montezuma.

NEW MEXICO

Catron.	San Juan.
McKinley.	Valencia.

UTAH

San Juan.	Wayne.

Signed at Washington, D.C., on January 18, 1968.

RAY FITZGERALD,
Vice President,
Commodity Credit Corporation.

[F.R. Doc. 68-1011; Filed, Jan. 25, 1968; 8:48 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ATLAS CHEMICAL INDUSTRIES, INC.

Notice of Filing of Petition for Food Additives

Pursuant to the provisions of the Federal Food, Drug and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 8B2248) has been filed by Atlas Chemical Industries, Inc., Wilmington, Del. 19899, proposing an amendment to § 121.2576 *Cross-linked polyester resins* to provide for the safe use of vinylcyclohexene dioxide as an optional component in cross-linked polyester resins intended for food-contact use.

Dated: January 18, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-999; Filed, Jan. 25, 1968; 8:47 a.m.]

B. F. GOODRICH CO.

Notice of Filing of Petition for Food Additives

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 8B2250) has been filed by The B. F. Goodrich Co., 500 South Main Street, Akron, Ohio 44318, proposing an amendment to § 121.2566 *Antioxidants and/or stabilizers for polymers* to provide for the safe use of 2,2'-di-*tert*-butyl-4,4'-isopropylidenediphenol bis (*p*-nonylphenyl) phosphite and *N*-alkyl (C_{14-18})-1,3-propanediamine-*N,N,N'*-triacetic acid as antioxidants and/or

stabilizers in polymers used in the manufacture of articles intended for food-contact use.

Dated: January 18, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-1000; Filed, Jan. 25, 1968; 8:47 a.m.]

CHEMAGRO CORP.

Notice of Filing of Petition Regarding Pesticides

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 8F0695) has been filed by Chemagro Corp., Post Office Box 4913, Hawthorn Road, Kansas City, Mo. 64120, proposing the establishment of tolerances for residues of the insecticide *O,O*-dimethyl *S*-[2-(ethylsulfinyl)ethyl] phosphorothioate in or on raw agricultural commodities as follows: 2.5 parts per million in or on corn (fodder and forage); 2 parts per million in or on leaf lettuce, plums (fresh prunes), strawberries, and turnip tops; 1.5 parts per million in or on apples, blackberries, cabbage, grapefruit, lemons, oranges, and raspberries; 1 part per million in or on cucumbers, eggplants, head lettuce, and summer squash; 0.75 part per million in or on peppers; 0.5 part per million in or on corn (kernels plus cobs with husks removed); 0.3 part per million in or on melons, pears, pumpkins, sugar beat tops, turnip roots, walnuts, and winter squash; and 0.1 part per million in or on cottonseed, potatoes, and sugar beets.

The analytical methods proposed in the petition for determining residues of the insecticide are: (1) A total phosphorus method based upon the procedure described by Martin and Doty, "Analytical Chemistry," vol. 21, page 965 (1949); and (2) a thermionic emission-gas chromatographic method using a phosphorus sensitive detector.

Dated: January 18, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-1001; Filed, Jan. 25, 1968; 8:47 a.m.]

GEIGY CHEMICAL CORP.

Notice of Filing of Petition Regarding Pesticides

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 8F0687) has been filed by the Geigy Chemical Corp., Ardsley, N.Y. 10502, proposing the establishment of tolerances for negligible residues of the herbicide 2-chloro-4,6-bis(isopropylamino-*s*-triazine in or on the raw agricultural commodities sorghum grain, forage, and fodder at 0.25 part per million.

The analytical method proposed in the petition for determining residues of the herbicide is extraction of residues with chloroform and cleanup by column chromatography. The herbicide is converted to the corresponding hydroxytriazine which is measured spectrophotometrically at 240 millimicrons.

Dated: January 18, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-1002; Filed, Jan. 25, 1968; 8:47 a.m.]

GULF OIL CORP.

Notice of Filing of Petition Regarding Pesticides

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 8F0688) has been filed by the Gulf Oil Corp., Dwight Building, Kansas City, Mo. 64105, proposing the establishment of tolerances for negligible residues of the herbicide barban (4-chloro-2-butynyl *m*-chlorocarbanilate) in or on the raw agricultural commodities barley, flax, lentils, mustard seed, peas, safflower seed, soybeans, sugar beets, sunflower seed, and wheat at 0.1 part per million.

The analytical method proposed in the petition for determining residues of the herbicide is as follows: The sample is hydrolyzed with sodium hydroxide to form 3-chloroaniline, which is steam distilled from the hydrolysate, diazotized, and coupled with *N*-1-naphthylethylenediamine to form a dye. The absorbance of the dye is measured specrophotometrically at 550 millimicrons.

Dated: January 18, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-1003; Filed, Jan. 25, 1968; 8:47 a.m.]

McLAUGHLIN GORMLEY KING CO.

Notice of Filing of Petition Regarding Pesticides

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 8F0684) has been filed by the McLaughlin Gormley King Co., 1715 Southeast Fifth Street, Minneapolis, Minn. 55414, proposing the establishment of tolerances for residues of the insecticide 2,3:4,5-bis(2-butylene)tetrahydro-2-furaldehyde in the raw agricultural commodities milk and meat of dairy and beef animals at 0.1 part per million.

The analytical method proposed in the petition for determining residues of the insecticide consists of extraction of the residue in a two phase system using isooctane, methanol, and water; reaction with 2,4-dinitrophenylhydrazine; and photometric measurement of the absorbance at 338 millimicrons.

Dated: January 18, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-1004; Filed, Jan. 25, 1968; 8:47 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 19517; Order E-26265]

AMERICAN AIRLINES, INC.

Order Authorizing Discussions

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 23d day of January 1968.

American Airlines, Inc. (American), has by letter filed January 19, 1968, requested authority from the Board to permit the scheduled certificated air carriers of the United States to hold discussions relative to promotional and tour-basing fares designed to increase travel to and in this country by foreign nationals in order to assist the President's program to improve the nation's balance of payments position. In support of the request the carrier states that the suggestion for such discussions was advanced at a meeting between the carriers and the Board and representatives of the President's Special Task Force on Travel, held to discuss what the carriers can do to assist this program. American believes that such informal discussions by the carriers on this subject would be most helpful to this end.

In these circumstances, and in view of the purpose of these discussions to advance national objectives, the Board will grant American's application. We will permit the carriers approximately 3 months to discuss promotional fares designed to attract foreign nationals to travel to and within the United States, subject to the conditions set forth below.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 412, and 414 thereof:

It is ordered, That:

1. The scheduled certificated air carriers of the United States may engage in meetings, at which the Board's representatives may be present, for a period from the date of this order through April 30, 1968, to discuss promotional and tour-basing fares designed to increase travel to and in the United States by foreign nationals.

2. The Director of the Bureau of Economics shall be given at least 48 hours' notice of the time and place of such meetings.

3. The carriers shall keep complete and accurate minutes of such discussions and a true copy of such minutes shall be filed with the Board's Docket Section not later than 2 weeks after the close of the discussions.

4. Any agreement or agreements reached as a result of such discussions shall be filed with the Board in accordance with section 412 of the Federal Aviation Act of 1958 and approved by the Board prior to being placed in effect.

5. This order shall be served upon all scheduled certificated air carriers of the United States, and shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 68-990; Filed, Jan. 25, 1968; 8:46 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Canadian Change List 235]

CANADIAN BROADCAST STATIONS

List of Changes, Proposed Changes, and Corrections in Assignments

NOVEMBER 24, 1967.

Notification under the provision of Part III, section 2, of the North American Regional Broadcasting Agreement.

List of changes, proposed changes, and corrections in assignment of Canadian Broadcast Stations modifying appendix containing Assignments of Canadian Stations (Mimeograph No. 47214–3) attached to the Recommendation of the North American Regional Broadcasting Agreement Engineering Meeting.

Call letters	Location	Power kw	Antenna	Schedule	Class	Expected date of commencement of operation
		710 kc/s				
CHYR (now in operation with increased power).	Leamington, Ontario	10 kw	DA-D	D	II	
		1510 kc/s				
CJRS (now in operation).	Sherbrooke, Province of Quebec.	10 kw	DA-2	U	II	
		1550 kc/s				
New (delete assignment).	Calgary, Alberta	10 kw	DA-1	U		

[SEAL]

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE,
Secretary.

[F.R. Doc. 68-956; Filed, Jan. 25, 1968; 8:45 a.m.]

[Canadian Change List 237]

CANADIAN BROADCAST STATIONS

List of Changes, Proposed Changes, and Corrections in Assignments

JANUARY 10, 1968.

Notification under the provision of Part III, section 2, of the North American Regional Broadcasting Agreement.

List of changes, proposed changes, and corrections in assignment of Canadian Broadcast Stations modifying appendix containing Assignments of Canadian Stations (Mimeograph No. 47214–3) attached to the Recommendation of the North American Regional Broadcasting Agreement Engineering Meeting.

Call letters	Location	Power kw	Antenna	Schedule	Class	Expected date of commencement of operation
		590 kc/s				
CFNL (now in operation).	Fort Nelson, British Columbia.	0.25 kw	ND	U	IV	
		680 kc/s				
CHFI (PO: 680 kc/s, 1 kwD/10 kwN, DA-2. Authorized for 680 kc, 1 kwD/25 kwN, DA-2, as notified on List No. 223).	Toronto, Ontario	2.5 kwD/25 kwN.	DA-2	U	II	E.I.O. 1-10-69.
		1150 kc/s				
CKOC (now in operation with increased power).	Hamilton, Ontario	10 kw	DA-2	U	III	
		1240 kc/s				
CKWL (correction of co-ordinates only N 52°07′16″ W 122°07′58″).	Williams Lake, British Columbia.	0.25 kw	ND	U	IV	
		1240 kc/s				
CFSL (assignment of call letters—now in operation).	Levis, Province of Quebec.	0.25 kw	ND	U	IV	
		1390 kc/s				
CKKC (change in call letters from CKLN).	Nelson, British Columbia.	1 kw	DA-1	U	III	
		1250 kc/s				
New	Sarina, Ontario	1 kw	DA-2	U	III	E.I.O. 1-10-69.

[SEAL]

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE,
Secretary.

[F.R. Doc. 68-957; Filed, Jan. 25, 1968; 8:45 a.m.]

[Docket Nos. 11227, 17588; FCC 68R-21]

CITY OF NEW YORK MUNICIPAL BROADCASTING SYSTEM (WNYC)

Memorandum Opinion and Order Amending Issues

In re application of City of New York Municipal Broadcasting System (WNYC), New York, N.Y., for special service authorization to operate additional hours from 6 a.m., e.s.t., to sunrise New York, N.Y., and from sunset Minneapolis, Minn., to 10 p.m., e.s.t., Docket No. 11227, File No. BSSA–226; In re application of City of New York Municipal Broadcasting System (WNYC), New York, N.Y., for construction permits, Docket No. 17588, File No. BP–16148.

1. This proceeding involves the applications of the City of New York Municipal Broadcasting System (WNYC) for a special services authorization and for a construction permit to increase power, change its transmitter site, directionalize its antenna array, and operate at specified hours during the day and night. The Commission, by memorandum opinion and order, FCC 67–825, 8 FCC 2d 1047, specified 11 issues for hearing.[1] Presently before the Review Board is a petition, filed August 10, 1967, by Midwest Radio-Television, Inc., licensee of Station WCCO, Minneapolis, Minn. (WCCO), requesting the addition of five issues, the revision of two issues, and the deletion or modification of one issue.[2] The requests will be treated seriatim.

Ascertainment of needs. 2. Petitioner first seeks the addition of an issue to determine whether WNYC has ascertained the needs of the areas it proposes

[1] Aside from the issues we will hereinafter discuss, the Commission designated an areas and population issue; an issue to determine the extent of the interference caused by WNYC's proposed operation to WCCO or any other station; a transmitter site and adjustment issue; an issue to determine whether there is any need for WNYC's SSA authorization; and a section 307(b) issue.

[2] The following pleadings are also before the Review Board: (a) WNYC's opposition to the WCCO petition, filed Sept. 21, 1967; (b) the Broadcast Bureau's opposition to WCCO's petition, filed Sept. 21, 1967; (c) WCCO's reply to oppositions, filed Oct. 24, 1967; (d) WCCO's supplement to the petition, filed Nov. 13, 1967; (e) opposition to supplement, filed Dec. 1, 1967, by WNYC; (f) reply to opposition to supplement, filed Dec. 4, 1967, by WCCO; and (g) answer to reply to supplement, filed Dec. 6, 1967, by WNYC. In addition, before the Review Board is a partial opposition to the petition, and a motion to accept it, filed Aug. 30, 1967, by Straus Broadcasting Group, Inc. (WMCA). Section 1.294 of the Commission's rules states that "(a) any party to a hearing may file an opposition to an interlocutory request filed in that proceeding." Since WMCA has neither sought to become a party in this proceeding, nor filed a petition to intervene, its opposition and motion to accept same will be denied. This, of course, does not prevent WMCA from participating in the hearing of this case by appearing and giving evidence relevant thereto, persuant to § 1.225 of the Commission's rules.

to serve. (Suburban issue).[3] In support of this request, WCCO relies in part on evidence offered by it in the 1956 hearing of this proceeding to the effect that certain ethnic group concentrations were within WNYC's SSA service area; and that these groups were, for the most part, made up of foreign-born, or non-English speaking persons. WNYC, it alleges, made no efforts to ascertain the needs of, or cater to these people in its broadcasts. WCCO also asserts that "[a]lthough the applicant made an extensive showing about the content of [its] programing, it offered no evidence that it had ever made any surveys or undertaken any other efforts to ascertain the actual needs of the limited audience served by it during SSA hours." The petitioner further contends that "it cannot be assumed that the management of Station WNYC has total knowledge of the needs and interests of its potential audience. Surely, that management cannot be relieved of the responsibility which the Commission has placed on all applicants to go out into the community and survey the local needs and interests." Finally, the petitioner contends that the need for the issue is even clearer in the light of WNYC's proposal for increased power. The petitioner alleges that the 0.5 mv/m daytime contour of WNYC would encompass substantially greater land areas and other towns and cities than its present operation. Moreover, it asserts that WNYC's proposed 2 mv/m contour would extend to such cities as Philadelphia, Pa., and Stamford, Conn. Petitioner concludes that "[s]urely the Suburban doctrine required WNYC to ascertain what are the needs and interests in the vast new areas and populations to be served, particularly those located well beyond Metropolitan New York, and to determine whether the programing of New York's municipally owned radio station actually would serve those needs."

3. In opposition, WNYC alleges that the Commission has already found that WNYC is a noncommercial station "in constant daily and continuous communication with city, State, and Federal agencies and departments, with educational institutions, with social, health, and welfare agencies, with citizens committees, museums and libraries, with labor unions and councils, as well as with the general public which are its owners." Further, WNYC alleges that the Examiner in the initial decision, released July 8, 1957, in this docket; and the Commission in Note 2 to § 73.25(a)[4] and its memorandum opinion and order of October 28, 1963 (FCC 63–978, 1 RR 2d 463)[5] both recognized the "special service" rendered by WNYC. Finally, WNYC alleges that its present and proposed programing is similar to prior programing which was based upon a survey taken by the station. The Broadcast Bureau also opposes the request for this issue, but on the ground that the "subject of programing has been fully considered by the Commission in its designation order." The Bureau asserts that an appropriate programing issue has already been designated to serve the peculiar circumstances of this case and is broad enough to encompass all relevant programing evidence in this proceeding.

4. In reply to the oppositions submitted by the Bureau and WNYC in regard to this request, WCCO argues that there is a distinction between a programing issue and a Suburban issue; that a substantially greater degree of ascertainment of the needs of the proposed outlying expansion area must be shown than has been shown; and that contact with officials by the city of New York is not tantamount to contact by station officials regarding broadcasting needs.

5. At the outset we are faced with the Bureau's contention that the Commission has considered fully the subject of programing and has designated an appropriate issue to cover it, thereby precluding us from considering it. We agree that all reference made in the petition to the inadequacy of the nature of WNYC's programing to meet the needs of the potential audience within its service area was indeed considered by the Commission and is encompassed within existing Issue No. 7 (see note 19, infra). However, petitioner questions WNYC's efforts to ascertain or determine the needs and interests of the area proposed to be served. It does not appear that the Commission specifically considered this matter or gave it a "reasoned analysis" in the designation order; therefore, we will consider the merits of petitioner's request in this regard. Atlantic Broadcasting Co. (WUST), FCC 66–1053, 8 RR 2d 991. Petitioner has worded its request so as to encompass those areas presently served by the applicant, and those proposed to be served. Since the areas involve substantially different factual circumstances, we will consider them separately.

6. It is manifest that the methods used to ascertain the needs and interests of the area proposed to be served may be shown in a responsive pleading, cf. WHOO Radio, 65R–929, 6 RR 2d 10; and that familiarity with the needs of the area proposed to be served may be shown to have resulted from continuous residency, contact and long-time broadcast experience. Cf. Storz Broadcasting Co., FCC 65R–320, 6 RR 2d 238; WHOO Radio, supra; and WKYR, Inc. (WKYR), FCC 64R–363, 3 RR 2d 1. The pleadings indicate that WNYC, by its very nature, comes into contact with many of the opinion-makers, city officials, and other significant leaders in the New York area.[6] Finally, we do not interpret the *Suburban* doctrine to require that a broadcaster have total knowledge of its service area. That would, of course, be an impossibility in any case, but especially in New York City.[7] In view of the fact that the applicant has made a prior survey to effectuate its current programing; that its proposed programing is essentially the same as its present programing; and that it has constantly and continually maintained contact with various phases of New York life through the operation of the station, as to present SSA areas covered, no Suburban question is raised, and no issue will be added.

7. The petitioner also alleges that WNYC has not adequately shown that it has ascertained the needs of its proposed expanded service area and requests that an issue be added to that effect. This presents a more difficult problem. The applicant's proposal to increase its power to 50 kw. would apparently[8] substantially increase its coverage to areas lying outside the Greater New York Metropolitan area. For example, WNYC's exhibit shows that the proposed 2 mv/m daytime contour would cover all of New Jersey and parts of Philadelphia to the south, and Stamford, and other parts of Connecticut, to the north. Nighttime contours likewise would significantly increase. Petitioner contends that these areas also must be surveyed or canvassed in some way. In support of this contention petitioner cites two cases: Wometco Enterprises, Inc. v. FCC, 114 U.S. App. D.C. 266, 314 F. 2d 266, 24 RR 2072; and Louisiana Television Broadcasting Corporation, 121 U.S. App. D.C. 24, 347 F. 2d 808, 5 RR 2d 2025 (1965). Also cited is a memorandum opinion and order of the Commission, St. Anthony Television Corporation, FCC 67–598, 10 RR 2d 38. Louisiana Television and St. Anthony involved the same proceeding. There, the applicant sought to move its television transmitter to within 31 miles

[3] Henry v. FCC, 112 App. D.C. 257, 302 F. 2d 196, 23 RR 2016 (1962).

[4] The note reads as follows: "Note 2: In view of special circumstances arising from the provision of a service during some nighttime hours by a Class II station operating on 830 kc/s at New York, N.Y. (i.e., from 6 a.m. to local sunrise and from sunset at Minneapolis to 10 p.m., e.s.t.) applications will be accepted for such operation: *Provided*, That they will be acted on only after and in light of the decision reached in Docket No. 11227."

[5] The memorandum opinion and order had the effect of remanding the proceeding to the Hearing Examiner and inviting WNYC's application for permanent operation during the then-SSA hours within 30 days.

[6] This is not to say that municipally owned and like stations are relieved of the responsibility of making an affirmative effort to determine the needs of the area.

[7] Although the applicant asserts that it made a survey of New York City and "surrounding areas" in connection with an earlier programing proposal for the station, it cannot be assumed that such "surrounding areas" encompassed the new outlying regions proposed to be served by its 50 kw. proposal without specific allegation to that effect. The alleged survey, therefore, will be considered in connection with the applicant's present coverage only. On the other hand, we are not persuaded that no survey was made merely because WCCO alleged that in 1964 it made a survey of 189 community leaders in greater New York and found that none had been contacted by WNYC. The New York area is too large and populous for this allegation to be of any material consequence.

[8] The engineering statistics are from WNYC's Exhibit E–1.

of city A and 40 miles from its primary city B. The petitioner alleged that the applicant had not ascertained the needs of the entire area sought to be served. The applicant responded, contending that it was not required to ascertain the needs of all of the towns and villages within its proposed service area (citing WKYR, supra); that its paramount duty was to its principal city; and that appropriate surveys had been made there.[9] The Court of Appeals, on appeal, remanded the case to the Commission (sub nom. Louisiana Television, supra) and set forth five questions which it stated involved public interest considerations which require resolution in a hearing including the questions of whether the applicant had made sufficient efforts to ascertain the programing needs of its proposed new service area. The Commission stated on remand (St. Anthony, supra) that "in light of the decision of the Court of Appeals * * *, much more is required [than was shown in this case] * * *. Each application for a modification of a construction permit must contain detailed data on the applicant's efforts to determine and fulfill the programing needs of the entire proposed service area." The Commission held there that the applicant's showing was inadequate and distinguished the WKYR case. The WKYR case held that the Commission has never gone so far as to require the applicant to survey the needs of its outlying service area to the same degree as it requires it to do so within its principal city. However, even though the case did hold that the same degree of ascertainment was not required for those outlying areas, it also held that some survey or ascertainment was required. Indeed, the St. Anthony case establishes that a mere allegation of incidental familiarity with an area is not enough, and that something more is required.

8. In the petition presently before the Board, the petitioner alleges that WNYC has made no efforts to ascertain the programing needs of the proposed expanded area. In response, WNYC alleges contact with various local, State and Federal officials, and others. However, WNYC does not allege specifically that these persons bear responsibilities and maintain interests which are directly related to the proposed expanded coverage area. In addition, WNYC relies on an earlier survey which included "surrounding areas." But as we have stated above (footnote 7), it cannot be assumed that such survey included Philadelphia or Stamford, or other areas of such substantial distance from the metropolitan area, without a specific allegation to that effect. Finally, we are aware of the practical difficulty in attempting to assess the needs of outlying areas, particularly here where such a vast area is involved. The Commission has itself recognized the difficulties attendant and has modified its requirements for these areas outside a broadcaster's principal city. See WKYR, supra. However, it is clear that some efforts in the outlying areas must be made (Louisiana Television Broadcasting Corporation, supra; St. Anthony Television Corporation, supra). Therefore, a substantial question is present as to whether or not the applicant has sufficiently ascertained the programing needs and interests of the proposed new service area, and an appropriate issue will be added. See also Cosmos Broadcasting Corporation, FCC 66-1028, 8 RR 2d 975.

Utilization of WNYC-FM and WNYC-TV issue. 9. WCCO next requests a clarification and/or an enlargement of the presently designated issues to determine whether "WNYC-FM (and possibly WNYC-TV) can be utilized to meet whatever needs may exist for additional hours of operation for WNYC." In support of this request, the petitioner cites cases which allegedly show the importance of FM broadcasting in determining the public's needs vis-a-vis standard broadcast stations.[10] WCCO also attempts to show the growth of FM radio in New York City and the possibility of FM (and perhaps television) providing better coverage of New York during nighttime and presunrise hours. In opposition, WNYC asserts that there is a "fundamental difference between the two services which is not just a mere classification;" that the number of persons served now by its AM station is significant and cannot be regarded as an inefficient use of the facilities; that the usual 307(b) case is not presented; and that the WOI case, supra, cited by the petitioner, involved different factual considerations. The Broadcast Bureau also opposes the addition of an FM-TV issue based on the contention that the issues already designated in this proceeding are "sufficiently broad to permit this evidence to be introduced, particularly Issues 3, 7, and 8."

10. The Commission has clearly indicated that it regards FM radio a component part of a total aural service. AM Station Assignment Standards, FCC 63-468, 25 RR 1615. Moreover, in its recent memorandum opinion and order relating to presunrise operation (FCC 67-1143, 11 RR 2d 1571) the Commission—in affirming its report and order (FCC 67-767, 10 RR 2d 1580)—stated that "one thing we note in connection with our decision * * * is the general availability of the FM service." In paragraph 16 of the report and order, supra, the Commission declared that:

> those areas of the country in which the greatest destruction of existing services will occur are, in general, reached by alternative services, including the signals of clear channel stations, and, to a lesser degree, by FM broadcast services.

The Commission has also taken into account FM service in resolving cases under section 307(b) of the Communications Act (Easton Publishing, Richmond Broadcasting, supra); waiver of allocation standards (Radio Rockford, supra); and waiver of the 25 percent rule (560 Broadcasting, supra). The Board also finds significant WCCO's undisputed allegations that WNYC-FM serves all of New York City to a degree greater than that which would be provided by WNYC by its 50 kw. proposal on 830 kHz; and that there is a high percentage of FM receiver ownership in New York City. In light of the foregoing, and the unusual nature of the subject applications (see paragraph 22, infra), an issue will be added to determine whether and the extent to which WNYC-FM can be utilized to meet the presunrise and postsunset needs of the areas proposed to be served by the WNYC AM operations. On the other hand, the petitioner does not convincingly show, nor does Commission precedent indicate, that television occupies the same relationship to standard AM radio as does FM. The issue will therefore not include television.

Revision of Issue 3. 11. Petitioner argues that Issue 3 is not properly framed,[11] based on the contention the note to § 73.24(b) of the rules is inapplicable in this case.[12] It alleges that that note applies only to applications for Class II-A

[9] In addition, in that case the applicant alleged that its president, director and 50 percent stockholder was also the sole stockholder of a corporation which was licensee of a station in Baton Rouge and a station in Houma (cities coming within the applicant's new service area), and that certain programs planned for the proposed station had their beginning in programing for the Baton Rouge station. Furthermore, the applicant alleged that the principals "* * * possess reasonable knowledge of the community of Houma and the entire proposed service area based on surveys and background." Finally, the applicant alleged that its programing was designed to meet the needs of the proposed area.

[10] Easton Publishing Co. v. FCC, 175 F. 2d 344, 4 RR 2147 (1949); Richmond Broadcasting Co., FCC 63-221, 25 RR 181; Radio Rockford, Inc., FCC 66-184, 6 RR 2d 907; 560 Broadcasting Corp., FCC 66-1121, 8 RR 2d 1134; also cited: Initial Decision, in Iowa State U. of Science and Tech. (WOI), Dockets 11290 and 16298, released May 29, 1967 (although in this case evidence as to FM service was allowed without a special issue). Petitioner also cites the Commission's memorandum opinion and order (5 RR 1037) denying a petition of WNYC and other stations for STA; the 1963 notice of proposed rulemaking looking toward the revision of the AM station assignment standards (25 RR 1615); and the Commission's memorandum opinion and order (FCC 67-1143, released Oct. 17, 1967) dealing with AM presunrise operation.

[11] Issue 3 reads as follows: "To determine whether, in light of the interference that it would receive, the proposed 50 kw. nighttime operation of Station WNYC would be consistent with the requirements of the note to § 73.24(b) of the Commission's rules and, if not, whether circumstances exist which would warrant a waiver of that section."

[12] The note to § 73.24(b) reads as follows: "The preceding provisions of this paragraph (b) shall not be applied to applications for new Class II-A stations or to applications accepted for filing before July 13, 1964. With respect to such applications, a showing must be made that: (a) Objectionable interference will not be caused to existing stations or that, if interference will be caused, the need for the proposed service outweighs the need for the service which will be lost by reason of such interference * * *. (b) The proposed station will not suffer interference to such an extent that its service would be reduced to an unsatisfactory degree."

stations, or to applications accepted for filing before July 13, 1964. All other applications, it asserts, are to be governed by the text of § 73.24(b). Petitioner contends that WNYC's 50 kw. application is not a Class II–A application and that its application was not accepted for filing until November 17, 1965 (citing the designation order, paragraph 14). Moreover, petitioner contends, since the Commission did not specify a § 73.28(d) issue (see Strafford Broadcasting Corporation, 34 FCC 142 (1963)), it must have meant to refer to the text of § 73.24(b). In opposition, WNYC asserts that the note is applicable in light of Note 2 to § 73.25 (a) of the rules (see footnote 4, supra), which implemented, in part, the Commission's Clear Channel decision.[13] The Broadcast Bureau asserts that the Commission has considered and rejected the petitioner's view of this matter. It further states that the fact that WNYC's application was accepted for filing at a date subsequent to July 13, 1964 is not the controlling element in this case. The WNYC application, it contends, is to be "governed by procedures decided far in advance of the July 13th date, one arising out of the Commission's report and order, Class Channel Proceeding * * *". Moreover, the Bureau contends, a § 73.28 (d) issue is unnecessary and its absence is not a logical reason to conclude that the text of § 73.24(b) governs, because Issues 3 and 9 contemplate such an evaluation themselves.

12. In reply, WCCO alleges that the Bureau disregards the clear and unambiguous terms of the note. It also contends that the Commission did not consider and reject this proposition in its designation order:

> Surely, nothing [in the memorandum opinion and order] can be construed as indicating that the Commission had meant to disregard the published rules or that, in advance of hearing, it had granted a waiver of the rules.

WCCO concludes that the reference to the note "is in error and that what was really intended, and the only thing that makes sense, is to delete reference to the note and limit the issue to the text of § 73.24(b)."

13. In light of the explicit statement in the body of the designation order that the note to § 73.24(b) would apply in this case, and its repetition in Issue 3 as designated, we are not persuaded by petitioner's argument that the Commission intended to refer to the text of the pertinent rule. Moreover, we agree with the Broadcast Bureau that the date of WNYC's application acceptance is not the controlling factor in this case. The relevance of the subject note must be determined in light of the Commission's Note 2 to § 73.25(a) of the rules (footnote 4, supra), inviting, inter alia, the instant application, and in the broad context of the entire Clear Channel matter. For, if the text of § 73.24(b) were literally to apply, its referral to the provisions of § 73.37 would have precluded acceptance of the WNYC application in the first instance.[14] Thus, it would seem that the Commission's reference to the note to § 73.24(b) is the only logical alternative in this case. Issue 3 will therefore not be modified.

Revision of Issue 4. 14. WCCO requests that Issue 4 (which now encompasses the question of whether WNYC's proposal would prejudice the future use of the 820 and 840 kHz Class I–A Channels), be revised to include a determination of whether the WNYC proposal "would seriously prejudice future consideration of the" 830 kHz channel. The petitioner also suggests that this issue should encompass a determination of the impact of the WNYC 50 kw. proposal on the future optimum exploitation of this channel, including the use of superpower (750 kw.) by WCCO. In support of these requests, petitioner asserts that there is a greater possibility that more damage will be done to the future use of 830 kHz than to the adjacent channels, pointing out that the potential impact on co-channels is measured by the 0.5 mv/m contour,[15] and that WNYC's 0.025 mv/m contour would extend from North Carolina to Boston. WCCO contends that it is incumbent upon the Commission to encourage the larger and more efficient use of radio, "[a]nd the present proceeding involves essentially a determination of just how 830 kc. can be best so used." The public interest question of this hearing, WCCO alleges, necessarily includes the question of whether a grant of the WNYC application would in any way inhibit or prevent the optimum exploitation of the channel "in the future should the Commission ever decide that the use of superpower is in the public interest."

15. In opposition, WNYC contends that the requests are without merit since a new Class II daytime operation is involved and because of Note 2 to § 73.25(a) of the rules (footnote 4, supra). It further alleges that it is necessary to look elsewhere than to WCCO's clear channel status to determine whether WNYC's proposal is in the public interest. The Broadcast Bureau, in its opposition, contends that some evidence on this question may be adduced under present Issues 3 and 9, "to the extent at least that such matters may be germane to evaluation of the waiver and efficiency elements of the issues." The Bureau alleges, moreover, that the Commission has determined to consider the WNYC proposal notwithstanding its impact on future 830 kHz utilization; i.e., the Commission has considered the question already, and had it wanted more detail thereon, it would have framed Issue 4 in different fashion.

16. In reply, petitioner alleges that the position of the Broadcast Bureau is inconsistent, in that, on the one hand, it suggests that this evidence may be adduced under Issues 3 and 9; and on the other, states that the question cannot be considered in this proceeding. WCCO asserts that the Bureau is "plainly wrong" in stating that the Commission in rulemaking determined that

> "sufficient reasons obtain to justify considerations of this very proposal in hearing, notwithstanding its potential impact on future 830 kc. assignments." The Commission could not possibly have considered WNYC's specific proposal for a 50 kw. operation from a site on Staten Island, with the particular DA design now suggested, at the time of its Clear Channel decision.

This proposal was not before the Commission, it is asserted, at the time of the Commission's decision; moreover, petitioner maintains the Commission went out of its way to point out that "nothing being decided in that decision would, in any way, prejudge any of the issues in this adjudicatory proceeding." Petitioner avers that the Bureau, too, is in error in contending that this or any issue has already been determined in the rulemaking proceeding:

> The Commission's acceptance for filing of WNYC's 50 kw. proposal represents solely a determination that this application was procedurally acceptable. Contrary to the views expressed by the Bureau (opp. paragraph 8), it was not a decision on the merits of the WNYC application.

WCCO contends that the only question before the Board is whether the issues submitted by it are required for a "full record and a proper public interest determination * * *". It asserts that they are necessary for such a determination in this case. Finally, petitioner challenges the applicant's contention that Note 2 to § 73.25(a) disposes of the problem. It contends that this note specifically deals with nighttime operation 830 kHz but not a daytime proposal.[16] It reasons, therefore, that since WNYC alleges that both its day and night proposals must be considered together, they are interdependent, and that the issue and revision it propounds are appropriate.[17]

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[13] Report and order, Clear Channel Proceeding, Docket No. 6741, 31 FCC 565; expanded in memorandum opinion and order, FCC 62–1214, 24 RR 1595.

[14] WNYC would not have met the acceptance for filing requirements of this section relating to minimum separation between stations and prohibited overlap.

[15] These figures are derived from § 73.37 of the Commission's rules.

[16] WCCO asserts that recognition must be given to the proposition that "the entire justification for the suggested breakdown of 830 kc. is to provide New York City with a night service, and not to cover the eastern seaboard daytime, or to prevent other daytime assignments on this frequency in the future."

[17] In further support of its position, WCCO, on Nov. 13, 1967, filed a supplement to its petition (for references, see footnote 2, supra). Therein is cited an excerpt from a Commission letter, dated Nov. 3, 1967 (Mimeo No. 8831), advising a corporation that its application for a new standard broadcast station on 850 kHz would not be accepted, and that waiver would not be granted of § 1.569 of the rules. The reason given was that the applicant's showing was "not sufficient to establish that the proposed operation would not prejudice the assignment of a new Class II–A proposal on the 830 kc. channel." In opposition, WNYC asserts that "no specific request for additional pleadings has been made," and that, if such revision were made, it would "undo what the Commission has done." Since the supplemental pleading merely calls the Board's attention to a recent Commission communication, it will be accepted.

17. The Review Board is of the opinion that although the Commission did consider in the designation order the question of whether WNYC's application for 750 kw. should be consolidated with the instant applications of WNYC, it did not deal with the question of whether the WNYC 50 kw. proposal would seriously prejudice all future use of the 830 kHz frequency. The Commission clearly did discuss WCCO's petition for waiver, and for acceptance of its 750 kw. construction permit application. But its determination to defer action on the application did not necessarily encompass a determination that WNYC's application will be acted on without regard to any possible future use of the frequency.[18] Moreover, although the Commission recognized the real and continuing existence of the then-pending WNYC application for SSA in the Clear Channel decision, there was indication there of its concern with the further future utilization of the frequency. The Commission stated therein that "any further use of the frequency can, of course, take cognizance of its higher power potential." Finally, although Note 2 to § 73.25(a) does state that WNYC's 1 kw. pending SSA proposal in Docket 11227 will be acted upon and that, in light of that determination, applications for a permanent New York operation will be accepted, it is clear that the note does not state or imply that applications for power greater than 1 kw. (the power then being used by WNYC) will be granted without considering the impact of such higher power on future use of the frequency. The Commission's acceptance of an application for filing, of course, is not a decision on the merits of such application. Thus, the Board agrees with WCCO that, in view of the new areas proposed to be served by the higher power application (50 kw.), a question exists as to whether "prejudice" could redound with respect to the future use of this Class I–A channel, as well as to the adjacent Class I–A channels; and there is no allegation which persuades us that 830 kHz should be treated any differently than 820 kHz and 840 kHz. Therefore, Issue No. 4 will be revised accordingly. cf. KXA, Inc., 5 RR 2d 338 (1965), State of Wisconsin, University of Wisconsin, 3 RR 2d 230 (1964).

Deletion or revision of Issue 7. 18. WCCO also requests the deletion of Issue 7, or in the alternative, revision of that issue.[19] In support of deletion, petitioner contends that since the present application is for a "permanent", as well as a "regular" operation during interference hours, an issue should not be based upon such a transitory consideration as present programing. "Under such circumstances, in resolving the present conflict, the Commission should rely solely upon its established technical and allocation policies and standards—'a carefully devised plan, based on experience, to obtain the best and most comprehensive service possible for the greatest number of listeners.' (Wendell Mayes, 7 FCC 511)" WCCO contends that, recently, the Commission has been putting more and more emphasis on "service" rather than "on evanescent considerations of programing." Petitioner further contends that the Commission has expressed doubts as to "[w]hether, under present-day conditions, our station assignment principles should provide at all for weighing of engineering standards against nonengineering factors." (Albuquerque Broadcasting Co. (KOB), 16 RR 755 (1958); WNYC, 9 FCC 169 (1942); FCC v. Allentown Broadcasting Corporation, 349 U.S. 358 (1955)). Moreover, it alleges, preparing and presenting programing evidence is "wasteful" of the Commission's time. Finally, petitioner contends that section 307(b) lays down the principles governing the resolution of the instant conflict and its mandate (fair, efficient, and equitable distribution of service) precludes consideration of such "irrelevant", "improper and transitory factors as comparison of programing by two different stations to two different areas."

19. In the alternative, the petitioner requests a revision of Issue 7. It insists that part of the designated issue contains an unwarranted assumption of the very question at hand, i.e., that there are special needs in the area. Allied to this question, it is asserted, is the related question of whether these needs and requirements are being met "in whole or in part, by existing AM and FM stations." The Commission, WCCO states, in the memorandum opinion and order designating this instant case to hearing, spelled out the purpose of Issue 7, including the objective of evaluating WNYC's programing "in light of competing available services." However, it is asserted, since the issue itself omitted the last-quoted phrase, it should be revised to include it.[20] As a second alternative request, petitioner contends that that part of the issue which refers to WCCO's programing in interference areas "ignores both the basic concept underlying clear channel service and the realities of the situation insofar as proof is concerned under such an issue," and therefore should be stricken. In short, petitioner contends "[i]t is simply not reasonable to expect a respondent to adduce evidence as to the 'special needs and interests' for WCCO's programing to the residents of the land area covered by WCCO's secondary signal" (allegedly 7.5 million).

20. In opposition, WNYC asserts that its application is not in derogation of established allocation principles. It is, WNYC alleges, in compliance with the Clear Channel proceeding and "[a]uthorization of the WNYC service is procedurally provided for, if the service on its merits is found to be in the public interest." Moveover, WNYC quarrels with petitioner's interpretation of the Allentown case, supra; WNYC contends that that case held programing to be of vital concern in a section (307(b) determination. WNYC concludes that the sole issue in this proceeding is to determine whether the proposed WNYC service would serve the public interest, convenience, and necessity, and that the issue specified by the Commission is appropriately designed to acomplish this purpose. The Broadcast Bureau opposes the deletion of Issue 7 (it makes no specific comment on the revision of that issue) because, it alleges, sufficient reasons were given for the inclusion of the issue in the designation order; the issue is warranted by the peculiar facts of this case; and in light of the foregoing, "it would be inappropriate for the Review Board to grant the request." Atlantic Broadcasting Co. (WUST), et al., 5 FCC 2d 717 (1966).

21. In reply, WCCO contends that the Commission may very well have mistakenly designated Issue 7, "because of the fact that there was such an issue in the earlier proceeding in this case." That proceeding, it contends, dealt with temporary authorization for WNYC and the issue was at that time appropriate; whereas, this proceeding concerns a "permanent alteration of the AM allocation standard and that, according to the KOB case, the programing of a particular applicant is irrelevant." The Review Board, petitioner asserts, has the authority and the "obligation to cure an error of law * * *". In regard to WNYC's attempts to distinguish the Allentown and Wendell Mayes cases, WCCO asserts that the Mayes case did not determine whether programing was or was not an appropriate issue "in a proceeding such as the instant one." Moreover, it contends that the Allentown case is also distinguishable from the present one because that case was a "routine adjudicatory proceeding involving competing applicants in different communities * * *", and that the present case involves both rulemaking and adjudication, "since what is here involved are the merits of a proposed breakdown of 830 kc. to accommodate a particular proposal advanced by WNYC." Allentown, WCCO contends, is applicable to this case in only one respect: That under 307(b), the Commission "cannot compare the extent to which WNYC's programing meets 'special needs and requirements' of an entirely different area." In regard to its alternative request for

[18] That its discussion was confined to the WNYC application is illustrated by the following Commission language stating the WCCO contentions: "* * * failure to consider its [WCCO's] 750 kw. proposal in the WNYC proceeding would be prejudicial to the future prospects of that proposal * * *." (Paragraph 18, designation order.)

[19] Issue 7 reads as follows: "To determine the type and character of the program services respectively proposed to be rendered by Stations WNYC and WCCO; whether and to what extent WNYC daytime and nighttime proposed programing would serve special needs and requirements of the populations and areas proposed to be served; and whether and to what extent WCCO's programing, during the hours of interference to it from WNYC would meet special needs and interests of residents of those areas in which such interference would occur."

[20] The issue, as per the requested revision, would read as follows: "To determine whether there are special needs and requirements of the populations and areas proposed to be served by the WNYC 50 kw proposal, and if so, (a) whether the type and character of the programing service proposed to render by WNYC would meet those special needs and requirements, and (b) whether and to what extent the same general program service is being rendered by other broadcast stations serving all or part of the area proposed to be served by station WNYC."

a revision of this issue, WCCO asserts that the Board is not powerless to effect such a change, and that, in fact, the Board made a similar revision in the WOI case, FCC 66R-36, 2 FCC 2d 480.[21]

22. WCCO's request for a deletion of Issue 7, or, in the alternative, for striking the last part of it, will be denied. It is clear that the issue in dispute was specified after a reasoned analysis of this matter (see paragraph 11 of the designation order), and to accede to WCCO's request would be to undo what the Commission has done. The rules do not delegate that authority to this Board.[22] Aside from that, we do not agree with petitioner's analysis of how the law should apply in this case. The Commission made provision for applications for permanent operation for 830 kHz (to operate daytime and certain interference hours), upon which WCCO is the dominant station, if such applications met certain technical standards and were otherwise in the public interest.[23] The issues in this proceeding were designed to inquire into those questions. Issue 7, and the petitioner's instant requests regarding it, are inextricably connected with the "public interest" determination to be made in this adjudicatory proceeding. The question is thus whether or not such an issue is appropriate to a determination of that ultimate question, in light of the factual circumstances of the case and Commission precedent. WCCO contends that programing evidence is too transitory—"evanescent"—and has no relevance to a permanent authorization. However, programing evidence has been held to be relevant in both 307(b) and interference cases. For example, in Cookeville Broadcasting Co., FCC 60-101, 19 RR 897, the Commission stated that it would allow such evidence in 307(b) cases if the petition shows that the evidence might be of "decisional significance". Similarly, in mid-America Broadcasting System, FCC 60-94, 19 RR 889, the Commission stated that programing evidence would be allowed in interference cases if 10 percent or more interference is involved. Where interference is less than 10 percent, a showing of decisional significance must first be made.[24] As stated above, this is not the prototype 307(b) or interference case; it contains elements of both. The unusual nature of this case, making the submission of programing evidence particularly important, is demonstrated by the allegations relating to the following: The great distance separating the two stations; the nature of the municipal licensee in New York; the noncommercial and sustaining character of its programing proposal; the "multi-service" type of programing presented on the Minneapolis station; the peculiar and large area in which the two signals interfere; and finally, the very nature of this proceeding whereby an existing service (WNYC) is operating on a clear channel frequently under temporary authorization. We believe the Commission was mindful of these differences when it specified Issue 7.

23. However, petitioner further contends that the Board should, if it does not delete the entire issue, strike the last portion of it relating to a determination of whether WCCO's programing is meeting special needs of the area and populations in the interference areas. Petitioner asserts that the showing required under such an issue would be prohibitively expensive and time-consuming, and that in light of its clear channel status, WCCO's programing should not be a factor in this case. However, merely because such a showing would be expensive or time-consuming is not an adequate basis for eliminating it. Moreover, the Commission and Board, in past interference cases, have added a complementing programing issue directed to loss areas of "interfered with" stations where it has also added a programing issue directed to the gain areas of interfering stations. See, e.g., Fredericksburg Broadcasting Corp., FCC 60-99, 19 RR 895; Progress Broadcasting Corp., FCC 62R-27, 24 RR 229. Finally, as to WCCO's contention that preparation of exhibits would be expensive, the Board believes it would be inequitable to require WNYC to make such a showing in the entire coverage areas, night and day (with a population equal to or greater than the 7.5 million allegedly in the interference areas), and to relieve WCCO of the burden. While we are not at this time in a position to comment on the ultimate significance of this evidence, neither are we persuaded that it can be of no value to the ultimate determination to be made herein.

24. Finally, here, petitioner requests a revision of Issue 7. First, it asserts that that issue, as it presently stands, calls for a determination of "whether and to what extent WNYC daytime and nighttime proposed programing would serve special needs and requirements of the population and areas proposed to be served." Petitioner urges that this language assumes the very question in issue, i.e., whether there are any special needs and interests to be served. We do not agree. If the issue had been phrased "the special needs and requirements" petitioner's contention might have had some merit. However, the language as it now stands, we believe, includes within it the questions of whether there are any special needs present, and therefore a revision in this regard need not be made. Second, the petitioner requests a revision of the issue to include a determination of whether there are other broadcasting outlets in the New York area which are presently meeting the special needs (should they be found to exist) of the area. The Commission explicitly stated in the designation order that the purpose of this issue was "intended to encourage the submission of evidence designed to facilitate an evaluation of the importance of WNYC's daytime and nighttime programing to residents of its primary service area, in the light of competing available services * * *". This explicit statement, in the Board's view, quite clearly indicates that evidence on this point will be admissible at the hearing. This obviates, therefore, any necessity for the Board to modify the issue.

Alternative facilities issues. 25. The petitioner also requests an issue to inquire into the suitability of effecting a rearrangement of local New York City broadcast assignments "if and when WNYC establishes that its ascertainment and meeting of local needs is significantly superior and unique * * *. Such rearrangement, it is alleged, is "not only consonant with the purpose of, but specifically intended by the Communications Act * * * [City of New York v. Federal Radio Commission, 36 F. 2d 115 (App. D.C. 1929); City of New York v. Federal Radio Commission, 64 F. 2d 719 (App. D.C. 1933)]." WCCO suggests that special study be given to 570 kHz and 540 kHz, and it attaches a detailed appendix allegedly demonstrating the feasibility of such a rearrangement.[25] Both the applicant and the Broadcast Bureau oppose the request because, they allege, section 307(b) of the Communications Act does not require it; such an issue is not appropriate in this proceeding in that it would be, in effect, rule making; and, if such an investigation is undertaken at all, it should be done by the Commission itself. WNYC further alleges that there are at least eight specific problems inherent in the merits of the petitioner's request to investigate a move by it to 540 kHz or 570 kHz,[26] and it asserts that it will not, at any rate, seek reassignment to either of these frequencies.

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[21] The same type of issue was not involved in that case. Thus, petitioner's citation is inappropriate here.

[22] See Atlantic Broadcasting Co. (WUST), supra.

[23] See footnote 4, supra. See also the Commission's Clear Channel decision, supra.

[24] It is worth mentioning also that in virtually all 307(b) or interference cases, a permanent allocation is sought; and, as previously indicated, programing may, under certain circumstances, be of decisional significance in both situations.

[25] WCCO suggests two "ready possibilities": 570 kHz (Exhibit II) and 540 kHz (Exhibit III). These frequencies, it is asserted, are two of a "large number" which could provide WNYC with full-time coverage comparable to 50 kw. on 830 kHz. If necessary, WCCO alleges, WNYC's proposed site on Staten Island could be used. The engineering statement regarding both frequencies, submitted by WCCO, includes maps and calculations concerning the following: (1) Present kHz allocation; (2) site and antenna considerations; (3) daytime coverage comparisons; (4) nighttime coverage comparisons; (5) daytime cochannel allocations conditions; (6) daytime adjacent channel conditions; (7) nighttime allocations conditions; and (8) support for waivers.

[26] The "problems" are summarized as follows: (1) Waiver from Canada would be required (§ 73.25(e)(2)); (2) stations north of 30° N. parallel and east of 93° W. meridian should not operate during the nighttime; (3) there would be prohibited overlap of contours in contravention of § 73.37 of the Commission's rules; (4) a station in Islip, Long Island, N.Y., would have to be shifted; (5) a transmitter site would be required in New Jersey, which is allegedly not feasible; (6) there would be possible interference with the maritime distress frequency; (7) there would be greater waste of signal radiation toward the Atlantic Ocean; and (8) higher antenna towers would be required.

26. In reply to the Broadcast Bureau's opposition to this request, WCCO reasserts its contention that this proceeding does involve rule making, and for that reason, alternative facilities consideration is appropriate. In reply to WNYC's eight "problems", WCCO contends that the instant application also causes "problems", especially for it, and submits that its problems are greater than the alleged problems raised by consideration of alternative facilities. WCCO also asserts that a consideration by the Board of alternative facilities in this proceeding will not result in an endless chain of hearings, but that it can be restricted to the immediate problems.

27. In this connection, petitioner also requests an issue to determine whether it is possible for WNYC to operate with "reduced interference to WCCO with coverage of New York City comparable to that proposed by WNYC." In support of this request, the petitioner asserts that the present 50 kw proposal of WNYC is not the only possibility; that what started out as an emergency wartime authorization (the SSA) should not "be accepted as immutable, or as one of the incontrovertible parameters of any new operation WNYC might choose to propose from a new site with higher power * * *;" that a grant of the applicant's proposal would be tantamount to a breakdown of a hitherto clear channel; that the proposed application would not accord the Clear Channel I–A station on 830 kHz (WCCO) anywhere near the protection which Class II–A stations are required to accord Class I–A stations on the other clear channels which were broken down; and finally, that the burden should be on WNYC to make the showing that the alleged "deficiencies" in its proposed application are unavoidable.[27]

28. WNYC opposes this request, contending that the clear channel decision provided for the WNYC application on the condition that it met certain technical requirements, i.e., that the proposal submitted would not create any more interference to WCCO than now present by reason of WNYC's current operations. WNYC further alleges that when its application was accepted, the Commission found that the instant proposal met such criteria. The Broadcast Bureau opposes the requested issue on the ground that this is an alternative proposal and that such "is not permitted." Moreover, it alleges, as did WNYC, that the proposed application meets the requirements of the Commission's "invitation". The Bureau does state, however, that "to the degree that public interest considerations are involved in WNYC's proposed mode of operation, issues have been already added to permit evaluation of its proposal in terms of efficiency and waiver * * *," and therefore some evidence on this point could be submitted at the hearing.

29. As for the question of lower power and/or alternative transmitter sites, the following discussion in paragraph 10 of the Commission's designation order, indicates that the Commission has fully considered the matter:

> As for WCCO's contention that WNYC has failed to demonstrate the superiority of the proposed site, and 50 kw. daytime and nighttime operations thereon, as compared with other alternatives which it should have explored—we find, first, that WCCO has failed to submit specific evidence sufficient to raise a substantial question as to whether WNYC misused the Commission's above cited invitation by refraining from consideration of alternative transmitter-antenna sites from which it could, with lower power, adequately serve New York area residents, and, at the same time, provide sufficient protection to WCCO et al.; and, second, that unless WNYC's proposed daytime operation at the Staten Island site would adversely affect existing broadcast operations or seriously prejudice future consideration of the 820 and 840 kilocycle Class I–A channels, there would seem to be no particular advantage in obligating WNYC to maintain separate transmitter-antenna systems at two different sites.

Since the Commission has specifically considered petitioner's contentions in this regard, the Board is constrained to deny the requested issue. Atlantic Broadcasting Co., supra. Petitioner's request to add an issue to inquire into possible alternative frequencies for WNYC will also be denied. The Commission has stated that if it were to adopt a policy of allowing hypothetical alternatives to be injected into the hearing procedures, such "would only result in introducing chaos into the Commission's processes * * *". Therefore, it "has consistently rejected consideration of hypothetical alternatives * * * WKYR, Inc., FCC 63–893, 1 RR 2d 314; Television Broadcasters, Inc., FCC 65–15, 4 RR 2d 19; TLB, Inc., FCC 65–103, released February 15, 1965." [28] In the WKYR case,[29] the Commission stated that its—

> consistent policy has been * * * that an application which is otherwise in the public interest, and meets the requirements of the rules, should be granted without regard to possible proposals which might have been advanced.

The Review Board has also denied requests similar to the instant one, where, for example, the addition of an issue to inquire into whether an applicant should be required to operate on a UHF instead of a VHF television channel was requested. Selma Television, Inc. (WSLA–TV), supra. Nor does this appear to be a case where an applicant's proposal is inherently deficient or, on its face, does not meet the requirements of the Commission's rules.[30] Compare Black Hawk Broadcasting Co. (KWWL–TV), FCC 66–559, 8 RR 2d 238; WKYR, Inc., supra; Beaumont Broadcasting Corp. v. FCC, 91 U.S. App. D.C. 111, 202 F. 2d 306, 7 RR 2149 (1952). Moreover, there is a substantial question in this case as to the practical feasibility of the petitioner's hypothetical proposal,[31] in light of the alleged problems raised by the applicant's opposition to the petition.

Accordingly, it is ordered, That the motion to accept partial opposition to petition addressed to the issues, filed August 30, 1967, by Straus Broadcasting Group, Inc., is denied; and that the petition addressed to the issues, filed August 10, 1967, by Midwest Radio-Television, Inc. is granted to the extent indicated below, and denied in all other respects; and

It is further ordered, That Issue No. 4 in this proceeding is revised as follows: To determine whether the 50 kw. proposal of the City of New York Municipal Broadcasting System would seriously prejudice future consideration of the 820, 830, and 840 kilocycle Class I–A Channels.

It is further ordered, That the issues in this proceeding are enlarged by the addition of the following issues:

(a) To determine whether the City of New York Municipal Broadcasting System has adequately ascertained the needs and interests of the new areas proposed to be served by its 50 kw. application.

(b) To determine whether and to what extent WNYC–FM can be utilized to meet presunrise and postsunset needs and requirements of the areas proposed to be served by WNYC's 50 kw. proposal.

It is further ordered, That the burden of proceeding with the introduction of evidence and the burden of proof under the issues added herein will be on the City of New York Municipal Broadcasting System (WNYC).

Adopted: January 17, 1968.

Released: January 24, 1968.

FEDERAL COMMUNICATIONS COMMISSION,[32]
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68–991; Filed, Jan. 25, 1968; 8:46 a.m.]

[Docket Nos. 17884, 17885; FCC 68M–115]

BERWICK BROADCASTING CORP. AND P.A.L. BROADCASTERS, INC.

Order Continuing Hearing

In re applications of Berwick Broadcasting Corp., Berwick, Pa., Docket No. 17884, File No. BPH–5812; P.A.L. Broadcasters, Inc., Pittston, Pa., Docket No. 17885, File No. BPH–5924; for construction permits.

Pursuant to an informal conference with counsel for all parties on January 18, 1968: *It is ordered,* That all procedural dates heretofore established be and the same are hereby canceled;

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[27] Petitioner cites section 324 of the Communicatons Act for its position: "* * * all radio stations, including those owned and operated by the United States, shall use the minimum amount of power necessary to carry out the communication desired * * *".

[28] Selma Television, Inc. (WSIA–TV), FCC 65–216, 5 RR 2d 809. See also Mid-America Broadcasting System, Inc., supra.

[29] Aff'd sub nom., Allegany County Broadcasting Corporation et al. v. FCC, 348 F. 2d 788, 5 RR 2d 2067.

[30] As stated supra, the applicant's proposal apparently is not in derogation of the Commission's rules—involving frequencies, allocations, etc.—in light of the discussion of this frequency in the Clear Channel proceeding and in Note 2 to § 73.25(a) of the Commission's rules. Footnote 4, supra.

[31] Lampasas Broadcasting Corporation (KCYL), FCC 65R–271, 5 RR 2d 986.

[32] Views and statements of Review Board members filed as part of the original document.

It is further ordered, That the exchange of exhibits shall be accomplished on or before May 6, 1968, that the notification of witnesses desired for cross-examination shall be established as on or before May 13, 1968, and that the hearing now scheduled for March 12, 1968, be and the same is hereby rescheduled for May 20, 1968, 10 a.m., in the Commission's offices, Washington, D.C.

Issued: January 19, 1968.

Released: January 22, 1968.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68-992; Filed, Jan. 25, 1968; 8:46 a.m.]

[Docket Nos. 17609, 17610; FCC 68M-112]

MINSHALL BROADCASTING CO., INC., AND UNIVERSITY CITY TELEVISION CABLE CO., INC.

Order Continuing Hearing

In re applications of Minshall Broadcasting Co., Inc., Gainesville, Fla., Docket No. 17609, File No. BPCT-3879; University City Television Cable Co., Inc., Gainesville, Fla., Docket No. 17610, File No. BPCT-3939; for construction permit for new television broadcast station.

Upon verbal request by counsel for Minshall Broadcasting Company, Inc.: *It is ordered*, That the evidentiary hearing now scheduled for January 29 be and the same is hereby rescheduled for January 31, 1968, 10 a.m., in the Commission's offices, Washington, D.C.

Issued: January 19, 1968.

Released: January 22, 1968.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68-993; Filed, Jan. 25, 1968; 8:46 a.m.]

[Docket Nos. 17886-17888; FCC 68M-113]

OUTER BANKS RADIO CO. ET AL.

Order Continuing Prehearing Conference

In re applications of Douglas Lystra Craddock and Lacy Phil Wicker, doing business as Outer Banks Radio Co., Wanchese, N.C., Docket No. 17886, File No. BP-16917; J. M. Farlow & William D. Mills, doing business as Onslow County Broadcasters, Midway Park, N.C., Docket No. 17887, File No. BP-17272; Hendon M. Harris, Maysville, N.C., Docket No. 17888, File No. BP-17275; for construction permits.

In order to resolve a conflict in the Hearing Examiner's hearing docket arising from the rescheduling of a field hearing: *It is ordered*, On the Examiner's own motion, that the further prehearing conference in the above-captioned proceeding heretofore scheduled for February 14, 1968, is postponed to February 21, 1968 at 9 a.m., in the offices of the Commission at Washington, D.C.

Issued: January 19, 1968.

Released: January 22, 1968.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68-994; Filed, Jan. 25, 1968; 8:46 a.m.]

[Docket Nos. 17472, 17473; FCC 68R-18]

RADIO STATIONS KNND AND KRKT AND ALBANY RADIO CORP.

Memorandum Opinion and Order Enlarging Issues

In re applications of Peter Ryan and Milton Viken, doing business as Radio Stations KNND and KRKT, Albany, Oreg., Docket No. 17472, File No. BPH-5321; Albany Radio Corp., Albany, Oreg., Docket No. 17473, File No. BPH-5436; for construction permits.

1. The above-captioned mutually exclusive applications for a new FM broadcast station in Albany, Oreg., were designated for hearing by Commission order, FCC 67-625, released June 15, 1967. There is now before the Board a petition to enlarge issues filed October 9, 1967, by Albany Radio Corp. (Albany).[1] Albany asserts that it could not have filed its petition at an earlier date since it was not aware of the critical facts prior to the exchange of exhibits in the above-captioned proceeding. To support its request petitioner alleges that on May 22, 1967, Peter Ryan and Milton Viken, doing business as Radio Stations KNND and KRKT (Ryan and Viken), filed an application seeking authority for the purchase of Radio Station KLOG, Kelso, Wash. Despite the fact that the instant application had been on file since March 21, 1966, no amendment to reflect Ryan and Viken's contract to purchase KLOG was filed. Moreover, Ryan and Viken did not file such an amendment within 30 days of the time the instant applications were designated for hearing, nor did they advise the parties to the proceeding of their intentions with respect to Station KLOG. Petitioner further alleges that it first became aware of Ryan and Viken's acquisition upon the exchange of exhibits in this proceeding and that an amendment to the application was not submitted until October 2, 1967.[2] This delay, petitioner contends, constitutes a violation of § 1.65 of the Commission's rules.[3] Moreover, the petitioner contends that the acquisition is particularly significant since KLOG had been operating at a loss of approximately $15,000 per year and that in the application for transfer of control, Ryan and Viken indicated that they would rely on the operating profits of KNND and KRKT to support KLOG until it becomes a profitable operation. Furthermore, Ryan and Viken, in the instant application, have indicated that they would rely upon profits from KNND and KRKT to construct and operate their proposed new FM station for the first year. The petitioner notes that data submitted with the instant application shows those stations capable of producing a profit of only approximately $20,000 per year. Thus, in view of the applicant's estimated cost of construction and first year operating expense, the KLOG acquisition raises serious questions as to Ryan and Viken's financial ability to construct and operate the proposed FM station for the first year.

2. The Bureau in its comments supports the enlargement of issues and suggests that inquiry be made both as to the section 1.65 question and the financial qualifications of Ryan and Viken. It points out that in circumstances where it appears that an applicant may be relying upon the same funds to demonstrate its financial ability to carry out two or more projects, an inquiry is in order to determine whether sufficient funds are available to accomplish both projects. Moreover, the Bureau is of the view that the KLOG acquisition constituted a material change which should have been reported pursuant to § 1.65 of the Commission's rules, and that, therefore, an issue with respect to this matter is in order.

3. Ryan and Viken oppose the enlargement of issues, urging that one day after the contract was executed (September 8, 1967), the Commission was advised of the transaction and that on October 2, 1967, less than 30 days from the closing date, it submitted an amendment to its instant application to reflect its acquisition of Station KLOG. With respect to the financial qualifications issue, Ryan and Viken note that they have, simultaneously with the opposition to the petition, submitted an amendment to their application which reflects a modified

[1] There are also before the Review Board Comments of Broadcast Bureau on "Petition to Enlarge Issues" filed Oct. 24, 1967; opposition to petition to enlarge issues, filed Oct. 31, 1967, by Peter Ryan and Milton Viken, doing business as Radio Stations KNND and KRKT; reply by Albany Radio Corp. filed Dec. 8, 1967; motion to strike filed Dec. 14, 1967, by Peter Ryan and Milton Viken, doing business as Radio Stations KNND and KRKT; and opposition to motion to strike, filed Dec. 21, 1967, by Albany Radio Corp.

[2] The Hearing Examiner granted the request for leave to amend by order, FCC 67M-1709, released Oct. 12, 1967.

[3] Sec. 1.65 provides in pertinent part as follows: "Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application. Whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate * * *".

financial proposal which clearly establishes their financial qualifications.[4]

4. Albany's allegations persuade us that a § 1.65 issue is appropriate. Questions 19 and 20 of section II of FCC Form 301 contain questions concerning the applicant's other broadcast interests, including a question with respect to other applications pending before the Commission. Moreover, section III of FCC Form 301 seeks information as to contracts and arrangements which relate to the financing of that station. Ryan and Viken did not amend the pending application to reflect their application to acquire control of Station KLOG filed May 22, 1967, until October 2, 1967. The applicant's acquisition of KLOG is particularly significant since that station was losing money and the applicant planned to rely on the same source of funds to initially support that station and to construct its proposed FM station (income from existing AM stations). Thus the application should have been amended to reflect the change in circumstances not later than June 21, 1967. The delay in filing the necessary amendments raises questions with respect to the qualifications of Ryan and Viken which can best be resolved in hearing. An issue will therefore be included for this purpose.

5. The Board notes as to the financial qualification issue that Ryan and Viken's application showed an estimated cash requirement of $40,225 to construct and operate its station for the first year. It also showed anticipated first year revenues of $48,000, but that it would rely upon profits from Stations KRKT and KNND to construct and operate the proposed new FM station. As most recently amended, the Ryan and Viken application indicates that they will require only $25,645 to construct and operate their proposed station for the first year. By way of explanation, they note that the amended proposal is for a minimum operation and does not anticipate the promotion and sales effort which would go into the operation if the proposed station were to produce $48,000 in revenues. The anticipated revenues are therefore reduced to $24,000 per annum.[5] The anticipated construction costs and costs of first year operation consist of $21,420 per year operating expenses, including payments and interest on equipment purchased, plus $3,925 downpayment on equipment and $300 balance due on consulting and engineering costs. These requirements would be met from four sources: (1) Anticipated cash flow from Stations KNND and KRKT of $16,600;[6] (2) current assets of Peter J. Ryan above current liabilities of approximately $3,000; (3) a loan in the amount of $7,500 from Mr. Thomas Jacobs, Albany, Oreg.; and (4) a loan in the amount of $7,500 from Mr. Fred C. Dunmire of Albany, Oreg., making $34,600 available to meet an anticipated requirement of $25,645. With respect to Ryan and Viken's obligations to Station KLOG, they note that the license is held by Washington Interstate Broadcasting Co., Inc. Each of the partners will own 40 percent of the corporate stock and each is obligated to furnish a total of $10,000 to the corporation for use during its first year of operation in the form of a $5,000 loan from each partner and the purchase of $5,000 worth of stock.[7] It was understood that when Ryan and Viken's interests in Stations KNND and KRKT were transferred to a new corporation, Interstate Broadcasting Co., Inc.,[8] the corporation would assume the partners' personal obligation to lend a total of $10,000 to Washington Interstate Broadcasting Co. This has been accomplished. However, each of the partners is obligated to acquire $5,000 worth of stock in Washington Interstate Broadcasting Co., Inc. Viken's personal balance sheet shows liquid current assets in excess of liabilities of only $1,500. He will borrow an additional $3,500 from his partner, Peter Ryan, to meet his commitment to Washington Interstate. Ryan's balance sheet shows current assets in excess of current liabilities of $11,569. If he meets his obligation of $5,000 to Washington Interstate and lends Viken $3,500, he will have available approximately $3,000 which may be used in conjunction with the construction operation of the proposed FM station. The proposed loans from Jacobs and Dunmire are supported by letters from each of the lenders which unconditionally indicate a willingness to lend $7,500 to Ryan and Viken on their personal signatures with an interest rate at 6 percent to be repaid at the rate of $100 per month until the loan is retired. Each proposed lender has submitted an affidavit to the effect that he has current assets (cash on hand, cash value of life insurance and stock listed on major exchanges) in excess of $7,500 over current liabilities. Ryan and Viken also submitted a lengthy exhibit with their opposition, which purported to support their original estimated income of $48,000. While this schedule which consists of a list of merchants in Albany, Oreg., together with the applicant's estimate of potential revenue from each business tends to establish the basis for the applicant's estimated revenues, it does little to persuade, without more, that revenue in that or any other amount will be forthcoming. In view of the foregoing considerations, the Board is persuaded that an issue as to the financial qualifications of Ryan and Viken is necessary.

6. The "minimum proposal" advanced by Ryan and Viken raises a number of questions which must be explored at the hearing. The proposed lenders have not submitted either a balance sheet or financial statement showing all of their liabilities as required by question 4 of section III, Form 301. In the absence of such a showing, Ryan and Viken are required to show in hearing that the proposed loans will be available. The applicant's explanation for the very substantial reduction in first year operating costs in view of its proposed programing is not convincing.[9] Thus an issue to determine whether Ryan and Viken have provided sufficient funds to operate their proposed station for 1 year is appropriate. Even though Ryan and Viken have not proposed to rely on income from the new FM station, an issue which will permit them to make a showing concerning income from that station will be included.

Accordingly, it is ordered, That the petition to enlarge issues, filed October 9, 1967, by Albany Radio Corp., is granted, and the issues in this proceeding are enlarged as follows:

1. (a) To determine whether Peter Ryan and Milton Viken, doing business as Radio Stations KNND and KRKT, failed to amend or attempt to amend their application within 30 days after substantial changes were made, as required by § 1.65 of the rules;

(b) To determine the effect of the facts adduced pursuant to subpart (a) of this issue on this applicant's requisite and comparative qualifications to receive a grant of its application;

2. (a) To determine whether Thomas Jacobs and Fred C. Dunmire have available liquid and current assets in excess of current liabilities to meet their respective loan commitments to Peter Ryan and Milton Viken, doing business as Radio Stations KNND and KRKT;

(b) To determine the basis for and reasonableness of the estimated first year operating costs proposed by Peter Ryan and Milton Viken, doing business as Radio Stations KNND and KRKT;

(c) To determine, in the event that Peter Ryan and Milton Viken, doing business as Radio Stations KNND and KRKT will have to depend on operating revenues of the proposed station during the first year of operation to meet construction and operating expenses, the basis for and reasonableness of such estimated operating revenues;

(d) To determine whether, in the light of the evidence adduced pursuant to subparts (a), (b), and (c) of this issue, Peter Ryan and Milton Viken, doing

[4] The Examiner granted the petition to amend and accepted the amendment for filing by order FCC 67M-2061 released Dec. 14, 1967.

[5] There is no indication in the amended application that Ryan and Viken intend to rely upon income from the proposed FM station.

[6] Cash flow as defined by the applicant consists of net profit less partner's withdrawals plus the depreciation. According to statements submitted the two stations had a combined cash flow for 1965 of $15,000, and of $19,000 in 1966.

[7] An unaudited balance sheet and statement of retained earnings which purports to show that, during September 1967, KLOG operated at a profit and generated sufficient cash flow to meet all of its requirements including payments due on the purchase notes, was submitted with Ryan and Viken's opposition.

[8] The assignment of those stations to Interstate Broadcasting Corp. was approved May 26, 1967.

[9] This matter was properly raised by Albany in its reply to the opposition, and a Ryan and Viken motion to strike the reply will be denied. In light of Ryan and Viken's modified financial proposal, it is appropriate to consider whether they can produce the programing which they had originally proposed.

business as Radio Stations KNND and KRKT, are financially qualified.

It is further ordered, That the burdens of proof and proceeding with the evidence are on Peter Ryan and Milton Viken, doing business as Radio Stations KNND and KRKT; and

It is further ordered, That the motion to strike filed December 14, 1967, by Peter Ryan and Milton Viken, doing business as Radio Stations KNND and KRKT, is denied.

Adopted: January 15, 1968.

Released: January 23, 1968.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68-995; Filed, Jan. 25, 1968; 8:47 a.m.]

FEDERAL MARITIME COMMISSION

CUNARD STEAM-SHIP CO., LTD.

Order of Revocation

Certificate of financial responsibility for indemnification of passengers for nonperformance of Transportation No. P-20 and certificate No. C-1,019 of financial responsibility to meet liability incurred for death or injury to passengers or other persons on voyages.

Whereas, The Cunard Steam-Ship Co., Ltd., 25 Broadway, New York, N.Y. 10004, has ceased to operate the passenger vessel "RMS Queen Mary"; and

Whereas, The Cunard Steam-Ship Co., Ltd., has requested that Certificate (Performance) No. P-20 and Certificate (Casualty) No. C-1,019 be revoked:

It is ordered, That Certificate (Performance) No. P-20 and Certificate (Casualty) No. C-1,019 be and are hereby revoked effective this date.

It is further ordered, That Certificate (Performance) No. P-20 and Certificate (Casualty) No. C-1,019 be returned to the Commission for cancellation.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served on the certificant.

By the Commission, January 23, 1968.

[SEAL] THOMAS LISI,
Secretary.

[F.R. Doc. 68-1009; Filed, Jan. 25, 1968; 8:48 a.m.]

[Independent Ocean Freight Forwarder License 781]

GREAT LAKES FORWARDING CO.

Revocation of License

Whereas, Ralph J. Henderson doing business as Great Lakes Forwarding Co., Board of Trade Bldg., Duluth, Minn., has ceased to operate as an Independent Ocean Freight Forwarder; and

Whereas, Ralph J. Henderson doing business as Great Lakes Forwarding Co., has returned Independent Ocean Freight Forwarder License No. 781 to the Commission; and

Whereas, by letter dated January 11, 1968, Ralph J. Henderson doing business as Great Lakes Forwarding Co., has requested the cancellation of his Independent Ocean Freight Forwarder License No. 781;

Now therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), § 6.03:

It is ordered, That the Independent Ocean Freight Forwarder License No. 781 of Ralph J. Henderson doing business as Great Lakes Forwarding Co., be and is hereby revoked, effective January 25, 1968.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served on the licensee.

LEROY F. FULLER,
Acting Director,
Bureau of Domestic Regulation.

[F.R. Doc. 68-1010; Filed, Jan. 25, 1968; 8:48 a.m.]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 649]

TEXAS

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of January 1968, because of the effects of certain disasters, damage resulted to residences and business property located in Bexar County, Tex.;

Whereas, the Small Business Administration has investigated and received other reports of investigations of conditions in the area affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such area constitute a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property, situated in the aforesaid county and areas adjacent thereto, suffered damage or destruction resulting from floods occurring on January 18, 1968, and continuing thereafter.

OFFICE

Small Business Administration Regional Office, 301 Broadway, San Antonio, Tex. 78205.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to July 31, 1968.

Dated: January 19, 1968.

ROBERT C. MOOT,
Administrator.

[F.R. Doc. 68-975; Filed, Jan. 25, 1968; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

[No. 34875]

PACIFIC INLAND TERRITORY

Increased Rates and Charges

JANUARY 24, 1968.

It appearing, that by order dated September 8, 1967, the Commission, Division 2, acting as an appellate division, entered into investigations concerning the lawfulness of the charges and regulations stated in tariff schedules designated therein, and suspended the operation of said schedules;

And it further appearing, that in order that consideration be given to all factors which may bear upon a proper determination of the issues, including the question whether the resulting rates would be just and reasonable, it is deemed appropriate in the public interest that the information specified below be included in the record to be developed in this proceeding; and good cause therefor:

It is ordered, That respondents be, and they are hereby, notified and required to submit information and supporting data which shall include, among other things, actual expense and revenue data (including anticipated expense and revenue data to show the effect of the proposed increase or decrease) and operating ratios specifically related to the traffic and carriers involved, overall operating ratios, detailed data to establish the representative nature of the carriers used, and in addition, all pertinent evidence and supporting data for the individual representative carriers as they relate to their overall operations, and specifically to the traffic and territories involved.

It is further ordered, That the traffic studies to be submitted shall represent the most current annual reporting period possible, and that they shall be based upon actual operations conducted during identical periods of time for each carrier; that the traffic studies shall be shown to be representative of the traffic covered by the rate proposal; and that the traffic study be costed out and operating ratios determined by the individual weight brackets included within the rate proposal. If the two carrier groups described below under the development of costs are used the traffic study shall be similarly separated. The revenues and costs for both groups shall also be totaled and operating ratios developed.

It is further ordered, That respondents shall produce evidence showing the total revenue earned for the services performed under the bureau's tariffs here under investigation for the most recent annual reporting period.

It is further ordered, That the cost study shall be based upon the most current annual reporting period adjusted to date. The costs may be developed for those carriers subject to the requirements for allocation of expenses between line haul and pickup and delivery in 49 CFR Part 1207, Instructions 27 and Account

9002, whose total amount of revenue derived under the bureau's tariffs collectively is 75 percent or more of the total revenue derived by all carriers participating in those tariffs. If those instruction 27 carriers' revenue is less than 75 percent of the total, then all of the instruction 27 carriers should be used. These study carriers shall be selected from the participating carriers in descending order beginning with the carrier deriving the greatest dollar amount of revenue from those tariffs. Unit costs are to be developed separately for (1) those carriers who earn 50 percent or more of their revenues under the tariffs involved and (2) those carriers who earn less than 50 percent. If factors similar to those published in appendix A to Highway Form B for the above two groups of carriers are not available, the published factors for the applicable territory based on the latest study are acceptable in the development of the unit costs.

It is further ordered, That both the cost study and the traffic study be adequately supported by working papers to permit a complete check of the procedures followed and the results obtained.

It is further ordered, That respondents shall produce evidence of the sum of money, in addition to operating expenses, needed to attract debt and equity capital which they require to insure financial stability and the capacity to render service. This evidence should include, without limiting the evidence that may be presented, particularized reference to the respondents' reasonable interest, dividend, and surplus requirement; and experienced, projected, and needed rate of return on depreciated investment in transportation.

It is further ordered, That all Class I and II motor carrier respondents shall submit detailed data regarding carrier-affiliate financial and operating relationships and transactions including, with respect to any and all individuals, partnerships, and corporations affiliated with respondents, when such transactions individually or in the aggregate amount to $2,500 or more during the year 1967, the following information:

1. Name of each affiliate from which respondent, during the year 1967, acquired, leased, or purchased lands, buildings, equipment, materials, supplies, parts, tires, tubes, gasoline, oil, or other property or services used by respondent in its operations as a motor common carrier.

2. Kinds of property or service which each affiliate supplies to respondent.

3. Basis of charges for property or services supplied by affiliate to respondent including the base and rate for rental charges.

4. Total charges by each affiliate to respondent during the year 1967 for:
   a. Lease of vehicles.
   b. Lease of terminals.
   c. Lease of other property.
   d. Pickup and delivery of shipments.
   e. Repair and servicing of vehicles.
   f. Management, accounting, financial, legal, purchasing, or traffic solicitation services.
   g. Property sold by affiliate to respondent.

5. If the affiliate derives revenue from the sale or lease of property or from services through transactions with persons, other than respondent, indicate the percentage of the revenue of such business to the total revenue of the affiliate in the year 1967.

6. A copy of the income statements for each affiliate for the year 1967 and the latest period of 1968 for which an income statement is available.

7. A statement, listing the amount of wages, salaries, bonuses, and other compensation paid by the affiliate in 1967 to any individual who is also a respondent or an officer, director, or substantial stockholder of a respondent; or the wife or close relative of a respondent or officer, director or substantial stockholder of a respondent.

8. The term "affiliate" as used in this order means:

a. Any individual who is also a respondent; an officer, director, or substantial stockholder of a respondent; or the wife or close relative either of a respondent, or of an officer, director, or substantial stockholder of a respondent.

b. Any partnership in which one of the partners is a respondent; an officer, director, or substantial stockholder of a respondent; or the wife or close relative either of a respondent; or of an officer, director, or substantial stockholder of a respondent.

c. Any corporation whose stock is wholly or partly owned by a respondent; by an officer, director, or substantial stockholder of a respondent; or by the wife or close relative either of a respondent or of an officer, director, or substantial stockholder of a respondent.

d. Any corporation which exercises control over the operations or finances of respondent.

It is further ordered, That the detailed information called for by this order shall be in writing and shall be verified by a person or persons having knowledge thereof; that such verified material shall be served on all parties of record on or before April 1, 1968, and at the same time, respondents shall file an executed original and two copies with this Commission, together with certificates of service in accordance with rule 22(a) of the general rules of practice. The information with respect to carrier affiliates may be served on the parties in summary form, if so desired.

It is further ordered, That all underlying data used in preparation of respondents' detailed and verified material shall be made available in the office of the party serving such verified matter during usual office hours for inspection by any party of record desiring to do so; and that the underlying data shall be made available also at the hearing, but only if and to the extent specifically requested in writing and required by any party for the purpose of cross-examination.

It is further ordered, That anyone desiring to become a party of record to receive copies of the verified material of respondents to be filed in accordance with the procedure set forth above, must notify the Commission, in writing, on or before March 11, 1968. As soon as practicable after such date, a service list of all parties of record will be prepared and served by the Commission. Otherwise, any interested person desiring to participate in the proceeding may make his appearance at the hearing.

It is further ordered, That this proceeding be, and it is hereby, referred to a hearing examiner who will be designated at a later date, for hearing commencing May 6, 1968, at 9:30 o'clock a.m., d.s.t. (or 9:30 o'clock a.m. U.S. standard time, if that time is observed), in Room 401, Multnomah Building, 120 Southwest Fourth Avenue, Portland, Oreg., and for the recommendation of an appropriate order thereon, accompanied by the reasons therefor.

It is further ordered, That a copy of this order be delivered to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER as notice to all interested persons.

And it is further ordered, That, to avoid future unnecessary service upon those respondents who, although participating carriers in the tariff schedules which are the subject of investigation, subsequent service on respondents herein of notices and orders of the Commission will be limited to those respondents who:

(1) Have been identified by name in the order or orders of investigation herein,

(2) Specifically make written request to the Secretary of the Commission to be included on the service list, or

(3) Have appeared at a hearing.

Dated at Washington, D.C., this 9th day of January 1968.

By the Commission, Commissioner Walrath.

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

[F.R. Doc. 68-984; Filed, Jan. 25, 1968; 8:45 a.m.]

[Nos. 34896, 11775 [1]]

ARKANSAS, IOWA, MICHIGAN, AND TEXAS

Intrastate Passenger Fares

JANUARY 23, 1968.

At a session of the Interstate Commerce Commisison, Division 2, held at its office in Washington, D.C., on the 27th day of December 1967.

It appearing, that petitions dated October 26, 1967, have been filed by the railroads listed in the appendix below averring that the intrastate passenger fares in the States of Arkansas, Iowa, Michigan, and Texas are below the level of the interstate passenger fares within these States;

[1] This proceeding also includes: Docket Nos. 11761, 11762, 28846, and 33683.

It further appearing, that the passenger fares involved herein are not subject to the jurisdiction of the State regulatory bodies of these States because of existing State law;

And it further appearing, that petitioners allege that the present intrastate passenger fares unduly burden and unjustly discriminate against interstate commerce in violation of section 13 of the Interstate Commerce Act:

It is ordered, That an investigation in Docket No. 34896 be, and it is hereby, instituted, and Docket Nos. 11775, 11761, 11762, 28846, and 33683 be, and they are hereby, reopened and that a hearing be held therein for the purpose of receiving evidence from the respondents (the petitioners above) and any other persons interested to determine whether the said intrastate passenger fares cause or will cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against, or undue burden on, interstate or foreign commerce; and to determine what fares shall be prescribe to remove the unlawful advantage, preference, prejudice, discrimination, or undue burden, if any, that may be found to exist;

It is further ordered, That the States of Arkansas, Iowa, Michigan, and Texas be notified of these proceedings by sending copies of this order by certified mail to their respective Governors and the applicable regulatory agencies;

It is further ordered, That notice of these proceedings be given to the public by depositing a copy of this order in the Office of the Secretary of the Commission at Washington, D.C., and by filing of a copy with the Director, Office of the Federal Register, Washington, D.C.;

And it is further ordered, That these proceedings be handled under the modified procedure, the filing and serving of pleadings to be as follows: (a) Opening statement of facts and argument by the respondents and any parties in support of the petitions on or before 30 days from the date of service of this order; (b) 30 days after that date, statement of facts and argument by any opposing parties; and (c) reply by respondents and any supporting parties 10 days thereafter.

By the Commission, Division 2.

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

APPENDIX

ARKANSAS

Chicago, Rock Island & Pacific Railroad Co.
The Kansas City Southern Railway Co.
Missouri Pacific Railroad Co.
St. Louis-San Francisco Railway Co.
St. Louis Southwestern Railway Co.

IOWA

The Atchison, Topeka & Santa Fe Railway Co.
Chicago & North Western Railway Co.
Chicago, Burlington & Quincy Railroad Co.
Chicago, Milwaukee, St. Paul & Pacific Railroad Co.
Chicago, Rock Island & Pacific Railroad Co.
Illinois Central Railroad Co.
Norfolk & Western Railway Co.

MICHIGAN

Chicago & North Western Railway Co.
Chicago, Milwaukee, St. Paul & Pacific Railroad Co.
Soo Line Railroad Co.

TEXAS

The Atchison, Topeka & Santa Fe Railway Co.
Chicago, Rock Island & Pacific Railroad Co.
The Kansas City Southern Railway Co.
Missouri Pacific Railroad Co.
St. Louis Southwestern Railway Co.
Southern Pacific Co.
The Texas & Pacific Railway Co.

[F.R. Doc. 68-985; Filed, Jan. 25, 1968; 8:46 a.m.]

[Notice 532]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 22, 1968.

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 protests 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 1966 (Sub-No. 4 TA), filed January 16, 1968. Applicant: THOMAS JORDANO & SON, INC., 21 Front Street, Brooklyn, N.Y. 11201. Applicant's representative: Edward M. Alfano, 2 West 45th Street, New York, N.Y. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by a manufacturer of drugs and toilet preparations including materials, supplies, equipment and advertising materials used in connection therewith, except in bulk, in tank vehicles, from New Brunswick, N.J., to points in Nassau County, N.J., and *returned shipments* of the above described commodities, from points in Nassau County, to New Brunswick, N.J., under continuing contract with E. R. Squibb & Sons, Inc., of New York, N.Y., for 150 days. Supporting shipper: E. R. Squibb & Sons, Inc., 745 Fifth Avenue, New York, N.Y. 10022. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 346 Broadway, New York, N.Y. 10013.

No. MC 13569 (Sub-No. 21 TA) (Correction), filed December 8, 1967, published FEDERAL REGISTER, issue of December 20, 1967, and republished as corrected this issue. Applicant: THE LAKE SHORE MOTOR FREIGHT COMPANY, 1200 South State Street, Girard, Ohio 44420. Applicant's representative: A. David Millner, 744 Broad Street, Newark, N.J. 07102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the plantsite of Jones & Laughlin Steel Corp., Putnam County, Ill., to points in Arkansas, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, Tennessee, Wisconsin, Oklahoma, and Nebraska; and (2) *materials equipment and supplies* used in the manufacture and processing of iron and steel articles, from points in the aforedesignated 10 States, to the plantsite of Jones & Laughlin Steel Corp., Putnam County, Ill., for 150 days. NOTE: The purpose of this republication is to include the inbound movement, which was inadvertently omitted from previous publication. Supporting shipper: Jones & Laughlin Steel Corp., 3 Gateway Center, Pittsburgh, Pa. 15230. Send protests to: G. J. Baccei, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 435 Federal Building, 215 Superior Avenue, Cleveland Ohio 44114.

No. MC 26739 (Sub-No. 61 TA), filed January 16, 1968. Applicant: CROUCH BROS., INC., Post Office Box 1059, St. Joseph, Mo. 64502. Applicant's representative: G. W. Keefer, Post Office Box 1059, St. Joseph, Mo. 64502. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between Chicago, Ill., and Omaha, Nebr., from Chicago over Interstate Highway 55 to junction Interstate Highway 80 (approximately 5 miles west of Joliet, Ill.), and thence over Interstate Highway 80 to Omaha, and return over the same route, as an alternate route. NOTE: Applicant seeks to interline only at both Chicago and Omaha, for 180 days. Supporting shipper: None; applicant seeks temporary authority to use the alternate route until certificate received pursuant to its corresponding permanent authority application. Send protests to: I. C. Peterson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 234 Federal Building, Topeka, Kans. 66603.

No. MC 39249 (Sub-No. 6 TA), filed January 16, 1968. Applicant: MARTIN MARANO, doing business as MARTY'S EXPRESS, 1236 Adams Avenue, Philadelphia, Pa. 19124. Applicant's representative: Raymond A. Thistle, Jr., 1500 Walnut Street, Philadelphia, Pa. 19102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General*

commodities (except classes A and B explosives and commodities in bulk), from the store and warehouse sites of Gimbel Bros in Philadelphia, Pa., commercial zone and King of Prussia, Pa., and Moorestown, N.J., to points in Delaware, New Jersey, Moorestown, N.J., to points in Delaware, New Jersey, and Pennsylvania, and the return of *refused, rejected, damaged or returned* merchandise, for 180 days. Supporting shipper: Arthur J. Jones, assistant general store manager, Gimbel Bros., Philadelphia, Pa. 19105. Send protests to: F. W. Doyle, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 900 U.S. Customhouse, Philadelphia, Pa. 19106.

No. MC 110479 (Sub-No. 22 TA), filed January 16, 1968. Applicant: HARPER TRUCK SERVICE, INC., 1230 North Eighth Street, Paducah, Ky. 42001. Applicant's representative: Robert M. Pearce, 1033 State Street, Central Building, Bowling Green, Ky. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, between the junction of U.S. Highway 62 and the west bank of Kentucky Lake at Kentucky Dam near Gilbertsville, Ky., and Louisville, Ky., serving no intermediate points, but serving Princeton and Caneyville, Ky., for purposes of interchange only; from the junction of U.S. Highway 62 with the west bank of Kentucky Lake at Kentucky Dam over U.S. Highway 62 to its junction with U.S. Highway 31W at Elizabethtown; thence over U.S. Highway 31W to Louisville and return over the same route; also from the junction of U.S. Highway 62 with the west bank of Kentucky Lake at Kentucky Dam over U.S. Highway 62 to its junction with the Western Kentucky Parkway interchange near Princeton, Ky.; thence over the Western Kentucky Parkway to its junction with Interstate Highway 65 near Elizabethtown, Ky; thence over Interstate Highway 65 to Louisville and return over the same route. NOTE: This application is directly related to Harper Truck Service, Inc.—Purchase (Portion)—Arnold Ligon Truck Line, Ind., MC–F–10007. Supporting shippers: There are approximately (41) statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: William W. Garland, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 390 Federal Office Building, 167 North Main Street, Memphis, Tenn. 38103.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-986; Filed, Jan. 25, 1968; 8:46 a.m.]

[Notice 533]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 23, 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 protests 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 107496 (Sub-No. 620 TA), filed January 18, 1968. Applicant: RUAN TRANSPORT CORPORATION, Third and Keosauqua Way, 50309, Post Office Box 855, Des Moines, Iowa 50304. Applicant's representative: H. L. Fabritz (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, from Milford, Iowa, to points in Minnesota, for 150 days. Supporting shipper: Sunray DX Oil Co., Post Office Box 2039, Tulsa, Okla. 74102. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 111729 (Sub-No. 256 TA), filed January 16, 1968. Applicant: AMERICAN COURIER CORPORATION, 222–17 Northern Boulevard, De Bevoise Building, Bayside, N.Y. 11361. Applicant's representative: J. K. Murphy (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Proofs, copy, manuscripts, telephone correction notices, and printed matter related thereto*, between Crawfordsville, Ind., on the one hand, and, on the other, Dertoit, Mich., Willard, Cleveland, Dayton, and Springfield, Ohio, Pittsburgh, Pa., and Buffalo, N.Y., (2) *radiopharmaceuticals, radioactive drugs, and medical isotopes*, between Columbus, Ohio, on the one hand, and, on the other, points in Boyd, Carter, Elliott, Greenup, Lawrence, and Lewis Counties, Ky., points in Cabell, Jackson, Kanawha, Lincoln, Mason, Putnam, and Wayne Counties, W. Va., points in Adams, Athens, Fairfield, Fayette, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Monroe, Morgan, Muskingum, Noble, Pickaway, Pike, Ross, Scioto, Vinton, and Washington Counties, Ohio; having an immediately prior or subsequent movement by air, (3) *payroll checks, business papers, records and audit and accounting media of all kinds*, between points in Bergen County, N.J., on the one hand, and, on the other, points in Connecticut, Massachusetts, Maryland, New Jersey, New York, Pennsylvania, Rhode Island, and Washington, D.C., for 180 days. Supporting shippers: R. R. Donnelley & Sons Co., 1009 Sloan Street, Crawfordsville, Ind. 47933; Abbott Laboratories, North Chicago, Ill. 60064; Automated Business Systems, 600 Washington Avenue, Carlstadt, N.J. 07072. Send protests to: E. N. Carignan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 346 Broadway, N.Y. 10013.

No. MC 113908 (Sub-No. 195 TA), filed January 18, 1968. Applicant: ERICKSON TRANSPORT CORPORATION, 706 West Tampa Street, Post Office Box 3180, Glenstone Station, Springfield, Mo. 65804. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Beverage base*, in bulk, in tank vehicles, from Cicero, Ill., to Reedley, Calif., for 180 days. Supporting shipper: Wagner Industries, Inc., 1331 South 55th Court, Cicero, Ill. 60650. Send protests to: H. J. Simmons, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1100 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 113945 (Sub-No. 13 TA), filed January 12, 1968. Applicant: THE HAULING AND RIGGING CORPORATION, 1007 Lewis Road, Greensboro, N.C. 27406. Applicant's representative: A. W. Flynn, Jr., Post Office Box 127, Greensboro, N.C. 27402. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron parts and steel parts*, used in the construction of metal tanks, which parts require the use of special equipment, from Richmond, Va., to Colfax, N.C., (2) *metal tanks*, requiring special equipment, from Colfax, N.C., to points in South Carolina, Virginia, West Virginia, Georgia, and points in Kentucky on and east of U.S. Highway 27, and points in Tennessee on and east of U.S. Highway 41. Restriction: The operations herein sought are to be limited to a transportation service to be performed under a continuing contract or contracts, with Richmond Engineering Co. of North Carolina, Inc., of Colfax and Greensboro, N.C., for 180 days. Supporting shipper: B. H. Keller, Jr., plant manager, Richmond Engineering Co. of N.C., Inc., Box 20165, Greensboro, N.C. 27401. Send protests to: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Post Office Box 10885, Cameron Village Station Raleigh, N.C. 27605.

No. MC 116457 (Sub-No. 5 TA), filed January 18, 1968. Applicant: CLAUDE BUTLER, doing business as BUTLER TRUCKING CO., Post Office Box 416, Show Low, Ariz. 85901. Applicant's representative: P. H. Dawson, 4453 East Piccadilly, Phoenix, Ariz. 85018. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing*, in rolls, *shingles and felts*, and *roofing supplies;* from Stroud, Okla., to points in New Mexico and Arizona, for 180 days. Supporting shipper: Allied Materials Corp., 5101 North Pennsylvania, Post Office Box 12340, 39th Street Station, Oklahoma City, Okla. 73112. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 3427 Federal Building, Phoenix, Ariz. 85025.

No. MC 119531 (Sub-No. 79 TA), filed January 18, 1968. Applicant: DIECK-BRADER EXPRESS, INC., 5391 Wooster Road, Cincinnati, Ohio 45226. Applicant's representative: Raymond C. Minks (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glassware* and *glass containers*, with or without caps, covers or stoppers, and paper cartons used in the packing of glassware and glass containers, from Winchester, Ind., to Chicago, Cicero, and Granite City, Ill.; Cedar Rapids, Iowa; Bardstown and Louisville, Ky.; Allen Park, Carrollton, Detroit, Niles, and Wayland, Mich.; Trenton, Mo.; Cleveland, Ohio; and Milwaukee, Wis., and *damaged and rejected shipments* on return, for 180 days. Supporting shipper: Anchor-Hocking Glass Corp., Lancaster, Ohio 43130. 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 123766 (Sub-No. 5 TA) (Correction), filed October 27, 1967, published FEDERAL REGISTER, issue of November 4, 1967, and republished as corrected this issue. Applicant: D & O TRANSPORT, INC., 214 South Fourth Avenue, Yakima, Wash. 98901. Applicant's representative: Douglas A. Wilson, Suite 2, Yakima Legal Center, 303 East D Street, Yakima, Wash. 98901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Boxes, fiberboard, paper or pulp board*, in bags, cases or bundles, and *partitions or interior packing forms*, fiberboard, paper or pulp board, flat or nested in bundles, between Longview and Yakima, Wash., on the one hand, and points in Idaho, on the other hand, for 180 days. Supporting shipper: Longview Fibre Co., Longview, Wash. 98632. Send protests to: S. F. Martin, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Building, Portland, Oreg. 97204. NOTE: The purpose of this republication is to add Yakima, Wash., to the territory proposed to be served, inadvertently omitted from the previous publication.

No. MC 127605 (Sub-No. 2 TA), filed January 16, 1968. Applicant: ELMER E. LAIRD, doing business as ELMER E. LAIRD & SON, 3135 West North Temple, Post Office Box 1343, Salt Lake City, Utah 84116. Applicant's representative: William S. Richards, Walker Bank Building, Salt Lake City, Utah 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sporting goods, fire alarms, vacuum cleaners, sewing machines, sewing machine cases, electric blenders, photo albums, floor sanding, waxing and cleaning machines, cameras, projectors, lawn mowers, encyclopedias, cookware, dishware, Melmac products, can openers, coffee makers, luggage, watches, power tools, radios, toothbrushes, grass catchers, picnic jugs, cutlery and advertising materials*, (1) from Los Angeles, Calif., and points in the Los Angeles Harbor commercial zone to Portland, Oreg., Seattle, Everett, and Spokane, Wash., and (2) from Portland, Oreg., Seattle, Everett, and Spokane, Wash., to Los Angeles, Calif., and points in the Los Angeles Harbor commercial zone, for 180 days. Supporting shipper: National Housewares, Inc., 1260 East Vine Street, Salt Lake City, Utah 84121. Send protests to: John T. Vaughan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 2224 Federal Building, Salt Lake City, Utah 84111.

No. MC 129450 (Sub-No. 1 TA), filed January 18, 1968. Applicant: DENNIS LINN, 912 West Duke Street, Hugo, Okla. 74743. Applicant's representative: James Bounds, 202 North Second Street, Hugo, Okla. 74743. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Treated fence posts, poles, treated lumber, finished and unfinished lumber*, from Hugo, Okla., to points in Texas, Kansas, and Missouri, for 180 days. Supporting shipper: R. M. Fry Creosoting Co., Inc., Jarvis B. Fry, Hugo, Okla. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 350, American General Building, 210 Northwest Sixth, Oklahoma City, Okla. 73102.

No. MC 129651 (Sub-No. 1 TA), filed January 18, 1968. Applicant: WENDELL A. THOMAS, R.F.D. No. 3, Centerville, Iowa 52544. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Gray iron castings*, in bulk, barrels and boxes, from Bloomfield, Iowa, to points in Missouri, Illinois, and Wisconsin, for 180 days. Supporting shipper: Bloomfield Foundry, Bloomfield, Iowa 52537. Send protests to: Ellis L. Annett, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 677 Federal Building, Des Moines, Iowa 50309.

By the Commission.

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

[F.R. Doc. 68-987; Filed, Jan. 25, 1968; 8:46 a.m.]

[Notice 78]

MOTOR CARRIER TRANSFER PROCEEDINGS

JANUARY 23, 1968.

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-69861. By order of January 17, 1968, the Transfer Board approved the transfer to Northwest Transport, Inc., Lewiston, Idaho, of a portion of the operating rights in certificate No. MC-117304 (Sub-No. 8), issued July 30, 1963 to Don Paffile, doing business as Paffile Truck Lines, Lewiston, Idaho, authorizing the transportation of machinery, mining equipment, mining supplies, mine ores except coal, building materials, hides, pelts, and tallow, from, to, or between specified points or parts of, Montana, Idaho, Oregon, and Washington. George R. LaBissoniere, 920 Logan Building, Seattle, Wash. 98101, attorney for applicants.

No. MC-FC-69960. By order of January 19, 1968, the Transfer Board approved the transfer to Elmer's Express, Inc., Billings, Mont., of certificate in No. M-63642, issued June 3, 1955, to Clifton A. Lund, doing business as Stendal Transportation Co., Lewistown, Mont., authorizing the transportation of livestock, and general commodities with various exceptions, between specified points in Montana. Herbert M. Boyle, 946 Metropolitan Building, Denver, Colo. 80202, attorney for applicants.

No. MC-FC-70122. By order of January 17, 1968, the Transfer Board approved the transfer to Ewing Transportation, Inc., Chester, Pa. 19013, of the operating rights of John M. Quinby, doing business as Quinby's Express, Chester, Pa. 19013, in certificate No. MC-16527, issued April 4, 1957, authorizing the transportation, over regular routes, of general commodities, excluding A and B explosives, household goods, commodities in bulk, and other specified commodities, between Philadelphia, Pa., and Wilmington, Del., and over irregular routes, of general commodities, excluding A and B explosives, household goods, commodities, and other specified commodities, between Philadelphia, Pa., on the one hand, and, on the other, Wilmington, Del., and points within 20 miles of Wilmington, and general commodities, excluding A and B explosives, household goods, commodities in bulk, and other specified commodities, between

points in Philadelphia. Ralph C. Busser, Jr., 1710 Locust Street, Philadelphia, Pa. 19103, attorney for applicants.

No. MC–FC–70160. By order of January 17, 1968, the Transfer Board approved the transfer to G. Grant Sims, Elmer L. Sims, and M. K. Sims (George Milton Sims, Elmer L. Sims, and Beverly Sims Candland, Executors), a partnership, doing business as Salt Lake Transfer Co., Salt Lake City, Utah, of the operating rights in certificates Nos. MC–109236, MC–109236 (Sub-No. 6), and MC–109236 (Sub-No. 13) issued December 22, 1966, December 8, 1948, and November 2, 1967, respectively, to George A Sims, M. K. Sims, Elmer L. Sims, and G. Grant Sims et al., a partnership, doing business as Salt Lake Transfer Co., Salt Lake City, Utah, authorizing the transportation of various commodities, including household goods, general commodities, explosives, and commodities requiring the use of special equipment, between points and places in Utah, Idaho, Montana, Colorado, New Mexico, Wyoming, Arizona, and Nevada. Keith E. Taylor, 520 Kearns Building, Salt Lake City, Utah 84101, attorney for applicants.

No. MC–FC–70161. By order of January 17, 1968, the Transfer Board approved the transfer to Frank A. Barben, Fred A. Barben, and Charles H. Barben, a partnership, doing business as Wm. H. Barben Sons, Philadelphia, Pa., of the operating rights in certificate No. MC–39697 issued June 2, 1949, to Edward J. Barben, Frank A. Barben, Fred A. Barben, and Charles H. Barben, a partnership, doing business as Wm. H. Barben Sons, Philadelphia, Pa., authorizing the transportation of household goods, as defined by the Commission, between Philadelphia, Pa., on the one hand, and, on the other, points and places in New Jersey. Raymond A. Thistle, Suite 1710, 1500 Walnut Street, Philadelphia, Pa. 19102, attorney for applicants.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 68–998; Filed, Jan. 25, 1968; 8:46 a.m.]

[Application 74, Amdt. 3]

WESTERN CARRIERS TARIFF BUREAU

Application for Approval of Amendment to Agreement

JANUARY 23, 1968.

The Commission is in receipt of a section 5a application in the above-entitled proceeding for approval of an amendment to the agreement therein approved.

Filed November 24, 1968, by William M. Larimore, agent, Western Carriers Tariff Bureau, 260 California Street, San Francisco, Calif. 94111.

The amendment involves: (1) Revision of the procedures for collective ratemaking so as to make the provisions more definite and certain; (2) revision of the fees and dues schedule; (3) compliance with Ex Parte No. 253; (4) amends the internal procedures of the Bureau; and (5) making such other incidental changes made necessary by the foregoing.

The amendment is docketed and may be inspected at the office of the Commission in Washington, D.C.

Any interested person desiring to protest and participate in this proceeding shall notify the Commission in writing within 20 days from the date of this notice. As provided by the general rules of practice of the Commission, persons other than applicants should fully disclose their interest, and the position they intend to take with respect to the application. Otherwise, the Commission, in its discretion, may proceed to investigate and determine the matters involved without public hearing.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 68–989; Filed, Jan. 25, 1968; 8:46 a.m.]

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FEDERAL REGISTER

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Friday, January 26, 1968 • Washington, D.C.

PART II

Department of the Interior

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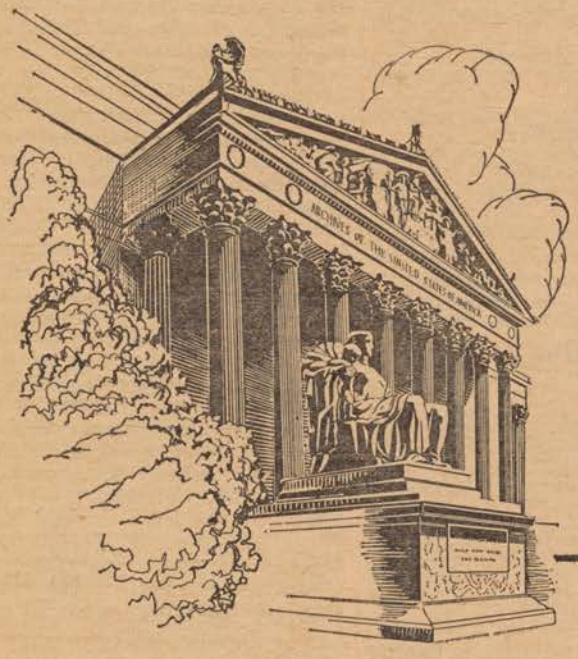
Employee Responsibilities and Conduct



Title 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior

PART 20—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Part 20 of the rules and regulations of the Department of the Interior is amended as follows:

1. Section 20.735–11(a) is amended by addition of reference to paragraph (f).

2. Section 20.735–11(d) is amended to indicate the circumstances under which a gift to an official superior may be allowed; and (e) is revised to conform with Public Law 89–673, 80 Stat. 952.

3. Section 20.735–11(f) has been added. This provision formerly appeared in § 20.735–12 *Outside work and interests* as paragraph (c)(8)(i).

4. Section 20.735–12(c)(8)(i) is deleted from this section and moved to § 20.735–11 *Gifts, entertainment, and favors* as paragraph (f). Subdivisions (ii) and (iii) have been redesignated (i) and (ii), respectively.

5. Section 20.735–15(b) is amended to show proper Departmental Manual reference.

6. Section 20.735–16 is amended to reflect Departmental policy under the Public Information Act (Public Law 90–23).

7. Section 20.735–19 is amended to correct statutory reference made obsolete by the codification of title 5, United States Code.

8. Section 20.735–20 (l) and (p) are amended to correct statutory reference made obsolete by the codification of title 5, United States Code.

9. Section 20.735–21(c), (4), (7), (8), (10), and (16) are amended to correct statutory references made obsolete by the codification of title 5, United States Code; subparagraph (17) is added.

10. Section 20.735–41(a) is amended to restrict the requirements relative to reporting employment and financial interests to those employees in positions where possibility of conflict-of-interest involvement is clear.

11. Section 20.735–42 is amended to eliminate quarterly supplementary statements.

12. Section 20.735–42a is added to provide availability of the Department's grievance procedure for settling questions concerning the applicability of the reporting requirement.

13. Section 20.735–46 is amended to provide for persons responsible for maintaining the financial statements in confidence.

14. Sections 20.735–48 (a) and (b) are amended to provide for a disclosure of financial interests limited to the interests relevant to the duties of the special Government employee.

15. The appendix is revised in its entirety.

Part 20, as amended, reads as set forth below.

These revisions and amendments of Part 20 were approved by the Civil Service Commission on December 18, 1967, and shall become effective upon publication in the FEDERAL REGISTER.

STEWART L. UDALL,
Secretary of the Interior.

JANUARY 17, 1968.

Subpart A—General Provisions

Sec.
20.735–1 Purpose.
20.735–2 Definitions.
20.735–3 Interpretation and advisory service.
20.735–4 Disciplinary and other remedial action.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

20.735–11 Gifts, entertainment, and favors.
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20.735–13 Holding State or local office.
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20.735–15 Government property.
20.735–16 Information.
20.735–17 Indebtedness.
20.735–18 Gambling, betting, and lotteries.
20.735–19 Habitual use of intoxicants.
20.735–20 Specific types of conduct.
20.735–21 Statutes relating to conduct.

Subpart C—Special Government Employees: Responsibilities, Ethical and Other Conduct

20.735–31 Statutes relating to conflict of interest.
20.735–32 Use of Government employment.
20.735–33 Use of inside information.
20.735–34 Coercion.
20.735–35 Gifts, entertainment, and favors.
20.735–36 Miscellaneous statutory provisions.

Subpart D—Statements of Employment and Financial Interests

20.735–41 Employees required to file statements: Manner of filing.
20.735–42 Supplementary statements.
20.735–42a Employee's complaint on filing requirement.
20.735–43 Interests of employees' relatives.
20.735–44 Information not known by employees.
20.735–45 Information prohibited.
20.735–46 Confidentiality of employees' statements.
20.735–47 Effect of employees' statements on other requirements.
20.735–48 Special Government employees—specific provisions.
20.735–49 Review and analysis of statements.
Appendix—List of Employees Required to File Statements.

AUTHORITY: The provisions of this Part 20 issued under E.O. 11222 of May 8, 1965, 30 F.R. 6469, 3 CFR, 1965 Supp.; 5 CFR 735.104.

Subpart A—General Provisions

§ 20.735–1 Purpose.

(a) *Policy on employee conduct.* The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. Employees of the Department are expected to comply with all Federal statutes and with regulations issued by the Civil Service Commission and by the Department. Legal requirements are essentially concerned with official conduct, i.e., the behavior of the employee in the course of or in relation to his official duties. Employees of the Department are required to conduct themselves in such a manner that the work of the Department is effectively accomplished and to observe the requirements of courtesy, consideration, and promptness in dealing with or serving the public or its clientele. Personal and private conduct of an employee (as opposed to official conduct), that reflects adversely upon the dignity and prestige of the Federal Service, is also a matter of concern to Departmental management. All employees are expected to cultivate those personal qualities which characterize a good civil servant—loyalty to the United States, a deep sense of responsibility for the public trust, and a standard of personal deportment which will be a credit to the individual.

(b) *Subordination to authority.* An employee is required to carry out the announced policies and programs of the Department. While policies related to his work are under consideration, he may, and is expected to express his opinions and points of view; but once a decision has been rendered by those in authority, he will be expected unreservedly to assure the success of programs which it is his responsibility to effectuate. If he fails to carry out any lawful regulation, order, or policy, or deliberately refuses to obey the proper requests of his superiors having responsibilty for his performance, he is subject to appropriate disciplinary action.

(c) *Bureau responsibility.* Heads of bureaus and offices shall establish and maintain internal procedures by means of which all employees are adequately and systematically informed of the content, meaning, and importance of the regulations in this part. Copies of the regulations in this part shall be given to each employee and special Government employee within 90 days from the date of the regulations in this part and upon entrance to duty. Each bureau and office shall remind its employees and special Government employees of the regulations in this part periodically, at least once annually, through a publication or memorandum issued to all employees.

(d) *Employee responsibility.* It is the responsibility of employees to familiarize themselves, and to comply with the regulations in this part. Employees are expected to consult with their supervisors and personnel officers on general questions they may have regarding the applicability of the regulations. On specific matters and for guidance on questions of conflict of interest they will receive authoritative advice and guidance from Bureau Counselors, Deputy Counselors, or the Departmental Counselor.

(e) *Supplementary regulations.* The head of a bureau or office may issue supplementary regulations, but such supplementary regulations must be submitted to the Department for approval before they are issued.

§ 20.735–2 Definitions.

(a) "Agency" means the Department of the Interior.

(b) "Employee" means an officer or employee of the Department, but does not include a special Government employee.

(c) "Executive order" means Executive Order 11222 of May 8, 1965.

(d) "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.

(e) "Special Government employee" means an officer or employee of the Department of the Interior who is retained, designated, appointed or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

§ 20.735–3 Interpretation and advisory service.

(a) *Designation of Counselors.* (1) The Director of Survey and Review in the Office of the Assistant Secretary for Administration is designated to serve as Counselor for the Department, and shall be responsible for providing direct advice, assistance, interpretation, and guidance to each employee and special Government employee who requests advice on a particular factual situation, or interpretation of the Department's regulations relating to conduct matters.

(2) Each Bureau Head shall immediately designate his bureau personnel officer as Bureau Counselor; he shall further designate each personnel officer at regional level or equivalent as Bureau Deputy Counselor. Each employee and special Government employee shall be informed of the name, address, and telephone number of the Counselor in his area by a Bureau of Office written notice. Any changes shall be communicated to each employee or special Government employee in the same manner. No designation of Deputy Counselor shall be made at project, reservation, district levels or below.

(3) The Chief, Division of Personnel, Office of Management Operations, is designated Deputy Counselor for employees and special Government employees of the Office of the Secretary and other Offices for which personnel services are provided by his Division.

(b) *Channels for counseling.* (1) It is the Department's policy to encourage responsible disposition of counseling requests by the Bureau Deputy Counselors for matters of field origin or by Bureau Counselors for matters of headquarters origin. Any employee or special Government employee so desiring, however, may refer his request for counseling directly to the Departmental Counselor.

(2) Counseling provided by Bureau Deputy Counselors involving any question of conflict of interest shall be in cooperation with the Regional Solicitor or a Field Solicitor designated by the Regional Solicitor. The Departmental Counselor and Bureau Counselors will similarly cooperate with the headquarters Office of the Solicitor.

(3) In order that the Departmental Counselor may be informed as to the content and scope of counseling at bureau levels, field or headquarters, the Bureau Counselor will be responsible for communicating a summary of each such counseling action to the Departmental Counselor on a concurrent basis: *Provided, however,* That such reporting is required only as to counseling in regard to conflict of interest questions. The Departmental Counselor will coordinate his review of these reported data with the Office of the Solicitor.

§ 20.735–4 Disciplinary and other remedial action.

(a) Violations of the regulations in this part by an employee or special Government employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(b) After consideration of the statements of employment and financial interests submitted by the employee or special Government employee and the explanation of such employee as required in the regulations in this part (see Subpart D of this part) if the Secretary or his designee decides that remedial action is required, he shall take immediate action to end the conflict or appearance of conflict of interest. Remedial action may include, but is not limited to:

(1) Changes in assigned duties;

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

(3) Disciplinary action; or

(4) Disqualification for a particular assignment.

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

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 20.735–11 Gifts, entertainment, and favors.

(a) Except as provided in paragraphs (b) and (f) 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 this Department; (2) conducts operations or activities that are regulated by this Department; or, (3) has interests that may be substantially affected by the performance or nonperformance of his official duty. Except as specifically authorized by law, employees are not authorized to accept on behalf of the United States voluntary donations or cash contributions from private sources for travel expenses, or the furnishing of services in kind, such as hotel accommodations, meals, and travel accommodations.

(b) (1) The prohibitions of paragraph (a) of this section do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) An employee may accept 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) An employee may accept loans from banks or other financial institutions on customary terms to finance proper and usual activities, such as home mortgage loans;

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

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

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

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

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

(d) 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.

(e) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(f) Neither this section nor § 20.735–12 prohibits receipt of bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, an employee may not be reimbursed, and payment may not be made on his behalf, for excessive personal living expenses, gifts, or entertainment nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B–128527 of the Comptroller General, dated March 7, 1967.

§ 20.735–12 Outside work and interests.

(a) *Policy.* Outside work is permitted to the extent that it does not prevent an employee from devoting his primary interests, talents, and energies to the accomplishments of his work for the Department or tend to create a conflict

between the private interests of an employee and his official responsibilities. The employee's outside employment shall not reflect discredit on the Government or his agency.

(b) *Definitions.* (1) The term "outside work" means all gainful employment other than the performance of official duties. It includes, but is not limited to self-employment, working for another employer, the management or operation of a private business for profit (including personally owned businesses, partnerships, corporations, and other business entities).

(2) The term "active proprietary management" as used in relation to outside work refers to a business affiliation in which substantial ownership is coupled with responsibility for day to day management effort in making decisions, supervising operations, dealing with the public and otherwise discharging essential tasks in the direction of the business.

(3) A situation which may involve a "conflict of interest" is one in which a Federal employee's private interest, usually of an economic nature, conflicts or raises a reasonable question of conflict with his public duties and responsibilities. The potential conflict is of concern whether it is real or only apparent.

(c) *Restrictions.* (1) 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. Any activity involving an incompatibility of interest is prohibited. Any work assignment or employment affiliation which might encourage on the part of members of the general public a reasonable presumption of a conflict of interest falls in this category. Incompatible activities include but are not limited to:

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

(ii) Outside employment which tends to impair his mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner.

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

(3) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, Civil Service regulations, or the regulations in this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Secretary of the Interior or his designee gives written authorization for the use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the Executive order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency, or which draws substantially on official data or ideas which have not become part of the body of public information.

(4) Among other things, abuse of leave privileges to engage in outside work shall be treated as an interference with official performance.

(5) Active proprietary management of any except the smallest business is questionable because of the probability that such management responsibilities may interfere with the employee's obligations to his primary employer, the Federal Government. Employees are especially urged to seek the advice of their counselors before committing themselves to such activities.

(6) An employee shall not perform outside work:

(i) Which is of such a nature that it may be reasonably construed by the public to be the official act of the Department; or

(ii) Which involves the use of Government facilities, equipment, and supplies of whatever kind; or

(iii) Which involves the use of official information not available to the public.

(7) While an employee is not prohibited from performing outside work solely because the work is of the same general nature as the work he performs for the Government, no employee may perform outside work:

(i) If the work is such that he would be expected to do it as a part of his regular duties; or

(ii) If the work involves active proprietary management of a business closely related to the official work of the employee; or

(iii) If the work for a private employer is of the same type as or closely akin to that involved in the program responsibilities of the bureau or office in which he is employed; or

(iv) If the work would tend to influence the exercise of impartial judgment on any matters coming before the employee in the course of his official duties.

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

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

(ii) 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.

§ 20.735–13 Holding State or local office.

(a) Under the Civil Service regulations, full-time Federal employees may hold positions under a State or local government on other than a full-time basis. Federal employees employed on other than a full-time basis may hold positions under a State or local government, whether full time or otherwise, and full-time or part-time Federal employees who are on leave without pay may hold a State or local office on a full-time basis or otherwise. However, a Federal employee of either class must obtain the advance approval of the head of his bureau or other Departmental office before accepting a position under a State or local government.

(b) Permission to serve State or local governments constitutes an exception to the general rule that no person may accept or hold any office under a State or local government, including departments and agencies and political subdivisions of such governments, at the same time that he holds by appointment any office in the executive branch of the Federal Government.

(c) The advance approval that is required may be granted by the head of a bureau or other Departmental office, or his designated representative, if he determines that the requirements of Civil Service regulations are met and that such service will not adversely affect the Department's programs or its relationships with the public. Leave without pay for the purpose of service with State or local governments may be granted only with Departmental concurrence.

§ 20.735–14 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, the Executive order, Civil Service regulations, or the regulations in this part.

§ 20.735–15 Government property.

(a) *General responsibility.* Employees shall be held accountable for Government property and moneys entrusted to their individual use or in connection with their official duties. It is their repsonsibility to protect and conserve Government property and to use it economically and for official purposes only.

(b) *Misuse of Government vehicles.* Employees shall not use or authorize the use of a Government owned or leased motor vehicle for other than official purposes. (See Departmental Manual Part 416, Chapter 1.)

§ 20.735–16 Information.

It is the policy of the Department to accord the public access to information about its activities and to make available to the public records of the Department except in the cases where the disclosure of the record is prohibited by statute or

Executive order or the record is exempt from the disclosure requirements of the Public Information Act (Public Law 90–23) and sound grounds exist which require application of an applicable exemption. An employee may not testify in any judicial or administrative proceedings concerning matters related to the business of the Government without the permission of the head of the bureau, his designee, or the Secretary of the Interior, or his designee. (See Part 2 of this subtitle, as revised July 3, 1967.)

§ 20.735–17 Indebtedness.

(a) *Employees responsibility.* An employee should pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which a bureau or office or the Department determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of dispute between an employee and an alleged creditor, this section does not require a bureau or office or the Department to determine the validity or amount of the disputed debt. Timely payment of any debt owed to the Government of the United States is an important personal responsibility of each employee concerned. An employee who fails to liquidate an obligation such as refunds of overpayments, travel advances, and income taxes promptly when due is a source of embarrassment to the Department and his salary is subject to seizure. He is also subject to removal from the service or to other disciplinary action. An employee who fails promptly to liquidate a final administrative determination of indebtedness for State or local taxes when due is a source of embarrassment to the Department and is subject to removal from the service or to other disciplinary action.

(b) *Departmental responsibility.* The Department will not act as a collection agency for private debts owed by its employees. Each bureau shall handle debt complaint letters received by it. Debt letters concerning bureau employees received in the Office of the Secretary shall be referred to the Director of Personnel for handling with the bureau concerned. Debt letters concerning employees in the Office of the Secretary or in other departmental units shall be referred to the Director of Management Operations for handling.

(c) *Routine debt letters.* Normally, the original letter shall be routed to the employee and he shall be instructed to handle the transaction direct with the creditor. When the creditor's letter is routed to the employee for direct handling, it should also be acknowledged with advice that the matter is being called to the attention of the employee. If a debt letter does not contain sufficient information to provide a basis for satisfactory handling with the employee, the creditor may be requested to furnish information such as the following: The method used in establishing the employee's credit; the date and amount of original debt; the schedule of payments agreed upon; the date and amount of each payment made; the current balance owed; the action taken to collect. When it is deemed advisable, the employee may be called upon to furnish a written statement concerning the claim or he may be interviewed for the purpose of arranging an equitable settlement with the creditor. If a statement is furnished by the employee or if he is interviewed, the creditor may be sent a copy of the statement or may be informed of the results of the interview with the employee.

(d) *Access to employees.* Whether by telephone or otherwise, creditors or collectors shall not have access to employees on premises occupied by the Department during working hours. If, nevertheless, the employee is approached during working hours, he shall inform the creditor or collector that he is not allowed to transact private business during official hours and that any discussions must be held after hours and away from Departmental premises.

(e) *Disciplinary action.* An employee may be subject to removal if his failure to meet just financial obligations becomes chronic, or causes embarrassment to or places undue burden on the Department. A decision to remove an employee for these reasons must be taken with full consideration for any extenuating circumstances over which he has no control, such as sickness, accident, or death in the family.

§ 20.735–18 Gambling, betting, and lotteries.

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

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

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

§ 20.735–19 Habitual use of intoxicants.

An employee who habitually uses intoxicants to excess is subject to removal (5 U.S.C. 7352).

§ 20.735–20 Specific types of conduct.

(a) *Misconduct.* Civil Service regulations state that any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct on the part of a Federal employee is cause for his removal from the service of the Government (Title 5, Code of Federal Regulations, § 731.201 and 752.104; see also Federal Personnel Manual, Chapter 735).

(b) *Negotiations for employment.* It is the policy of the Department that employees shall not, without proper clearance, negotiate for future non-Federal employment with persons or organizations having business with the Department as to which the employee is called upon officially to render advice or make judgments. (See also, the related criminal provision referred to in section 20.735–21(b).) In the event an employee desires to negotiate for such employment, he shall inform his supervisor of his intentions. If the supervisor determines that the proposed negotiations will not adversely affect the Government's interests, he may authorize the employee to proceed.

(c) *Selling or soliciting.* Employees and other persons are prohibited from selling or soliciting for personal gain within any building occupied or used by the Department without proper permission. This prohibition does not apply to:

(1) Authorized and installed business activities, e.g., Indian Arts and Crafts Shop; Employees' Cafeteria;

(2) Solicitation for Government bonds, United Givers Fund, and other purposes approved under the President's fund-raising policy; or

(3) Token solicitations for floral remembrances, retirement gifts, and similar purposes.

(d) *Money lending.* The practice of money lending between or among employees is to be discouraged. Organized financial lending activities by employees, except when officially sponsored by the Department, is prohibited. Properly constituted employee credit unions that provide various financial services to employee members are sanctioned.

(e) *Endorsements.* Employees are prohibited from endorsing the proprietary products or processes of manufacturers or the services of commercial firms for advertising, publicity, or sales purposes. Use of materials, products, or services by the Department does not contribute official endorsement, and employees are cautioned not to make statements, written or oral, that can be exploited to the advantage of one firm over another.

(f) *Contracts with employees.* Because contracts with its own employees are considered to be against public policy, contracts with employees or business concerns or organizations which are substantially owned or controlled by employees are not permitted in the Department except where it is clearly shown that the interest of the United States is the major consideration to be served thereby.

(g) *Supplies for, and purchases from, Indians.* No Federal employee may have an interest in a contract with the Government or with the Indians for the purchase, transportation, or delivery of goods or supplies for the Indians (18 U.S.C. 437). While Federal employees may, under regulations of the Secretary of the Interior, purchase products, services, or commodities from Indians, such purchases may not be made for the purposes of resale (25 U.S.C. 87a). Regulations on purchases are found in 25 CFR 251.5.

(h) *Interests in lands.* Part 7 of this title (Title 43 of the Code of Federal Regulations) prohibits employees and their spouses from acquiring voluntarily or retaining an interest in any lands or resources administered by the Bureau of

Land Management, unless specifically excepted or authorized.

(i) *Community and professional activities.* Employees are encouraged to participate in the activities of professional societies and of civic organizations whose purpose and objectives are not inconsistent with those of the bureau in which they are employed or of the Department. Affiliation with such groups may be mutually beneficial to the employee and to the Government; however, such participation must not affect adversely an employee's performance of his regularly assigned duties.

(j) *Records and testimony.* Part 2 of this title (Title 43 of the Code of Federal Regulations) contains the regulations and procedures of the Department which govern the availability of official records and the testimony of employees concerning matters related to the business of the Government or the contents of official records. Appeals regarding an interpretation of these regulations as applied to a particular set of circumstances are decided by the Solicitor.

(k) *Budget estimates and legislation.* Since the enactment of the Budget and Accounting Act of 1921, it has been Executive policy to consider budget estimates transmitted to the Congress with the approval of the President to be binding upon the executive departments and agencies. Employees are expected to conform to this policy by refraining from efforts to promote an increase in the departmental budget as approved by the President. Employees are also required to refrain from promoting or opposing legislation relating to programs of the Department without the official sanction of the proper departmental authority. It should be clearly understood, however, that nothing in this policy is to be considered as restraining or interfering with the obligation of employees to respond freely and candidly to any congressional inquiries made of them in regard to appropriations or related matters.

(l) *Political activity.* Subchapter III of chapter 73 of Title 5, United States Code (the former Hatch Act) states generally that employees may not use their official authority or influence for the purpose of interfering with an election or affecting its results, and they may not take an active part in political management or in political campaigns. An employee is subject to dismissal for violation. (See 5 CFR Part 733 and Chapter 733, Federal Personnel Manual.) Information regarding prohibition against employees engaging in political activity, including certain exceptions, is contained in Pamphlet 20, "Political Activity of Federal Officers and Employees", issued by the Civil Service Commission.

(m) *Equal Government employment opportunity policy.* It is the policy of the Federal Government that there shall be no discrimination based on such factors as race, creed, color, national origin, political affiliation, physical handicap, sex, and similar matters not related to merit and fitness. Part 370, Chapter 713, of the Departmental Manual contains departmental regulations implementing Executive Order 11246 relating to equal Government employment opportunity policy (see also 5 CFR, Part 713 and Chapter 713, Federal Personnel Manual).

(n) *Nepotism.* Employment by reason of blood or marriage relationships rather than merit is prohibited. No employee shall supervise a member of his family except in emergency situations such as forest fires, floods, earthquakes, or at isloated field stations or where there is a shortage of quarters. Exceptions in other situations may be made with the approval of the head of the Bureau. (Regarding summer employees, refer to current departmental directives.)

(o) *Political affiliation.* Under the Civil Service regulations, no person in the Executive branch with authority to take or recommend a personnel action relative to a person in, or an eligible or applicant for, a position in the competitive service, may make inquiry concerning his political affiliation. All disclosures concerning political affiliation shall be ignored, except as to membership in political parties or organizations constituted by law as a disqualification for Government employment. Except as may be authorized or required by law, discrimination may not be exercised, threatened, or promised by any person in the Executive branch against or in favor of an employee in, or an eligible or applicant for, a position in the competitive service because of his political affiliation (see also 5 CFR, Part 733 and Chapter 733, Federal Personnel Manual).

(p) *Employee organizations.* An employee may not be a member of an organization of Government employees that asserts the right to strike against the Government or an organization that advocates the overthrow of our constitutional form of Government in the United States (5 U.S.C. 7311). Further information regarding employee affiliation with employee organizations will be found in the Departmental Manual, Part 370, Chapter 711, Employee Management Cooperation.

(q) *Patents.* Patent regulations issued by the Secretary, Part 6 of this title (Title 43, Code of Federal Regulations), define the rights and obligations of employees with respect to any inventions made or developed while they are employed in the Department. Under the regulations each employee shall submit a report on any invention made or developed to the Solicitor, through supervisory channels.

(r) *Practitioners.* The Department has adopted regulations applicable to individuals who practice before the Department, which place certain restrictions upon its present and former employees. These restrictions are contained in Part 1 of this title (Title 43, Code of Federal Regulations).

(s) *Indian employees and tribal representatives.* An Indian who is employed in a regularly established position in the Bureau of Indian Affairs within the jurisdiction of which his tribal body is a part, may not serve as a representative of his tribe, band, or pueblo. Neither may an Indian who is serving in such a representative capacity be employed in a regularly established position in the Bureau of Indian Affairs within the jurisdiction of which his tribal body is a part.

(1) These restrictions do not apply to Indians who are employed on an intermittent or irregular basis where such employment does not require decisions or actions which might be influenced by their official connection with the tribe, band, or pueblo. Nor shall these restrictions prevent an Indian serving as a representative from being employed on such a basis.

(2) The Commissioner of Indian Affairs may make exceptions to the restrictions contained in this paragraph when circumstances justify.

(3) The term "representative" as used in this paragraph means the occupant of an elective or other position in the official governing body of the tribe, band, or pueblo, or any position established by such governing body which carries with it the right to vote in the proceedings of that body.

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

§ 20.735–21 Statutes relating to conduct.

(a) Certain restrictions are imposed by statute upon employees of the Bureau of Land Management (43 U.S.C. 11), of the Bureau of Mines (30 U.S.C. 6), and of the Geological Survey (43 U.S.C. 31), and upon employees engaged in Indian Affairs (25 U.S.C. 68). These restrictions must be complied with, and the heads of the bureaus mentioned and of bureaus and offices whose employees are engaged in Indian Affairs have a particular responsibility both to inform their employees of the restrictions and to enforce them.

(b) The statutes generally spoken of as the conflicts of interest laws, insofar as they relate to regular employees, are sections 203, 205, 207, 208, and 209 of Title 18 of the United States Code. The Department of Justice, in a memorandum of January 28, 1963 (28 F.R. 985; 18 U.S.C. 201, note) summarized the main provisions of conflict of interest laws as follows:

> A regular officer or employee of the Government—that is, one appointed or employed to serve more than 130 days in any period of 365 days—is in general subject to the following major prohibitions (the citations are to the new sections of title 18 of the United States Code):
>
> 1. He may not, except in the discharge of his official duties represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).
>
> 2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

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

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restraint described in paragraph 3 if the matter is one in which he participated personally and substantially.

5. He may not receive any salary, or supplementation of his Government salary, from a private source as compensation of his services to the Government (18 U.S.C. 209).

(c) Miscellaneous statutory provisions and restrictions: Each employee shall acquaint himself with each statute that relates to his ethical and other conduct as an employee of the Department and of the Government and to the following statutory provisions:

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

(2) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employee concerned.

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

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

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

(6) The prohibitions against (i) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (ii) the disclosure of confidential information (18 U.S.C. 1905).

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

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

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

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

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

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

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

(14) The prohibitions against (i) embezzlement of Government money or property (18 U.S.C. 641); (ii) failing to account for public money (18 U.S.C. 643); and (iii) 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).

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

(16) The prohibition 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.

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

(d) Miscellaneous restrictions: (1) An employee is prohibited from accepting employment, regardless of whether he is on annual leave or leave without pay, with or without remuneration by any foreign government, corporation, partnership, or individual that is in competition with American industry (E.O. 5221, Nov. 11, 1929).

(2) An employee is prohibited from charging fees for performing any notarial act for any employee of the Federal Government in his official capacity or for any person during the hours of such notary's service to the Government (E.O. 977, Nov. 24, 1908).

(3) Nonofficial expression by employees is covered in Part 487 of the Departmental Manual.

Subpart C—Special Government Employees: Responsibilities, Ethical and Other Conduct

§ 20.735–31 Statutes relating to conflict of interest.

The Department of Justice in a memorandum of January 28, 1963 (28 F.R. 985; 18 U.S.C. 201 note), summarized the major provisions of the conflict of interest laws insofar as special Government employees are concerned as follows:

1. (a) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which he has at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205).

(b) He may not, except in the discharge of his official duties, represent anyone else in a matter pending before the agency he serves unless he has served there no more than 60 days during the past 365 (18 U.S.C. 203 and 205). He is bound by this restraint despite the fact that the matter is not one in which he has ever participated personally and substantially.

The restrictions described in subparagraphs (a) and (b) apply to both paid and unpaid representation of another. These restrictions in combination are, of course, less extensive than the one described in the corresponding paragraph 1 in the list set forth above with regard to regular employees.

2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

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

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restriction described in paragraph 3 if the matter is one in which he participated personally and substantially.

§ 20.735–32 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.

§ 20.735–33 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 paragraph "inside information" means information obtained under Government authority which has not become part of the body of public information.

(b) Special Government employees may teach, lecture, or write in a manner not inconsistent with the provisions governing employees (see § 20.735–12(c)(3)).

§ 20.735–34 Coercion.

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

§ 20.735–35 Gifts, entertainment, and favors.

Except as provided in section 20.735–11(b), a special Government employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with his agency 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.

§ 20.735–36 Miscellaneous statutory provisions.

Each special Government employee shall acquaint himself with each statute listed in § 20.735–21.

Subpart D—Statements of Employment and Financial Interests

§ 20.735–41 Employees required to file statements: Manner of filing.

(a) *Who shall file.* The following employees shall file statements of employment and financial interests:

(1) Employees paid at a level of the Federal Executive Schedule in subchapter II of chapter 53 of title 5, United States Code.

(2) Employees listed in the appendix to this part. These employees are included pursuant to the criteria set forth in 5 CFR 735.403 (b) and (d) and in grades GS–13 and above or the equivalent thereof except as otherwise provided.

(3) Employees in hearing examiner positions.

(4) Employees in positions listed in the appendix to this part.

(b) *Time for filing.* Each employee required to file a statement of employment and financial interests shall file such a statement (on Form DI–212):

(1) Within 90 days from the date of publication of the regulations in this part in the FEDERAL REGISTER, if employed on or before that date, or

(2) At the time of entrance on duty, but not earlier than 90 days after the publication of the regulations in this part in the FEDERAL REGISTER, if appointed after that date.

An employee shall file his statement with the appropriate counselor or with the Secretary as provided in paragraph (c) of this section.

(c) *Channels for filing statements.* (1) Statements of the following will be filed originally with the Secretary: The Under Secretary; Assistant Secretaries; Heads of Bureaus and other Departmental Offices; the High Commissioner and Deputy High Commissioner of the Trust Territory; Governors of Guam, the Virgin Islands and American Samoa; and such others as the Secretary may designate.

(2) Statements of the following will be filed with the Chief, Division of Personnel, Office of Management Operations: Employees and special Government employees in the Office of the Secretary and in other Departmental offices except those employees mentioned in subparagraph (1) of this paragraph; associate, deputy and assistant heads of bureaus and their equivalents, administrative officers and others who supervise the work of Bureau Counselors.

(3) Statements of the following will be filed with Bureau Counselors: Regional or area directors and assistant directors and others who supervise the work of Deputy Bureau Counselors. Statements of all other employees and special Government employees in bureaus will be filed with Bureau or Deputy Bureau Counselors as the head of the bureau may direct.

(4) All statements of employment and financial interests will be classified "Nonsecurity Confidential" and will be transmitted, in a blue envelope so classified, by the employee to the receiving official designated in this paragraph.

(d) The appendix to this part may be revised, either by the addition or deletion of positions, when the Secretary determines such revisions are required to carry out the purpose of law, the Executive order, the regulations of the Civil Service Commission, and the regulations in this part. Additions to, deletions from, and other amendments of the list of positions in the appendix are effective upon actual notification to the incumbents. The amended appendix shall be submitted annually for publication in the FEDERAL REGISTER.

§ 20.735–42 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 as of June 30 each year. If no changes 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 action that would result, in a violation of the conflict of interest provisions of section 208 of title 18, United States Code, or Subpart B of this part.

§ 20.735–42a Employee's complaint on filing requirement.

Any employee required to file a statement of employment and financial interest under § 20.735–41(a) shall be given an opportunity for review through the Department's grievance procedure as to whether his position has been improperly included.

§ 20.735–43 Interests of employees' relatives.

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

§ 20.735–44 Information not known by employees.

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

§ 20.735–45 Information prohibited.

This subpart does not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational 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.

§ 20.735–46 Confidentiality of employees' statements.

Each statement of employment and financial interests and each supplementary statement are classified "Nonsecurity Confidential" and will be held in confidence. Receiving officials designated in § 20.735–41(c) are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. Information will not be disclosed from a statement except as the Secretary of the Interior or the U.S. Civil Service Commission may determine for good cause shown.

§ 20.735–47 Effect of employees' statements on other requirements.

The statement 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 his or the other person's participation is prohibited by law, order, or regulation.

§ 20.735–48 Special Government employees—specific provisions.

(a) Each special Government employee who occupies a position of consultant or expert shall file a statement of employment and financial interests as provided in paragraph (b) of this section. A special Government employee who does not occupy a position of consultant or expert shall, nonetheless, file such a statement if the position is found by the appointing officer to be of such a nature or at such a level of responsibility that the submission of a statement is necessary to protect the integrity of the Government. Special Government employees occupying positions other than those mentioned in this paragraph are not required to file statements.

(b) Special Government employees who are required to submit statements of employment and financial interests pursuant to paragraph (a) of this section shall fill out and submit to the appropriate counselor designated in § 20.735–41, Form DI–213, "Statement of Employment and Financial Interests." This form provides for the reporting of:

(1) All employment, including employment without compensation; and

(2) All financial interests, including any interest held by the spouse or minor child of a special Government employee.

In an instance involving the proposed employment of a special Government employee for highly specialized and limited duties, the head of a bureau or office may propose to the Departmental Counselor a reporting of financial interests restricted to such interests as may be determined to be relevant to the duties the special Government employee is to perform. If a restricted reporting of

financial interests is approved by the Departmental Counselor in advance of employment, Form DI–213 may be revised to reflect the narrower requirement.

(c) For the purpose of this section the terms "consultant" and "expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual, but do not include:

(1) A physician, dentist, or allied medical specialist whose services are procured to provide care and service to patients; or

(2) A veterinarian whose services are procured to provide care and service to animals.

(d) The statement of employment and financial interests shall be submitted before the special Government employee enters on duty. Each special Government employee shall keep his statement current through his employment with the Department by the submission of supplementary statements.

§ 20.735–49 Review and analysis of statements.

(a) Employee and special Government employee statements shall be reviewed by the receiving official at the receiving location and in cooperation with the Regional Solicitor, or the Office of the Solicitor in Washington, as the case may be.

(b) Any statements revealing a conflict, or a situation creating the appearance of conflict, between the private interests of an employee and his official responsibilities, shall be identified in the review process. If the matter cannot be resolved within the bureau, it shall be forwarded through the Bureau Counselor to the Departmental Counselor for appropriate action in cooperation with the Office of the Solicitor and other officials such as the Director of Personnel as necessary. Cases so referred must include a file containing the employee's statement, a summary of the issue, and the circumstances precluding settlement at the original reviewing level. On those cases wherein a conflict, or appearance of conflict, has been disclosed but as to which the matter is resolved at the original review point, a similar documented report shall be submitted to the Departmental Counselor for informational purposes.

(c) At all stages in the review process employees shall be provided full opportunity to offer information and explanation prior to a final determination.

(d) Unresolved questions of real or apparent conflicts of interest referred to the departmental Counselor shall be by him reported to the Secretary and a final decision, involving, if necessary, the disciplinary and remedial actions provided in the regulations in this part will be rendered.

(e) After the review process has been fully completed employee's and special Government employees' statements will be returned to the Personnel Office having custody of the employee's official personnel file.

APPENDIX —LIST OF EMPLOYEES REQUIRED TO FILE STATEMENTS

As provided in 43 CFR 20.735–41(a)(2), employees in the following positions, which are in addition to those listed in § 20.735–41(a)(1) shall file statements of employment and financial interests:

OFFICE OF THE SECRETARY

SECRETARY'S IMMEDIATE OFFICE

Assistants to the Secretary (2)—Washington, D.C.
Assistant to the Secretary (Congressional Liason)—Washington, D.C.
Ecological Research Coordinator—Washington, D.C.

OFFICE OF THE UNDER SECRETARY

Deputy Under Secretary—Washington, D.C.
Assistant to the Under Secretary—Washington, D.C.
Deputy Under Secretary for Programs—Washington, D.C.
Assistant Director, Office of Program Analysis—Washington, D.C.

OFFICE FOR EQUAL OPPORTUNITY

Director—Washington, D.C.
Assistant to the Director—Washington, D.C.
Senior Staff Specialists (2)—Washington, D.C.

ASSISTANT SECRETARY—PUBLIC LAND MANAGEMENT

Deputy Assistant Secretary—Washington, D.C.
Staff Assistant (Indian Affairs)—Washington, D.C.
Staff Assistant (Land Matters)—Washington, D.C.
Staff Assistant (Recreation and Public Relations Matters)—Washington, D.C.

ASSISTANT SECRETARY FOR ADMINISTRATION

Deputy Assistant Secretary for Administration—Washington, D.C.

ASSISTANT SECRETARY—WATER AND POWER DEVELOPMENT

Assistant and Engineering Research Advisor—Washington, D.C.
Deputy Assistant Secretary—Washington, D.C.
Staff Assistant—Washington, D.C.
General Engineers (3)—Washington, D.C.
Electrical Engineer—Washington, D.C.
Project Review Coordinator—Washington, D.C.
Administrator, Defense Electric Power Administration—Washington, D.C.

ASSISTANT SECRETARY—WATER POLLUTION CONTROL

Deputy Assistant Secretary for Applied Sciences and Engineering—Washington, D.C.
Deputy Assistant Secretary for Scientific Programs—Washington, D.C.
Deputy Assistant Secretary—Water Pollution Control—Washington, D.C.

PROGRAM SUPPORT STAFF

Regional Coordinators:
Southwest Region—Muskogee, Okla.
Upper Mississippi-Western Great Lakes—Duluth, Minn.
North Central Field Committee—Cincinnati, Ohio.
Northeast Field Committee—Boston, Mass.
Pacific Northwest Region—Portland, Oreg.
Pacific Southwest Field Committee—San Francisco, Calif.
Alaska Field Committee—Juneau, Alaska.
Missouri Basin Field Committee—Billings, Mont.

BOARD OF CONTRACT APPEALS

Supervisory Attorney-Examiner (General)—Washington, D.C.
Attorney-Examiners (General) (4)—Washington, D.C.

JOB CORPS COORDINATION

Coordinator—Washington, D.C.
Deputy Coordinator—Washington, D.C.
Contract and Procurement Officer—Washington, D.C.
Job Corps Finance Officer—Washington, D.C.
Job Corps Supply Officer—Washington, D.C.

OFFICE OF INFORMATION

Assistant to the Secretary and Director of Information—Washington, D.C.
Information Specialist (Deputy Director)—Washington, D.C.

OFFICE OF SURVEY AND REVIEW

Director—Washington, D.C.
Assistant Director—Washington, D.C.
Assistant to the Director (Contract Review)—Washington, D.C.
Supervisory Auditor—Washington D.C.
Supervisory General Investigator—Washington, D.C.
Investigators (General) (5), GS–11 and above—Washington, D.C.
Director, Audit Operations—Washington, D.C.
Assistant Director, Internal Audit—Washington, D.C.
Assistant Director, Grant and Contract Auditing—Washington, D.C.
Assistant Director, Job Corps Audit—Washington, D.C.
Regional Director, Region I—Washington, D.C.
Regional Director, Region II—Denver, Colo.
Regional Director, Region III—Portland, Oreg.

OFFICE OF BUDGET

Director—Washington, D.C.

OFFICE OF MANAGEMENT OPERATIONS

Director—Washington, D.C.
Deputy Director—Washington, D.C.
Chief, Division of Fiscal Services—Washington, D.C.
Chief, Division of General Services—Washington, D.C.
Chief, Branch of Supply—Washington, D.C.

OFFICE OF SALINE WATER

Director—Washington, D.C.
Assistant Director, Engineering and Development—Washington, D.C.
Assistant Director, Research—Washington, D.C.
Assistant Director, Project Management and Plant Engineering—Washington, D.C.
Chief, Distillation Division—Washington, D.C.
Chief, Desalting Feasibility and Economic Studies—Washington, D.C.
Special Assistant to Assistant Director, Project Management and Plant Engineering—Washington, D.C.
Chief, Administrative Management—Washington, D.C.
Chief, Contract Operations—Washington, D.C.
Chief, Financial Management—Washington, D.C.
Chief, Finance and Accounting—Washington, D.C.
Chief, Membrane Division—Washington, D.C.
Chief, Special Projects Division—Washington, D.C.
Special Assistant on Materials—Washington, D.C.
Chief, Plant Engineering—Washington, D.C.
Chief, Applied Sciences Division—Washington, D.C.

Chief, Polymer and Biophysics Division—Washington, D.C.
Chief, Chemistry Division—Washington, D.C.
Chief, Chemical Physics Division—Washington, D.C.
Project Manager, Saudi Arabia Project—Washington, D.C.
Project Manager, Bolsa Island Project—Washington, D.C.
Manager, Test Facility—Wrightsville Beach, N.C.
Manager, San Diego Test Facility—San Diego, Calif.
Resident Engineer, Roswell Test Facility—Roswell, N. Mex.
Resident Engineer, Freeport Test Facility—Freeport, Tex.

OFFICE OF OIL AND GAS

Director—Washington, D.C.
Deputy Director—Washington, D.C.
Assistant Director—Washington, D.C.

OIL IMPORT ADMINISTRATION

Administrator—Washington, D.C.
Industrial Specialists—Assistant Administrators (2)—Washington, D.C.
Industrial Specialist—Washington, D.C.

OIL IMPORT APPEALS BOARD

Attorney-Advisor (General), Chairman—Washington, D.C.

OFFICE OF WATER RESOURCES RESEARCH

Director—Washington, D.C.
Associate Director—Washington, D.C.
Executive Officer—Washington, D.C.

OFFICE OF MINERALS AND SOLID FUELS

Director—Washington, D.C.

OFFICE OF COAL RESEARCH

Director—Washington, D.C.
Chief, Division of Contract and Administration—Washington, D.C.
Chief, Division of Mining and Preparation—Washington, D.C.
Chief, Division of Utilization—Washington, D.C.
Supervisory Industry Economist—Washington, D.C.
Contract Specialists (3)—Washington, D.C.

OFFICE OF GEOGRAPHY

Supervisory Geographer (Director)—Washington, D.C.

OFFICE OF THE SOLICITOR

Deputy Solicitor—Washington, D.C.
Special Assistants to the Solicitor (2)—Washington, D.C.
Associate Solicitors (7)—Washington, D.C.
Legislative Counsel—Washington, D.C.
Assistant Legislative Counsel—Washington, D.C.
Assistant Solicitors (17)—Washington, D.C.
Regional Solicitors (8).
Assistant Regional Solicitors (18).
Field solicitors (17).
Claims Attorney, Branch of Claims—Washington, D.C.

LOWER COLORADO RIVER LAND USE OFFICE

Administrator.

DELAWARE RIVER BASIN COMMISSION

Alternate Federal Member and U.S. Commissioner.

BUREAU OF COMMERCIAL FISHERIES

Director—Washington, D.C.
Deputy Director—Washington, D.C.
Assistant Director for Biological Research—Washington, D.C.
Assistant Director for Economics—Washington, D.C.
Assistant Director for Resource Development—Washington, D.C.
Assistant Director for Industrial Research—Washington, D.C.
Assistant Director for International Affairs—Washington, D.C.
Assistant Director for Administration—Washington, D.C.
Chief, Branch of Property Management—Washington, D.C.
Assistant Chief, Branch of Property Management—Washington, D.C.
Chief, Branch of Loans and Grants—Washington, D.C.
Fishery Administrator—Washington, D.C.
Hearing Examiner—Washington, D.C.
Regional Director—Seattle, Wash.
Deputy Regional Director—Seattle, Wash.
Assistant Regional Director for Administration—Seattle, Wash.
Property and Supply Officer—Seattle, Wash.
Regional Director—St. Petersburg Beach, Fla.
Deputy Regional Director—St. Petersburg Beach, Fla.
Assistant Regional Director for Administration—St. Petersburg Beach, Fla.
Property Management Officer—St. Petersburg Beach, Fla.
Regional Director—Gloucester, Mass.
Deputy Regional Director—Gloucester, Mass.
Assistant Regional Director for Administration—Gloucester, Mass.
Regional Director—Ann Arbor, Mich.
Deputy Regional Director—Ann Arbor, Mich.
Assistant Regional Director for Administration—Ann Arbor, Mich.
Regional Director—Juneau, Alaska.
Deputy Regional Director—Juneau, Alaska.
Assistant Regional Director for Administration—Juneau, Alaska.
Regional Director—Terminal Island, Calif.
Assistant Regional Director for Administration—Terminal Island, Calif.
Fishery Biologist, Research—Terminal Island, Calif.
Area Director—Honolulu, Hawaii.
Deputy Area Director—Honolulu, Hawaii.
Assistant Area Director for Administration—Honolulu, Hawaii.

BUREAU OF SPORT FISHERIES AND WILDLIFE

Director—Washington, D.C.
Deputy Director—Washington, D.C.
Associate Director—Washington, D.C.
Assistant Director, Research—Washington, D.C.
Assistant Director, Operations—Washington, D.C.
Assistant Director, Cooperative Services—Washington, D.C.
Director, National Fisheries Center and Aquarium—Washington, D.C.
Assistant Director, Administration and Engineering—Washington, D.C.
Chief, Division of Property Management—Washington, D.C.
Assistant Chief, Division of Property Management—Washington, D.C.
Regional Director, Pacific Region—Portland, Oreg.
Assistant Regional Director, Administration and Engineering—Portland, Oreg.
General Supply Officer—Postland, Oreg.
Assistant Regional Director, Cooperative Services—Portland, Oreg.
Regional Supervisor, Division of Federal Aid—Portland, Oreg.
Deputy Regional Director—Portland, Oreg.
Regional Director, Southwestern Region—Albuquerque, N. Mex.
Assistant Regional Director, Administration and Engineering—Albuquerque, N. Mex.
Procurement Officer, GS–12 and above—Albuquerque, N. Mex.
Assistant Regional Director, Cooperative Services—Albuquerque, N. Mex.
Regional Supervisor, Division of Federal Aid—Albuquerque, N. Mex.
Deputy Regional Director—Albuquerque, N, Mex.
Regional Director, North Central Region—Minneapolis, Minn.
Assistant Regional Director, Administration and Engineering—Minneapolis, Minn.
Property Officer, GS–11 and above—Minneapolis, Minn.
Assistant Regional Director, Cooperative Services—Minneapolis, Minn.
Regional Supervisor, Division of Federal Aid—Minneapolis, Minn.
Deputy Regional Director.
Regional Director, Southeastern Region—Atlanta, Ga.
Assistant Regional Director, Administration and Enginering—Atlanta, Ga.
General Supply Officer.
Assistant Regional Director, Cooperative Services—Atlanta, Ga.
Regional Supervisor, Division of Federal Aid—Atlanta, Ga.
Deputy Regional Director—Atlanta, Ga.
Regional Director, Northeastern Region—Boston, Mass.
Assistant Regional Director, Administration and Engineering—Boston, Mass.
Property Officer—Boston, Mass.
Assistant Regional Director, Cooperative Services—Boston, Mass.
Regional Supervisor, Division of Federal Aid—Boston, Mass.
Deputy Regional Director—Boston, Mass.

GEOLOGICAL SURVEY

Associate Director—Washington, D.C.
Assistant Directors (3)—Washington, D.C.
Physical Scientist—Washington, D.C.
Staff Geologists (2)—Washington, D.C.
Staff Engineer—Washington, D.C.
Research Geologist—Earth Orbiter—Washington, D.C.
Executive Officer—Washington, D.C.
Assistant Executive Officer—Washington, D.C.
Procurement Officer—Washington, D.C.
Contract Negotiator—Washington, D.C.
Chief, Publications Division—Washington, D.C.
Assistant Chief, Publications Division—Washington, D.C.
Supervisory Hydrologists (3)—Washington, D.C.
Research Hydrologists (2)—Washington, D.C.
Hydrolic Engineer (Delaware Watermaster)—Washington, D.C.
Chief Topographic Engineer—Washington, D.C.
Associate Chief Topographic Engineer—Washington, D.C.
Assistant Chief Topographic Engineers (2)—Washington, D.C.
Research Geographer—Washington, D.C.
Chief, Conservation Division—Washington, D.C.
Assistant Chief, Conservation Division—Washington, D.C.
Chief, Branch of Oil and Gas Operations—Washington, D.C.
Chief, Branch of Mining Operations—Washington, D.C.
Chief, Branch of Minerals Classification—Washington, D.C.
Staff Engineer—Washington, D.C.
Supervisory Petroleum Engineer—Washington, D.C.
Petroleum Engineer—Washington, D.C.
Supervisory Mine Development and Production Engineer—Washington, D.C.
General Engineer—Washington, D.C.
Supervisory Hydrologist Engineer—Washington, D.C.
Chief, Computer Center Division—Washington, D.C.
Assistant Chief, Computer Center Division—Washington, D.C.
Chief Geologist—Washington, D.C.
Administrative Geologist—Washington, D.C.
Geologist—Washington, D.C.
Supervisory Geologist—Washington, D.C.
Supervisory Chemist—Washington, D.C.

Chief, Office of Minerals Exploration—Washington, D.C.
Assistant Chief, Office of Minerals Exploration—Washington, D.C.
Assistant Chief Geologist for Regional Geology—Washington, D.C.
Assistant Chief Geologist for Experimental Geology—Washington, D.C.
Assistant Chief Geologist for Engineering Geology—Washington, D.C.
Management Officer—Denver, Colo.
Personnel Officer—Denver, Colo.
Regional Hydrologist—Denver, Colo.
Rocky Mountain Engineer—Denver, Colo.
Supervisory Mine Development and Production Engineer—Denver, Colo.
Management Officer—Menlo Park, Calif.
Personnel Officer—Menlo Park, Calif.
Regional Hydrologist—Menlo Park, Calif.
Pacific Region Engineer—Menlo Park, Calif.
Geographer—Menlo Park, Calif.
Research Geophysicist—Earthquake Center—Menlo Park, Calif.
Chief, Office of Marine Geology and Hydrology—Menlo Park, Calif.
Regional Hydrologist—St. Louis, Mo.
Regional Hydrologist—Arlington, Va.
Atlantic Region Engineer—Arlington, Va.
Supervisory Hydro Engineer (Watermaster)—Idaho Falls, Idaho.
Central Region Engineer—Rolla, Mo.
Supervisory General Engineer—Casper, Wyo.
Supervisory General Engineer—Roswell, N. Mex.
Supervisory General Engineer—New Orleans, La.
Supervisory Petroleum Engineer—Tulsa, Okla.
Supervisory Petroleum Engineer—Los Angeles, Calif.
Supervisory Petroleum Engineer—Anchorage, Alaska.
Supervisory Mine Development and Production Engineer—Anchorage, Alaska.
Supervisory Mine Development and Production Engineer—McAlester, Okla.
Supervisory Mine Development and Production Engineer—Carlsbad, N. Mex.
Supervisory Mine Development and Production Engineer—Salt Lake City, Utah.
Superivsory Mine Development and Production Engineer—Billings, Mont.
Deputy Assistant Chief Geologist for Astrogeology—Flagstaff, Ariz.
Chief of Party, Saudi Arabia—Jidda, Saudi Arabia.

BUREAU OF INDIAN AFFAIRS

Deputy Commissioner—Washington, D.C.
Director, Division of Administration—Washington, D.C.
Supply Program Management Officer—Washington, D.C.
Area Director—Aberdeen, S. Dak.
Assistant Area Director, Administration—Aberdeen, S. Dak.
Supervisory General Supply Officer—Aberdeen, S. Dak.
Area Director—Albuquerque, N. Mex.
Assistant Area Director, Administration—Albuquerque, N. Mex.
Supervisory General Supply Officer—Albuquerque, N. Mex.
Area Director—Anadarko, Okla.
Area Director—Billings, Mont.
Assistant Area Director, Administration—Billings, Mont.
Supervisory General Supply Officer—Billings, Mont.
Area Director—Navajo Area—Gallup, N. Mex.
Assistant Area Director, Administration—Gallup, N. Mex.
Supply Management Officer—Gallup, N. Mex.
Area Director—Juneau, Alaska.
Assistant Area Director—Juneau, Alaska.
Supervisory General Supply Officer—Juneau, Alaska.
Area Director—Minneapolis, Minn.
Area Director—Muskogee, Okla.
Assistant Area Director—Muskogee, Okla.
Supervisory General Supply Officer—Muskogee, Okla.
Area Director—Phoenix, Ariz.
Assistant Area Director, Administration—Phoenix, Ariz.
Supervisory General Supply Officer—Phoenix, Ariz.
Area Director—Portland, Oreg.
Assistant Area Director, Administration—Portland, Oreg.
Supply Management Officer—Portland, Oreg.
Area Director—Sacramento, Calif.
Supervisory General Engineer (2)—Albuquerque, N. Mex.
Supervisory Management Engineer—Littleton, Colo.
Supervisory Civil Engineer—Littleton, Colo.
Administrative and Special Representative (Liaison Office — Washington — Juneau Area)—Seattle, Wash.

BUREAU OF LAND MANAGEMENT

Associate Director—Washington, D.C.
Assistant Director, Resource Management—Washington, D.C.
Assistant Director, Lands and Minerals—Washington, D.C.
Assistant Director, Administration—Washington, D.C.
Chief, Division of Lands and Minerals, Program Management—Washington, D.C.
Chief, Division of Administrative Services—Washington, D.C.
Manager, Eastern States Land Office—Silver Spring, Md.
Chief, Office of Appeals and Hearings—Silver Spring, Md.
Chief, Branch of Land Appeals—Silver Spring, Md.
Chief, Branch of Mineral Appeals—Silver Spring, Md.
State Director—Phoenix, Ariz.
Chief, Division of Lands and Minerals, Program Management and Land Office—Phoenix, Ariz.
Chief, Division of Resource Program Management—Phoenix, Ariz.
District Manager—Phoenix, Ariz.
State Director—Sacramento, Calif.
Chief, Division of Lands and Minerals, Program Management and Land Office—Sacramento, Calif.
Chief, Division of Resource Program Management—Sacramento, Calif.
District Manager—Sacramento, Calif.
Hearing Examiners—Sacramento, Calif.
State Director—Denver, Colo.
Chief, Division of Lands and Minerals, Program Management and Land Office—Denver, Colo.
Chief, Division of Resource Program Management—Denver, Colo.
State Director—Boise, Idaho.
Chief, Division of Lands and Minerals, Program Management and Land Office—Boise, Idaho.
Chief, Division of Resource Program Management—Boise, Idaho.
District Manager—Boise, Idaho.
State Director—Billings, Mont.
Chief, Division of Lands and Minerals, Program Management and Land Office—Billings, Mont.
Chief, Division of Resource Program Management—Billings, Mont.
District Manager—Billings, Mont.
State Director—Reno, Nev.
Chief, Division of Lands and Minerals, Program Management and Land Office—Reno, Nev.
Chief, Division of Resource Program Management—Reno, Nev.
State Director—Santa Fe, N. Mex.
Chief, Division of Lands and Minerals, Program Management and Land Office—Santa Fe, N. Mex.
Chief, Division of Resource Program Management—Santa Fe, N. Mex.
State Director—Portland, Oreg.
Chief, Division of Lands and Minerals, Program Management and Land Office—Portland, Oreg.
Chief, Division of Resource Program Management—Portland, Oreg.
State Director—Salt Lake City, Utah.
Chief, Division of Lands and Minerals, Program Management and Land Office—Salt Lake City, Utah.
Chief, Division of Resource Program Management—Salt Lake City, Utah.
District Manager—Salt Lake City, Utah.
Hearing Examiners—Salt Lake City, Utah.
State Director—Cheyenne, Wyo.
Chief, Division of Lands and Minerals, Program Management and Land Office—Cheyenne, Wyo.
Chief, Division of Resource Program Management—Cheyenne, Wyo.
State Director—Anchorage, Alaska.
Chief, Division of Lands and Minerals, Program Management and Land Office—Anchorage, Alaska.
Chief, Division of Resource Program Management—Anchorage, Alaska.
District Manager—Anchorage, Alaska.
Manager, Outer Continental Shelf Office—New Orleans, La.
Mineral Leasing Representative—Los Angeles, Calif.
Conservation Center Director—Kingman, Ariz.
Conservation Center Director—Mountain Home, Idaho.
Conservation Center Director—Tillamook, Oreg.
Conservation Center Director—Fort Vannoy, Oreg.
Conservation Center Director—Price, Utah.
District Manager, GS–12 and above—Lakeview, Oreg.
District Manager, GS–12 and above—Burns, Oreg.
District Manager, GS–12 and above—Vale, Oreg.
District Manager, GS–12 and above—Prineville, Oreg.
District Manager, GS–12 and above—Baker, Oreg.
District Manager, GS–12 and above—Coos Bay, Oreg.
District Manager, GS–12 and above—Salem, Oreg.
District Manager, GS–12 and above—Eugene, Oreg.
District Manager, GS–12 and above—Roseburg, Oreg.
District Manager, GS–12 and above—Medford, Oreg.
District Manager, GS–12 and above—Spokane, Wash.
District Manager, GS–12 and above—Bakersfield, Calif.
District Manager, GS–12 and above—Susanville, Calif.
District Manager, GS–12 and above—Redding, Calif.
District Manager, GS–12 and above—Ukiah, Calif.
District Manager, GS–12 and above—Riverside, Calif.
District Manager, GS–12 and above—Fairbanks, Alaska.
District Manager, GS–12 and above—Burley, Idaho.
District Manager, GS–12 and above—Idaho, Falls, Idaho.
District Manager, GS–12 and above—Salmon, Idaho.
District Manager, GS–12 and above—Shoshone, Idaho.
District Manager, GS–12 and above—Coeur d'Alene, Idaho.
District Manager, GS–12 and above—Elko, Nev.
District Manager, GS–12 and above—Winnemucca, Nev.
District Manager, GS–12 and above—Carson City, Nev.

District Manager, GS–12 and above—Ely, Nev.
District Manager, GS–12 and above—Las Vegas, Nev.
District Manager, GS–12 and above—Battle Mountain, Nev.
District Manager, GS–12 and above—Fillmore, Utah.
District Manager, GS–12 and above—Cedar City, Utah.
District Manager, GS–12 and above—Richfield, Utah.
District Manager, GS–12 and above—Monticello, Utah.
District Manager, GS–12 and above—Price, Utah.
District Manager, GS–12 and above—Vernal, Utah.
District Manager, GS–12 and above—Kanab, Utah.
District Manager, GS–12 and above—St. George, Utah.
District Manager, GS–12 and above—Safford, Ariz.
District Manager, GS–12 and above—Malta, Mont.
District Manager, GS–12 and above—Miles City, Mont.
District Manager, GS–12 and above—Dillon, Mont.
District Manager, GS–12 and above—Lewiston, Mont.
District Manager, GS–12 and above—Missoula, Mont.
District Manager, GS–12 and above—Worland, Wyo.
District Manager, GS–12 and above—Lander, Wyo.
District Manager, GS–12 and above—Rawlins, Wyo.
District Manager, GS–12 and above—Rock Springs, Wyo.
District Manager, GS–12 and above—Pinedale, Wyo.
District Manager, GS–12 and above—Casper, Wyo.
District Manager, GS–12 and above—Craig, Colo.
District Manager, GS–12 and above—Glenwood Springs, Colo.
District Manager, GS–12 and above—Montrose, Colo.
District Manager, GS–12 and above—Canon City, Colo.
District Manager, GS–12 and above—Grand Junction, Colo.
District Manager, GS–12 and above—Albuquerque, N. Mex.
District Manager, GS–12 and above—Socorro, N. Mex.
District Manager, GS–12 and above—Las Cruces, N. Mex.
District Manager, GS–12 and above—Roswell, N. Mex.

BUREAU OF MINES

Assistant Director, Administration—Washington, D.C.
Chief, Division of Procurement and Property Management—Washington, D.C.
Chief, Division of Coal Mine Inspection—Washington, D.C.
Chief, Eastern Administrative Office—Pittsburgh, Pa.
Chief, Western Administrative Office—Denver, Colo.

NATIONAL PARK SERVICE

Deputy Director—Washington, D. C.
Associate Director—Washington, D.C.
Deputy Associate Director—Washington, D.C.
Assistant Directors (5)—Washington, D.C.
Deputy Assistant Directors (4)—Washington D.C.
Chief, Division of Property Management and General Services—Washington, D.C.
Chief, Division of Concessions Management—Washington, D.C.
Chief, Division of Land and Water Rights—Washington, D.C.
All Regional Directors (6).
All Associate Regional Directors (2).
All Assistant Regional Directors (11).
Regional Chiefs, Division of Property Management and General Services.
Regional Procurement Officer.
Supervisory Archeologist, Southwest Archeological Center.
Supervisory Archeologist, Southeast Archeological Center.
All Chiefs, Offices of Land and Water Rights (2)
All Chiefs, Offices of Design and Construction (2).
All Chiefs, Division of Contract Administration and Construction (3).
All Realty Officers (5).
All Conservation Center Directors (9), GS–12 and above.
All Superintendents of Park Areas (161), GS-11 and above.
All Administrative Officers (10).

BUREAU OF OUTDOOR RECREATION

Associate Director—Washington, D.C.
Assistant Director for Federal Coordination—Washington, D.C.
Assistant Director for State, Local, and Private Programs—Washington, D.C.
Assistant Director for Planning and Research—Washington, D.C.
Assistant Director for Recreation and Natural Beauty—Washington, D.C.
Assistant Director for Administration—Washington, D.C.
Chief, Division of Personnel Management, Organizations, and Accounting Operations—Washington, D.C.
Chief, Division of Program Development and Management Operations—Washington, D.C.
Chief, Office of Recreation Information—Washington, D.C.
Chief, Division of Grants-in-Aid—Washington, D.C.
Assistant Chiefs, Division of Grants-in-Aid (2)—Washington, D.C.
Recreation Resource Specialist-Hudson River Compact Staff—Washington, D.C.
Regional Director, Pacific Northwest Region—Seattle, Wash.
Assistant Regional Directors (2)—Seattle, Wash.
Chief, Grants-in-Aid—Seattle, Wash.
Regional Director, Pacific Southwest Region—San Francisco, Calif.
Assistant Regional Directors (2)—San Francisco, Calif.
Chief, Grants-in-Aid—San Francisco, Calif.
Regional Director, Mid-Continent Region—Denver, Colo.
Assistant Regional Directors (2)—Denver, Colo.
Chief, Grants-in-Aid—Denver, Colo.
Regional Director, Lake Central Region—Ann Arbor, Mich.
Assistant Regional Directors (2)—Ann Arbor, Mich.
Chief, Grants-in-Aid—Ann Arbor, Mich.
Regional Director, Southeast Region—Atlanta, Ga.
Assistant Regional Directors (2)—Atlanta, Ga.
Chief, Grants-in-Aid—Atlanta, Ga.
Regional Director, Northeast Region—Philadelphia, Pa.
Assistant Regional Directors (2)—Philadelphia, Pa.
Chief, Grants-in-Aid—Philadelphia, Pa.

BUREAU OF RECLAMATION

Assistant Commissioner, Power and General Engineering—Washington, D.C.
Assistant Commissioner, Legislation and Coordination—Washington, D.C.
Assistant Commissioner, Administration—Washington, D.C.
Assistant Commissioner, Atmospheric Water Resources—Washington, D.C.
Assistant to the Commissioner—Research—Washington, D.C.
Chief, Office of Atmospheric Water Resources—Washington, D.C.
Chief, Office of Research—Washington D.C.
Chief, Division of General Services—Washington, D.C.
Chief, Property and Services Branch—Washington, D.C.
Chief, Audit and Financial Review—Washington, D.C.
Assistant Chief, Division of Engineering—Washington, D.C.
Chief, Construction Activities Branch—Washington, D.C.
Chief, Research, Scientific and Technical Coordination Branch—Washington, D.C
Chief, Division of Power—Washington, D.C.
Assistant Chief, Division of Power—Washington, D.C.
Chief, Marketing and Sales Branch—Washington, D.C.
Chief, Power Systems Branch—Washington, D.C.
Chief, Division of Procurement and Property—Washington, D.C.
Assistant Chief, Division of Procurement and Property—Washington, D.C.
Chief, Division of Project Development—Washington, D.C.
Assistant Chief, Division of Project Development—Washington, D.C.
Chief, Division of Water and Land Operations—Washington, D.C.
Assistant Chief, Division of Water and Land Operations—Washington, D.C.
Chief, Irrigation Branch—Washington, D.C.
Chief, Lands and Recreation Branch—Washington, D.C.
Compliance and Settlement Officer—Washington, D.C.
Realty Officer—Washington, D.C.
Chief, Contracts and Repayment Branch—Washington, D.C.
Contract and Repayment Specialists (3)—Washington, D.C.
Chief Engineer—Denver, Colo.
Chief Designing Engineer—Denver, Colo.
Chief Research Scientist—Denver, Colo.
Supervisory General Physical Scientists (2)—Denver, Colo.
General Physical Scientists (3)—Denver, Colo.
General Engineers (3)—Denver, Colo.
Supervisory General Physical Scientists (2)—Denver, Colo.
Supervisory General Engineers (14)—Denver, Colo.
Supervisory Civil Engineers (24)—Denver, Colo.
Supervisory Electrical Engineers (11)—Denver, Colo.
Supervisory Mechanical Engineers (8)—Denver, Colo.
Supervisory Structural Engineers (4)—Denver, Colo.
Electrical Engineer—Denver, Colo.
Civil Engineers (5)—Denver, Colo.
Procurement Officer—Denver, Colo.
Administrative Assistant—Denver, Colo.
Supervisory Hydraulic Engineer—Denver, Colo.
Supervisory Soil Scientist—Denver, Colo.
Research Meteorologists (2)—Denver, Colo.
Supervisory Appraiser—Denver, Colo.
Supervisory Geologists (2)—Denver, Colo.
Business Manager—Denver, Colo.
Office Services Manager—Denver, Colo.
Regional Director—Boise, Idaho.
Assistant Regional Director—Boise, Idaho.
Assistant to the Regional Director—Administration—Boise, Idaho.
Regional Engineer—Boise, Idaho.
Chief, Construction Branch—Boise, Idaho.
Chief, Design Branch—Boise, Idaho.
Supervisor of Irrigation—Boise, Idaho.
Chief, Repayment and Statistics Branch—Boise, Idaho.
Supervisor of Power—Boise, Idaho.

Chief, Resources and Contracts Branch—Boise, Idaho.
Project Development Engineer—Boise, Idaho.
Assistant Project Development Engineer—Boise, Idaho.
Chief, Engineering and Surveys Branch—Boise, Idaho.
Chief, Economic Resources Branch—Boise, Idaho.
Procurement and Property Officer—Boise, Idaho.
Project Manager, Columbia Basin Project—Ephrata, Wash.
Assistant Project Manager—Ephrata, Wash.
Chief, Engineering and Construction Division—Ephrata, Wash.
Chief, Construction Management Branch—Ephrata, Wash.
Chief, Construction Field Branch—Ephrata, Wash.
Chief, Irrigation and Land Division—Ephrata, Wash.
Chief, Power Field Division—Ephrata, Wash.
Chief, Maintenance Branch—Ephrata, Wash.
Assistant to the Project Manager, Administration—Ephrata, Wash.
Center Director, Columbia Basin Job Corps Construction Center, GS–12 and above—Larson AFB, Wash.
Project Construction Engineer, Baker Project Office—Baker, Oreg.
Project Construction Engineer, Spokane Valley Project—Spokane, Wash.
Project Superintendent, Central Snake Project Office—Boise, Idaho.
Chief, Mann Creek Construction Field Division—Weiser, Idaho.
Project Superintendent, Minidoka Project Office—Burley, Idaho.
Project Superintendent, Yakima Project Office—Yakima, Wash.
Project Superintendent, Hungry Horse Project Office—Hungry Horse, Mont.
Project Construction Engineer, Chief Joseph Dam Project Office—Oroville, Wash.
Center Director, Marsing Job Corps Construction Center—Marsing, Idaho.
Area Engineer, Upper Columbia Development Office, Spokane, Wash.
Area Engineer, Lower Columbia Development Office—Salem, Oreg.
Area Engineer, Snake River Development Office—Boise, Idaho.
Columbia-North Pacific Planning Officer—Portland, Oreg.
Project Construction Engineer—Coulee Dam, Wash.
Field Engineer—Coulee Dam, Wash.
Officer Engineer—Coulee Dam, Wash.
Project Construction Engineer—Wild Horse Dam, Nev.
Regional Director—Sacramento, Calif.
Assistant Regional Directors (2)—Sacramento, Calif.
Assistant to Regional Director—Administrative Management—Sacramento, Calif.
Civil Engineer (Loan Engineer)—Sacramento, Calif.
Regional Supervisor of Irrigation—Sacramento, Calif.
Chief, Land Acquisition Branch—Sacramento, Calif.
Regional Supervisor of Power—Sacramento, Calif.
Chief, Marketing and Sales Branch—Sacramento, Calif.
Regional Engineer—Sacramento, Calif.
Regional Project Development Engineer—Sacramento, Calif.
Regional Procurement and Property Officer—Sacramento, Calif.
Supervisory Appraiser—Sacramento, Calif.
Chief, Folsom Field Division—Folsom, Calif.
Chief, Fresno Field Division—Fresno, Calif.
Chief, Tracy Field Division—Tracy, Calif.
Chief, Shasta Field Division—Redding, Calif.
Project Construction Engineer—Red Bluff, Calif.
Project Construction Engineer—Willows, Calif.
Office Engineer—Willows, Calif.
Project Construction Engineer, San Luis Unit—Los Banos, Calif.
Office Engineer—Los Banos, Calif.
Assistant Project Construction Engineer—Los Banos, Calif.
Administrative Officer—Los Banos, Calif.
Project Construction Engineer, Fresno CVP Construction Office—Fresno, Calif.
Office Engineer—Fresno, Calif.
Project Manager, Klamath Project—Klamath Falls, Oreg.
Project Construction Engineer, Auburn-Folsom South Unit—Auburn, Calif.
Chief, Right of Way Division—Auburn, Calif.
Mineral Appraiser—Auburn, Calif.
Project Manager, Lahontan Basin Project—Carson City, Nev.
Project Construction Engineer—Carson City, Nev.
Center Director, Lewiston Job Corps Construction Center—Lewiston, Calif.
Center Director, Toyon Job Corps Construction Center, GS–12 and above—Redding, Calif.
Regional Director—Boulder City, Nev.
Assistant Regional Director—Post of Duty—Phoenix, Ariz.
Assistant to Regional Director, Administrative Management—Boulder City, Nev.
Regional Engineer—Boulder City, Nev.
Regional Supervisor of Power—Boulder City, Nev.
Regional Supervisor of Irrigation—Boulder City, Nev.
Regional Procurement and Property Officer—Boulder City, Nev.
Chief, Construction Branch—Boulder City, Nev.
Supervisory Economist—Boulder City, Nev.
Land Use and Settlement Specialist—Boulder City, Nev.
Regional Project Development Engineer—Boulder City, Nev.
Chief, Engineering Branch—Boulder City, Nev.
River Control Engineer—Boulder City, Nev.
Project Manager—Boulder City, Nev.
Area Engineer—Boulder City, Nev.
Construction Engineer—Boulder City, Nev.
Project Manager, Parker-Davis Project—Phoenix, Ariz.
Deputy Project Manager—Phoenix, Ariz.
Administrative Officer—Phoenix, Ariz.
Area Engineer—Phoenix, Ariz.
Project Manager, Yuma Projects Office—Yuma, Ariz.
Administrative Officer—Yuma, Ariz.
Chief, Field Engineering Division—Yuma, Ariz.
Area Engineer—San Bernardino, Calif.
Pacific-Southwest Planning Officer—San Bernardino, Calif.
Planning Engineer, Dixie Projects Office—St. George, Utah.
Construction Engineer, South Nevada Water Projects Office—Henderson, Nev.
Regional Director—Salt Lake City, Utah.
Assistant Regional Director—Salt Lake City, Utah.
Assistant to Regional Director, Administrative Management—Salt Lake City, Utah.
Regional Engineer—Salt Lake City, Utah.
Regional Supervisor of Irrigation—Salt Lake City, Utah.
Regional Project Development Engineer—Salt Lake City, Utah.
Regional Supervisor of Power—Salt Lake City, Utah.
Regional Finance Officer—Salt Lake City, Utah.
Regional Property and Services Officer—Salt Lake City, Utah.
Chairman, Pacific Southwest Field Committee—Salt Lake City, Utah.
Project Manager, Central Utah Projects Office—Provo, Utah.
Assistant Project Manager—Provo, Utah.
Project Power Manager, CRSP Power Operation Office—Montrose, Colo.
Administrative Officer—Montrose, Colo.
Chief, Flaming Gorge Field Division—Dutch John, Utah.
Chief, Glen Canyon Field Division—Page, Ariz.
Project Construction Engineer, Curecanti Unit—Gunnison, Colo.
Project Manager—Durango, Colo.
Project Manager—Grand Junction, Colo.
Area Engineer—Logan, Utah.
Construction Engineer—Rifle, Colo.
Project, Construction Engineer, Lyman Project—Mount View, Wyo.
Project Construction Engineer, Seedskadee Project—Fontenelle, Wyo.
Project Manager, Upper Green River Project, GS–12 and above—Rock Springs, Wyo.
Project Manager, Weber Basin Project—Ogden Utah.
Center Director, Collbran JCC Center, GS–12 and above—Collbran, Colo.
Center Director, Weber Basin JCC Center—Ogden, Utah.
Regional Director—Amarillo, Tex.
Assistant Regional Director—Amarillo, Tex.
Assistant to Regional Director—Administrative Management—Amarillo, Tex.
Regional Engineer—Amarillo, Tex.
Regional Supervisor of Power—Amarillo, Tex.
Regional Project Development Engineer—Amarillo, Tex.
Regional Supervisor of Irrigation—Amarillo, Tex.
Regional Finance Officer—Amarillo, Tex.
Regional Procurement and Property Officer—Amarillo, Tex.
Project Superintendent, Middle Rio Grande Project—Albuquerque, N. Mex.
Project Supervisor, Rio Grande Project—El Paso, Tex.
Project Construction Engineer, Canadian River Project—Amarillo, Tex.
Project Construction Engineer, San Juan-Chama Project—Santa Fe, N. Mex.
Project Construction Engineer, Navajo Indian Irrigation Project—Farmington, N. Mex.
Area Engineer—Albuquerque, N. Mex.
Chief, Pecos River Water Salvage, GS–12 and above—Carlsbad, N. Mex.
Area Engineer—Oklahoma City, Okla.
Area Engineer—Austin, Tex.
Center Director, Arbuckle JCC Center, GS–12 and above—Sulphur, Okla.
Regional Director—Billings, Mont.
Assistant Regional Director—Billings, Mont.
Regional Engineer—Billings, Mont.
Regional Supervisor of Irrigation—Billings, Mont.
Regional Supervisor of Power—Billings, Mont.
Regional Project Development Engineer—Billings, Mont.
Regional Property Officer—Billings, Mont.
Chief, Land Acquisition Branch—Billings, Mont.
Assistant to Regional Director, Administrative Management—Billings, Mont.
Project Manager, Missouri-Souris Project—Bismarck, N. Dak.
Assistant Project Manager—Bismarck, N. Dak.
Chief, Administrative Services Division—Bismarck, N. Dak.
Project Manager, Missouri-Oahe Project—Huron, S. Dak.
Administrative Officer—Huron, S. Dak.
Project Construction Engineer, Yellowtail Project—Fort Smith, Mont.
Project Manager, Upper Missouri Project—Great Falls, Mont.
Construction Engineer—Conrad, Mont.
Project Manager, Riverton Project—Riverton, Wyo.

Power Systems Operations Officer—Watertown, S. Dak.
Regional Director—Denver, Colo.
Assistant to Regional Director (2)—Denver, Colo.
Regional Engineer—Denver, Colo.
Chief, Construction Coordination and Estimates Branch—Denver Colo.
Regional Projects Development Engineer—Denver, Colo.
Regional Supervisor of Irrigation—Denver, Colo.
Chief, Land Acquisition Branch—Denver, Colo.
Chief, Repayments Branch—Denver, Colo.
Regional Supervisor of Power—Denver, Colo.
Chief, Power Contracts Branch—Denver, Colo.
Regional Procurement and Property Officer—Denver, Colo.
Regional Finance Officer—Denver, Colo.
MRB Planning Officer—Omaha, Nebr.
Assistant MRB Planning Officer—Omaha, Nebr.
Wyoming Reclamation Representative—Cheyenne, Wyo.
Project Manager, Fryingpan-Arkansas Project—Pueblo, Colo.
Administrative Officer—Pueblo, Colo.
Chief, Construction Field Division—Glenwood Springs, Colo.
Project Manager, South Platte River Project—Loveland, Colo.
Project Manager, North Platte River Project—Casper, Wyo.
Administrative Officer—Casper, Wyo.
Construction Engineer, Glen Elder Construction Office—Beloit, Kans.
Project Manager, Kansas River Project—McCook, Nebr.
Assistant Project Manager—McCook, Nebr.
Construction Engineer, Torrington Construction Field Division—Cheyenne, Wyo.
Area Engineer, Niobrara Lower Platte Development Office—Grand Island, Nebr.
Center Director, McCook JCC Center—McCook, Nebr.
Center Director, Casper JCC Center—Casper, Wyo.

OFFICE OF TERRITORIES

Director—Washington, D.C.
Assistant Director, Pacific Division—Washington, D.C.
Assistant Director, Virgin Islands Division and Legal Advisor—Washington, D.C.
Chief, Division of Programing and Financial Management—Washington, D.C.
Governor of the Virgin Islands—St. Thomas, V.I.
Secretary of the Virgin Island—St. Thomas, V.I.
Comptroller—St. Thomas, V.I.
Deputy Comptroller—St. Thomas, V.I.
Governor of American Samoa—Pago Pago, American Samoa.
Secretary of American Samoa—Pago Pago, American Samoa.
Attorney General—Pago Pago, American Samoa.
Special Assistant to the Governor—Pago Pago, American Samoa.
Director of Public Works—Pago Pago, American Samoa.
Director of Administrative Services—Pago Pago, American Samoa.
Chief Justice for American Samoa—Pago Pago, American Samoa.
Associate Justice for American Samoa—Pago Pago, American Samoa.
High Commissioner of the Trust Territory—Saipan, Mariana Islands.
Deputy Commissioner—Saipan, Mariana Islands.
Assistant Commissioner for Administration—Saipan, Mariana Islands.
Chief Engineer—Saipan, Mariana Islands.
Director of Property and Supply—Saipan, Mariana Islands.
Transportation Officer—Saipon, Mariana Islands.
Assistant Commissioner for Resources Development—Saipan, Mariana Islands.
Assistant Commissioner for Public Affairs—Saipan, Mariana Islands.
Chief Justice—Saipan, Mariana Islands.
Associate Justice—Saipan, Mariana Islands.
Deputy Attorney General—Saipan, Mariana Islands.
Director, Community Development—Saipan, Mariana Islands.
District Administrators (6)—Saipan, Mariana Islands.
Director of Economic Development—Saipan, Mariana Islands.
Attorney General—Saipan, Mariana Islands.
Assistant Commissioner for Education—Saipan, Mariana Islands.
Governor of Guam—Agana, Guam.
Secretary of Guam—Agana, Guam.

FEDERAL WATER POLLUTION CONTROL ADMINISTRATION

Deputy Commissioner—Washington, D.C.
Public Information Officer—Washington, D.C.
Program Advisor—Washington, D.C.
Assistant Commissioner for Administration—Washington, D.C.
Director, Division of General Services—Washington, D.C.
Acting Chief, Procurement Branch—Washington, D.C.
Assistant Commissioner, Program Plans and Development—Washington, D.C.
Assistant Commissioner, Technical Programs—Washington, D.C.
Director, Division of Pollution Surveillance—Washington, D.C.
Director, Technical Services—Washington, D.C.
Assistant Commissioner, Research and Development—Washington, D.C.
Director, Division of Research—Washington, D.C.
Assistant Director, Division of Research—Washington, D.C.
Chief, Pollution Control Technical Branch—Washington, D.C.
Program Planning Officer—Washington, D.C.
Director, Division of Grants Management—Washington, D.C.
Grants Review Officer—Washington, D.C.
Assistant Commissioner, Enforcement—Washington, D.C.
Director, Enforcement Program—Washington, D.C.
Assistant Commissioner, Facilities Program—Washington, D.C.
Director, Division of Construction Grants—Washington, D.C.
Deputy Director, Division of Construction Grants—Washington, D.C.
Assistant Commissioner, Comprehensive Planning and Programs—Washington, D.C.
Director, Division of Area Operations—Washington, D.C.
Acting Director, Division of Technical Control—Washington, D.C.
Acting Director, Division of Planning Grants—Washington, D.C.
Regional Director, Northeast Region—Boston, Mass.
Regional Construction Grants Officer—Boston, Mass.
Construction Grants Officer—Metuchen, N.J.
Regional Director, Middle Atlantic Region—Charlottesville, Va.
Deputy Regional Director—Charlottesville, Va.
Regional Director, Southeast Region—Atlanta, Ga.
Deputy Regional Director—Atlanta, Ga.
Regional Construction Grants Officer—Atlanta, Ga.
Regional Director, Ohio Basin Region—Cincinnati, Ohio.
Regional Construction Grants Officer—Cincinnati, Ohio.
Regional Enforcement Officer—Cincinnati, Ohio.
Regional Director, Great Lakes Region—Chicago, Ill.
Deputy Regional Director—Chicago, Ill.
Regional Construction Grants Officer—Chicago, Ill.
Regional Enforcement Officer—Chicago, Ill.
Construction Grants Officer—Chicago, Ill.
Regional Director, Missouri Basin Region—Kansas City, Mo.
Regional Construction Grants Officer—Kansas City, Mo.
Regional Enforcement Officer—Kansas City, Mo.
Regional Director, South Central Region—Dallas, Tex.
Deputy Regional Director—Dallas, Tex.
Regional Enforcement Officer—Dallas, Tex.
Regional Construction Grants Officer—Dallas, Tex.
Construction Grants Officers (2)—Dallas, Tex.
Regional Director, Southwest Region—San Francisco, Calif.
Deputy Regional Director—San Francisco, Calif.
Regional Enforcement Officer—San Francisco, Calif.
Regional Construction Grants Officer—San Francisco, Calif.
Regional Director, Northwest Region—Portland, Oreg.
Deputy Regional Director—Portland, Oreg.
Regional Construction Grants Officer—Portland, Oreg.
Regional Enforcement Officers (2)—Portland, Oreg.

BONNEVILLE POWER ADMINISTRATION

Deputy Administrator—Portland, Oreg.
Assistant to the Administrator (2)—Portland, Oreg.
Field Operations Officer—Portland, Oreg.
Assistant Administrator—Portland, Oreg.
General Engineer—Portland, Oreg.
Special Assistant to the Administrator—Portland, Oreg.
Executive Assistant to the Administrator—Portland, Oreg.
Assistant to the Administrator (Planning)—Portland, Oreg.
Equal Employment Policy and Security Officer—Portland, Oreg.
Assistant Administrator for Engineering—Portland, Oreg.
Assistant Chief Engineer—Portland, Oreg.
Consulting Engineer—Portland, Oreg.
Electrical Engineer (General)—Portland, Oreg.
Assistant to Chief Engineer—Portland, Oreg.
Assistant to Chief Engineer (Program Management)—Portland, Oreg.
Assistant to Chief Engineer for Systems Control—Portland, Oreg.
Assistant to Chief Engineer (Construction Project Coordination)—Portland, Oreg.
Electrical Engineer (Power Systems) (4)—Portland, Oreg.
General Engineers (5)—Portland, Oreg.
Supervisory Electrical Engineer—Portland, Oreg.
Electrical Engineers (3)—Portland, Oreg.
Civil Engineer—Portland, Oreg.
Chief of Construction—Portland, Oreg.
Assistant Chief of Construction—Portland, Oreg.
Head, Line Construction Section—Portland, Oreg.
Head, Substation Construction Section—Portland, Oreg.
Plant Services Manager—Portland, Oreg.

Supervisory General Engineer—Portland, Oreg.
Realty Officer—Portland, Oreg.
Assistant Administrator for Administrative Management—Portland, Oreg.
Assistant Director for Administrative Management—Portland, Oreg.
Chief, Branch of Finance and Accounts—Portland, Oreg.
Head, Disbursing Audit Section—Portland, Oreg.
Disbursing and Claims Specialist—Portland, Oreg.
Chief, Branch of Supply—Portland, Oreg.
Assistant Chief, Branch of Supply—Portland, Oreg.
Head, Supply Control—Portland, Oreg.
Head, Procurement Section—Portland, Oreg.
Head, Special Engineering Unit—Portland, Oreg.
Head, Inspection Section—Portland, Oreg.
Head, Pacific Coast Inspection—Portland, Oreg.
Head, Pittsburgh Inspection Office—Pittsburgh, Pa.
Head, Schenectady Inspection Office—Schenectady, N.Y.
Assistant Administrator for Power Management—Portland, Oreg.
Special Assistant to Power Manager—Portland, Oreg.
Assistant Power Manager—Portland, Oreg.
Chief, Branch of Power Resources—Portland, Oreg.
Chief, Branch of Customer Services—Portland, Oreg.
Chief, Branch of Power Marketing—Portland, Oreg.
Chief of Maintenance—Portland, Oreg.
Chief, Branch of Power Operations—Portland, Oreg.
Area Manager—Portland, Oreg.
Area Manager—Seattle, Wash.
Area Manager—Spokane, Wash.
Area Manager—Walla Walla, Wash.
Area Manager—Idaho Falls, Idaho.
Head, Bid and Awards Unit, GS–12 and above—Portland, Oreg.
Head, Purchasing Unit, GS–12 and above—Portland, Oreg.

SOUTHEASTERN POWER ADMINISTRATION

Administrator—Elberton, Ga.

SOUTHWESTERN POWER ADMINISTRATION

Administrator—Tulsa, Okla.
Assistant Administrator—Tulsa, Okla.
Chief, Division of Power—Tulsa, Okla.
Assistant Chiefs, Division of Power (2)—Tulsa, Okla.
Chief, Branch of Customer Service—Tulsa, Okla.
Chief, Branch of Construction and Maintenance—Tulsa, Okla.
Assistant Chiefs, Branch of Construction and Maintenance—Tulsa, Okla.
Chief, Division of Administrative Services—Tulsa, Okla.
Assistant Chief, Division of Administrative Services—Tulsa, Okla.
Chief, Branch of Supply—Tulsa, Okla.
Chief, Management Office—Tulsa, Okla.
Public Utilities Specialists (2)—Tulsa, Okla.
Chief, Branch of Power Operations—Tulsa, Okla.

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