FEDERAL REGISTER

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PART I

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Agencies in this issue—

Agricultural Research Service
Atomic Energy Commission
Civil Aeronautics Board
Civil Service Commission
Consumer and Marketing Service
Customs Bureau
Economic Opportunity Office
Federal Aviation Administration
Federal Communications Commission
Federal Crop Insurance Corporation
Federal Power Commission
Federal Trade Commission
Fish and Wildlife Service
Food and Drug Administration
Foreign Direct Investments Office
Health, Education, and Welfare Department
Housing and Urban Development Department
Interagency Textile Administrative Committee
Interstate Commerce Commission
Land Management Bureau
National Park Service
Securities and Exchange Commission
Small Business Administration
Transportation Department

Detailed list of Contents appears inside.

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[Revised as of January 1, 1968]

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Title 7—AGRICULTURE

Chapter II—Consumer and Marketing Service (Consumer Food Programs), Department of Agriculture

PART 220—SCHOOL BREAKFAST AND NONFOOD ASSISTANCE PROGRAMS AND STATE ADMINISTRATIVE EXPENSES

Appendix—Apportionment of School Breakfast Program Funds Pursuant to Child Nutrition Act of 1966, Fiscal Year 1969

Pursuant to section 4 of the Child Nutrition Act of 1966, Public Law 89-642, 80 Stat. 886, food assistance funds available for the fiscal year ending June 30, 1969, are apportioned among the States as follows:

State	Total apportionment	State agency	Withheld for private schools
Alabama	$77,152	$75,413	$1,739
Alaska	50,891	50,891	
Arizona	57,555	55,337	2,218
Arkansas	66,305	64,707	1,598
California	82,553	82,553	
Colorado	58,711	55,126	3,585
Connecticut	57,598	57,598	
Delaware	52,236	51,808	428
District of Columbia	51,347	51,347	
Florida	82,291	80,736	1,555
Georgia	88,749	88,749	
Guam	15,793	11,612	4,181
Hawaii	55,426	52,186	3,240
Idaho	53,754	52,312	1,442
Illinois	75,236	75,236	
Indiana	70,343	70,343	
Iowa	65,573	58,027	7,546
Kansas	60,192	60,192	
Kentucky	74,867	74,867	
Louisiana	84,473	84,473	
Maine	54,667	48,588	6,079
Maryland	61,120	59,406	1,714
Massachusetts	70,089	70,089	
Michigan	72,064	66,260	5,804
Minnesota	69,721	61,819	7,902
Mississippi	72,527	72,527	
Missouri	70,802	70,802	
Montana	52,678	49,725	2,953
Nebraska	56,742	48,752	7,990
Nevada	50,748	50,410	338
New Hampshire	52,729	52,729	
New Jersey	61,311	54,823	6,488
New Mexico	56,312	56,312	
New York	105,837	105,837	
North Carolina	93,543	93,543	
North Dakota	54,297	48,575	5,722
Ohio	84,233	76,550	7,683
Oklahoma	61,862	61,862	
Oregon	57,694	57,694	
Pennsylvania	84,106	74,711	9,395
Puerto Rico	73,693	73,693	
Rhode Island	51,493	51,493	
South Carolina	76,172	75,362	810
South Dakota	53,532	53,532	
Tennessee	76,099	74,951	1,148
Texas	91,217	88,164	3,053
Utah	57,454	57,271	183
Vermont	51,529	51,529	
Virginia	74,953	73,896	1,057
Virgin Islands	15,872	15,872	
Washington	60,650	59,142	1,508
West Virginia	60,432	59,233	1,199
Wisconsin	65,980	54,052	11,928
Wyoming	51,386	51,386	
Samoa, American	15,411	15,411	
Total	3,500,000	3,389,514	110,486

(Secs. 2, 4, 6, 8 through 16, 80 Stat. 885-890; 42 U.S.C. 1771, 1773, 1775, 1777-1785)

Dated: October 4, 1968.

RODNEY E. LEONARD,
Administrator.

[F.R. Doc. 68-12291; Filed, Oct. 9, 1968; 8:45 a.m.]

PART 220—SCHOOL BREAKFAST AND NONFOOD ASSISTANCE PROGRAMS AND STATE ADMINISTRATIVE EXPENSES

Appendix—Apportionment of Nonfood Assistance Funds Pursuant to Child Nutrition Act of 1966, Fiscal Year 1969

Pursuant to section 5 of the Child Nutrition Act of 1966, Public Law 89-642, 80 Stat. 887, nonfood assistance funds available for the fiscal year ending June 30, 1969, are apportioned among the States as follows:

State	Total apportionment	State agency	Withheld for private schools
Alabama	$23,817	$23,280	$537
Alaska	782	782	
Arizona	6,628	6,373	255
Arkansas	14,303	13,958	345
California	28,555	28,555	
Colorado	7,641	7,174	467
Connecticut	6,665	6,665	
Delaware	1,962	1,946	16
District of Columbia	1,182	1,182	
Florida	28,325	27,790	535
Georgia	33,990	33,990	
Guam	696	512	184
Hawaii	4,760	4,482	278
Idaho	3,293	3,205	88
Illinois	22,137	22,137	
Indiana	17,845	17,845	
Iowa	13,661	12,089	1,572
Kansas	8,940	8,940	
Kentucky	21,813	21,813	
Louisiana	30,240	30,240	
Maine	4,094	3,639	455
Maryland	9,754	9,480	274
Massachusetts	17,622	17,622	
Michigan	19,354	17,795	1,559
Minnesota	17,299	15,338	1,961
Mississippi	19,761	19,761	
Missouri	18,247	18,247	
Montana	2,349	2,217	132
Nebraska	5,914	5,081	833
Nevada	656	652	4
New Hampshire	2,394	2,394	
New Jersey	9,922	8,872	1,050
New Mexico	5,536	5,536	
New York	48,980	48,980	
North Carolina	38,195	38,195	
North Dakota	3,770	3,373	397
Ohio	30,028	27,289	2,739
Oklahoma	10,405	10,405	
Oregon	6,749	6,749	
Pennsylvania	29,918	26,576	3,342
Puerto Rico	20,783	20,783	
Rhode Island	1,310	1,310	
South Carolina	22,958	22,714	244
South Dakota	3,098	3,098	
Tennessee	22,893	22,548	345
Texas	36,154	34,944	1,210
Utah	6,539	6,518	21
Vermont	1,341	1,341	
Virginia	21,889	21,580	309
Virgin Islands	765	765	
Washington	9,343	9,111	232
West Virginia	9,151	8,969	182
Wisconsin	14,018	11,484	2,534
Wyoming	1,216	1,216	
Samoa, American	360	360	
Total	750,000	727,900	22,100

(Secs. 2, 5, 6, 8 through 16, 80 Stat. 885-890; 42 U.S.C. 1771, 1774, 1775, 1777-1785)

Dated: October 4, 1968.

RODNEY E. LEONARD,
Administrator.

[F.R. Doc. 68-12294; Filed, Oct. 9, 1968; 8:45 a.m.]

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

PART 1062—MILK IN ST. LOUIS-OZARKS MARKETING AREA

PART 1071—MILK IN NEOSHO VALLEY MARKETING AREA

Determination of Equivalent Price for Use in Computing Class I Prices

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Neosho Valley marketing area (7 CFR Part 1071) it is hereby found and determined that:

(1) The Class I price of the Neosho Valley order is based in part on the Class I price of the Ozarks order (Part 1067). The Neosho Valley order provides in § 1071.51(a)(2): "The price for Class I milk of 3.5 percent butterfat content established for the same month or delivery period under Part 1067 of this chapter regulating the handling of milk in the Ozarks marketing area, plus 15 cents".

(2) Effective October 1, 1968, the Ozarks order will be merged with the St. Louis, Mo., order into one order regulating the handling of milk in the St. Louis-Ozarks marketing area, pursuant to an order issued September 26, 1968.

(3) For the purpose of computing the Neosho Valley Class I price, the Class I price announced for Zone I under the St. Louis-Ozarks milk order (Part 1062) will be equivalent to the price specified in § 1071.51(a)(2) of the Neosho Valley order and should be used in lieu thereof in computation of the Class I price of the Neosho Valley order until such time as the Neosho Valley order may be amended.

Therefore, good cause exists for making this determination effective October 1, 1968.

Effective date: October 1, 1968.

Signed at Washington, D.C., on October 4, 1968.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 68-12316; Filed, Oct. 9, 1968; 8:46 a.m.]

[Milk Order 133]

PART 1133—MILK IN INLAND EMPIRE MARKETING AREA

Order Suspending Certain Provisions

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Inland Empire marketing area (7 CFR Part 1133), it is hereby found and determined that:

(a) The following provisions of the order no longer tend to effectuate the declared policy of the Act for the month of September 1968.

(1) In paragraph (c) of § 1133.12 the provision: "and 20 percent in the month of September", where such provision appears in both subparagraphs (1) and (2) of such paragraph; and

(2) The word "September" which appears in the second sentence of § 1133.12 (c)(5).

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

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

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

(3) The suspension will permit a handler to divert producer milk from a pool plant to a nonpool plant during the month of September 1968 without limit, if the milk of such producers had been received at a pool plant prior to diversion (but not necessarily in the current month). The proposed suspension will permit dairy farmers who have supplied the fluid milk requirements of the market to continue as producers under the order.

(4) Interested parties were afforded opportunity to file written data, views, or arguments concerning this suspension (33 F.R. 14173).

A cooperative association whose members also supply milk to handlers regulated by the order opposed, at this time, the suspension for October and November 1968. It stated that unlimited diversion for October and November might encourage the pooling of additional producers who have not been associated with the market. This could lower returns for dairy farmers who have regularly supplied the fluid milk requirements of the market.

Furthermore, unlimited diversion for October and November would tend to diminish the desired effect of the seasonal incentive plan for the market, which provides for fall production incentive payments from a fund established last spring by deductions from payments to producers who were associated with the market at that time.

Therefore, good cause exists for making this order effective for the month of September 1968 upon publication in the FEDERAL REGISTER.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for the month of September 1968.

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

Effective date: Upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on October 4, 1968.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 68-12315; Filed, Oct. 9, 1968; 8:46 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 83—DUCK VIRUS ENTERITIS (DUCK PLAGUE)

Approved Source Flocks

Pursuant to the provisions of sections 1 and 3 of the Act of March 3, 1905, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, sections 4, 5, 6, and 7 of the Act of May 29, 1884, as amended, and section 3 of the Act of July 2, 1962 (21 U.S.C. 111, 112, 113, 115, 117, 120, 123, 125, and 134b), § 83.7 of Part 83, Title 9, Code of Federal Regulations, designated "Duck Virus Enteritis (Duck Plague)" is hereby amended in the following respects:

Subparagraph (3) of paragraph (b) of § 83.7 is amended to read as follows:

§ 83.7 Approval and maintenance of source flocks.

* * * * *

(b) * * *

(3) The flock has been maintained free from exposure to duck virus enteritis, has never been vaccinated with a live duck virus enteritis agent, and has not been exposed to waterfowl vaccinated with such an agent.

* * * * *

(Secs. 1 and 2, 32 Stat. 791 and 792, as amended, secs. 4, 5, 6, and 7, 23 Stat. 32, as amended, secs. 1 and 3, 33 Stat. 1264 and 1265, as amended, sec. 3, 76 Stat. 130; 21 U.S.C. 111, 112, 113, 115, 117, 120, 123, 125, 134b. 29 F.R. 16210, as amended)

Effective date. The foregoing amendment shall become effective upon publication in the FEDERAL REGISTER.

The purpose of this amendment is to facilitate a Federal-State program now in operation in the State of New York for the control and eradication of duck virus enteritis by prohibiting the use of live duck virus enteritis vaccine in approved source flocks of commercial domestic waterfowl until this product has been properly evaluated and its possible contagion determined. In order to accomplish its purpose, the amendment should be made effective as soon as possible. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 4th day of October 1968.

R. J. ANDERSON,
Acting Administrator, Agricultural Research Service.

[F.R. Doc. 68-12364; Filed, Oct. 9, 1968; 8:50 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 68–CE–47]

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

Designation of Control Zone and Alteration of Transition Area

On pages 10459 and 10460 of the FEDERAL REGISTER dated July 23, 1968, the Federal Aviation Administration published a notice of proposed rule making which would amend §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a control zone and alter the transition area at Glasgow, Mont.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendments.

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

These amendments shall be effective 0901 G.m.t., December 12, 1968.

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

Issued in Kansas City, Mo., on September 20, 1968.

DANIEL E. BARROW,
Acting Director, Central Region.

(1) In § 71.171 (33 F.R. 2058), the following control zone is added:

GLASGOW, MONT.

Within a 5-mile radius of Glasgow International Airport (latitude 48°12'50" N. longitude 106°37'10" W.); within 2 miles each side of the 079° bearing from Glasgow International Airport, extending from the 5-mile radius zone to 8 miles east of the airport; and within 2 miles each side of the 290° bearing from Glasgow International Airport; extending from the 5-mile radius zone to 8 miles west of the airport.

(2) In § 71.181 (32 F.R. 2148) the following transition area is amended to read:

GLASGOW, MONT.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Glasgow International Airport (latitude 48°12'50" N., longitude 106°37'10" W.); and within 2 miles each side of the Glasgow VOR 195° and 015° radials extending from the 8-mile radius area to 8 miles north of the VOR; and that airspace extending upward from 1,200 feet above the surface within 8 miles south and 5 miles north of the 290° bearing from Glasgow International Airport, extending from the airport to 12 miles west of the airport; within 8 miles north and 5 miles south of the 079° bearing from Glasgow International Airport, extending from the airport to 12 miles east of the airport; and within 8 miles west and 5 miles east of the Glasgow VOR 195° and 015° radials, extending from 12 miles north to 12 miles south of the VOR.

[F.R. Doc. 68-12362; Filed, Oct. 9, 1968; 8:50 a.m.]

[Airspace Docket No. 68-WE-63]

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

Designation of Transition Area

On August 24, 1968, a notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 12056) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations which would designate a new transition area to be known as San Carlos, Ariz.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No objections have been received and the proposed amendment is hereby adopted without change.

Effective date. This amendment shall be effective 0901 G.m.t., December 12, 1968.

Issued in Los Angeles, Calif., on October 1, 1968.

ARVIN O. BASNIGHT,
Director, Western Region.

In § 71.181 (33 F.R. 2137), the following transition area is added:

SAN CARLOS, ARIZ.

That airspace extending upward from 12,000 feet MSL bounded on the northwest by the southeast edge of V-190, on the east by an arc of a 115 mile radius circle centered on Williams AFB, Ariz. (latitude 33°18'25" N., longitude 111°39'35" W.); on the south by the north edge of V-94 and on the west by longitude 110°52'00" W.

[F.R. Doc. 68-12352; Filed, Oct. 9, 1968; 8:49 a.m.]

[Airspace Docket No. 68-WE-65]

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

Alteration of Transition Area

On August 24, 1968, a notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 12056) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations which would alter the Jackson, Wyo., transition area.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No objections have been received and the proposed amendment is hereby adopted without change.

Effective date. This amendment shall be effective 0901 G.m.t., December 12, 1968.

Issued in Los Angeles, Calif., on October 1, 1968.

ARVIN O. BASNIGHT,
Director, Western Region.

In § 71.181 (33 F.R. 2199) the Jackson, Wyo. transition area is amended to read as follows:

JACKSON, WYO.

That airspace extending upward from 700 feet above the surface within a 5-mile radius circle centered on Jackson Hole Airport, Wyo. (latitude 43°36'24" N., longitude 110°44'13" W.); that airspace extending upward from 1,200 feet above the surface within 6 miles west and 9 miles east of the Jackson VOR 200° and 020° radials, extending from 23 miles south to 11 miles north of the VOR, and within 6 miles north and 9 miles south of the Dunoir, Wyo. VOR 282° and 102° radials, extending from 8 miles east to 21 miles west of the VOR, and that airspace within 5 miles each side of the Jackson VOR 107° radial extending from 9 to 15 miles east of the VOR.

[F.R. Doc. 68-12353; Filed, Oct. 9, 1968; 8:49 a.m.]

[Airspace Docket No. 68-WE-75]

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

Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the description of the Newport, Oreg., transition area.

The VOR/DME 1 approach procedure for Newport Airport, Oreg., has been revised to provide for the optional use of DME to eliminate the necessity of a procedure turn. This modification will require a 1.5 SM extension to the 700-foot portion of the transition area based on the 184° T (163° M) radial of the Newport VORTAC. The VOR/DME 2 procedure has been modified to incorporate a 10 NM arc transition with no procedure turn, extending counterclockwise from the 044° T (023° M) to the 005° T (344° M) radials of the Newport VORTAC. This revised procedure will require a very small portion of additional 1,200-foot transition area between V-27 and V-287 W.

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

In § 71.181 (33 F.R. 2227) the Newport Oreg. transition area is amended by striking out the numeral "8" in the fifth line of the description of the 700-foot portion of the transition area and substituting "9.5" therefor. Add the following to the 1,200-foot portion of the transition area: ", and that airspace between the arcs of a 12 and a 16.5-mile radius circle centered on the Newport VORTAC, extending counterclockwise from the 044° radial to a line 5 miles west of a parallel to the 005° radial of the VORTAC."

Since this amendment is minor in nature and imposes no additional burden on any person, notice, and public procedure are unnecessary.

Effective date. This amendment shall be effective 0901 G.m.t., December 12, 1968.

Issued in Los Angeles, Cailf., on October 1, 1968.

ARVIN O. BASNIGHT,
Director, Western Region.

[F.R. Doc. 68-12354; Filed, Oct. 9, 1968; 8:49 a.m.]

[Airspace Docket No. 68-CE-54]

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

Designation of Transition Area; Correction

On September 5, 1968, a final rule was published in the FEDERAL REGISTER (33 F.R. 12544), F.R. Doc. 68-10682, which designated a transition area at Ida Grove, Iowa. However, in the designation the longitude coordinate for the Ida Grove Municipal Airport was incorrectly recited as "longitude 92°26'40" W." It should have read "longitude 95°26'40" W." Action is taken herein to make this correction.

Since this amendment is editorial in nature and imposes no additional burden on any person, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, "longitude 92°26'40" W., as set forth in the transition area designation in F.R. Doc. 68-10682, is deleted and "longitude 95°26'40" W." is substituted therefor.

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

Issued in Kansas City, Mo., on September 25, 1968.

EDWARD C. MARSH,
Director, Central Region.

[F.R. Doc. 68-12355; Filed, Oct. 9, 1968; 8:49 a.m.]

[Airspace Docket No. 67-CE-151]

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

Extension of Federal Airway

On January 5, 1968, a notice of proposed rule making was published in the

FEDERAL REGISTER (33 F.R. 151) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would extend VOR Federal airway No. 430 from Williston, N. Dak., to Cut Bank, Mont., via Glasgow, Mont., and Havre, Mont., including a south alternate segment between Williston and Glasgow.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. Two comments were received in response to the notice. The comment received from the Air Transport Association of America endorsed the proposal. The comment received from the Department of the Air Force objected to the proposed airway as it would pose additional problems and restrictions to Air Defense operations and training. The Department of the Air Force recommended that the floors of the airway, if designated, be raised so as to ensure the proper exchange of radar traffic information between the Air Defense control facility and the Great Falls, Mont., Air Route Traffic Control Center.

The FAA anticipates no more effect on military aircraft operations west of Williston on the proposed segment of V-430 than is now experienced on the existing segment of V-430 east of Williston. The FAA also believes the Air Force recommendation to raise the airway floors of the proposed segment of V-430 will enhance the overall safety of transiting aircraft through the military training areas. Accordingly, action is taken herein to raise the airway floors for the proposed segments of V-430 between Williston and Cut Bank.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., December 12, 1968, as hereinafter set forth.

In § 71.123 (33 F.R. 2009) V-430 is amended by deleting "From Williston, N. Dak.," and substituting "From Cut Bank, Mont., 10 miles 12 AGL, 74 miles 55 MSL, 12 AGL Havre, Mont.; 14 miles 12 AGL, 103 miles 50 MSL, 12 AGL Glasgow, Mont.; 13 miles 12 AGL, 79 miles 50 MSL, 12 AGL Williston, N. Dak., including a south alternate 12 AGL INT Glasgow 117° and Williston 263° radials, 22 miles 12 AGL, 33 miles 55 MSL, 12 AGL Williston;" therefor.

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

Issued in Washington, D.C., on October 3, 1968.

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

[F.R. Doc. 68-12356; Filed, Oct. 9, 1968; 8:49 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. C-1425]

PART 13—PROHIBITED TRADE PRACTICES

Genuine Sportswear Corp. and Andor Gestetner

Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-90 Wool Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-90 Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-80 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719; as amended, secs. 2-5, 54 Stat. 1128-1130; 15 U.S.C. 45, 68) [Cease and desist order, Genuine Sportswear Corp. et al., New York, N.Y., Docket C-1425, Sept. 16, 1968]

In the Matter of Genuine Sportswear Corp., a Corporation, and Andor Gestetner, Individually and as an Officer of Said Corporation

Consent order requiring a New York City manufacturer of outerwear sports garments to cease misbranding its wool products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Genuine Sportswear Corp., a corporation, and its officers, and Andor Gestetner, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the manufacture for introduction into commerce, the introduction into commerce or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding wool products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner, each element of information required to be disclosed by section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Issued: September 16, 1968.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 68-12325; Filed, Oct. 9, 1968; 8:47 a.m.]

[Docket No. C-1426]

PART 13—PROHIBITED TRADE PRACTICES

Pachter Garment Co., Inc., and Meyer J. Pachter

Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-30 Fur Products Labeling Act; 13.1185-90 Wool Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-30 Fur Products Labeling Act; 13.1212-80 Textile Fiber Products Identification Act; 13.1212-90 Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 *Composition:* 13.1845-36 Fur Products Labeling Act; 13.1845-80 Wool Products Labeling Act; § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-35 Fur Products Labeling Act; 13.1852-70 Textile Fiber Products Identification Act; 13.1852-80 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2-5, 54 Stat. 1128-1130, sec. 8, 65 Stat. 179, 72 Stat. 1717; 15 U.S.C. 45, 68, 69f, 70) [Cease and desist order, Pachter Garment Co., Inc., et al., Kansas City, Mo., Docket C-1426 Sept. 16, 1968]

In the Matter of Pachter Garment Co., Inc., a Corporation, and Meyer J. Pachter, Individually and as an Officer of Said Corporation

Consent order requiring a Kansas City, Mo., manufacturer of ladies' coats and suits to cease misbranding its wool, fur, and textile fiber products and falsely invoicing its fur products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Pachter Garment Co., Inc., a corporation, and its officers, and Meyer J. Pachter, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any

corporate or other device, in connection with the introduction, manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by section 4(a)(2) of the Wool Products Labeling Act of 1939.

3. Failing to designate on stamps, tags, labels, or other means of identification affixed to such wool products, fibers present in the amount of less than 5 per centum, by the term "other fibers" instead of the generic names or fiber trademarks of such fibers.

4. Failing to set forth the common generic names of natural fibers or the generic names of manufactured fibers established in Rule 7 of the regulations promulgated under the Textile Fiber Products Identification Act, in naming such fibers in required information on stamps, tags, labels or other means of identification attached to wool products.

5. Using the term "mohair" in lieu of the word "wool" in setting forth the required information on labels affixed to wool products unless the fibers described as mohair are entitled to such designation and are present in at least the amount stated.

It is further ordered, That respondents Pachter Garment Co., Inc., a corporation, and its officers, and Meyer J. Pachter, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

2. Setting forth on labels attached to fur products the name or names of any animal or animals other than the names of the animals producing the fur contained in the fur products as specified in the Fur Products Name Guide, and as prescribed by the rules and regulations.

3. Failing to set forth the term "natural" as part of the information required to be disclosed on labels under the Fur Products Labeling Act and the rules and regulations promulgated thereunder to describe such fur products which are not pointed, bleached, tip-dyed, dyed, or otherwise artificially colored.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Failing to set forth the term "natural" as part of the information required to be disclosed on an invoice under the Fur Products Labeling Act and rules and regulations promulgated thereunder to describe such fur product which is not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Failing to set forth on an invoice the item number or mark assigned to such fur product.

It is further ordered, That respondents Pachter Garment Co., Inc., a corporation, and its officers, and Meyer J. Pachter, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product, which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding textile fiber products by failing to affix labels to such textile fiber products showing in a clear, legible and conspicuous manner each element of information required to be disclosed by section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Issued: September 16, 1968.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary*.

[F.R. Doc. 68-12326, Filed, Oct. 9, 1968; 8:47 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 68-252]

PART 16—LIQUIDATION OF DUTIES

Countervailing Duties; Sugar Content of Certain Articles From Australia

The Treasury Department is in receipt of official information that the rates of bounties or grants paid or bestowed by the Australian Government within the meaning of section 303, Tariff Act of 1930 (19 U.S.C. 1303), on the exportation during the month of September 1968, of approved fruit products and other approved products containing sugar amounts to Australian $126.30 per 2,240 pounds of sugar content.

The net amount of bounties or grants on the above-described commodities which are manufactured or produced in Australia is hereby ascertained, determined, and declared to be Australian $126.30 per 2,240 pounds of sugar content. Additional duties on the above-described commodities, except those commodities covered by T.D. 55716 (27 F.R. 9595), whether imported directly or indirectly from that country, equal to the net amount of the bounty shown above shall be assessed and collected.

The table in § 16.24(f) of the Customs Regulations is amended by inserting after the last line under "Australia—Sugar content of certain articles" the number of this Treasury decision in the column headed "Treasury Decision" and the words "New rate" in the column headed "Action." The table in § 16.24(f) is further amended by deleting therefrom under "Australia—Sugar content of certain articles" the number 68-207 in the column headed "Treasury Decision" and the words "New rate" appearing opposite such number in the column headed "Action."

(R.S. 251, secs. 303, 624, 46 Stat. 687, 759; 19 U.S.C. 66, 1303, 1624)

[SEAL] EDWIN F. RAINS, *Acting Commissioner of Customs*.

Approved: October 3, 1968.

JOSEPH M. BOWMAN, *Assistant Secretary of the Treasury*.

[F.R. Doc. 68-12367; Filed Oct. 9, 1968; 8:50 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 12—Department of Transportation

[OST Docket No. 19]

PART 12–3—PROCUREMENT BY NEGOTIATION

The purpose of the following amendment is to add one new part to the Department's procurement regulations.

Since this amendment relates to Departmental management, procedures and practices, notice and public procedure thereon is unnecessary.

This amendment is made under authority of section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)) and the Armed Services Procurement Act (10 U.S.C. Chapter 137).

In consideration of the foregoing, Title 41 of the Code of Federal Regulations is amended by adding the following new Part 12-3—Procurement by Negotiation, effective November 30, 1968.

Issued in Washington, D.C., on October 4, 1968.

ALAN L. DEAN,
Assistant Secretary for Administration.

Subpart 12–3.1—Use of Negotiation

Sec.
12–3.150 Receipt and opening of offers.
12–3.151 Late proposals and modifications.
12–3.152 Protests against award.

Subpart 12–3.2—Circumstances Permitting Negotiation

12–3.200 Scope of subpart.

Subpart 12–3.6—Small Purchases

12–3.603–1 Solicitation.

AUTHORITY: The provisions of this Part 12-3 issued under sec. 205(c), Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); Armed Services Procurement Act, 10 U.S.C. Chapter 137.

Subpart 12–3.1—Use of Negotiation

§ 12–3.150 Receipt and opening of offers.

The instructions for the receipt and safeguarding of bids in FPR 1-2.401 shall also apply to the receipt and safeguarding of proposals and quotations.

§ 12–3.151 Late proposals and modifications.

(a) Proposals which are received in the office designated in the requests for proposals after the time specified for their submission are "Late Proposals". Late proposals shall not be considered for award, except under the circumstances set forth in FPR 1-2.303 relating to late bids or where only one proposal is received. (For the purpose of applying the late bid rules to late proposals, unless a specified time for receipt of proposals is stated in the request for proposals, the time for such receipt shall be deemed to be the time for close of business of the office designated for receipt of proposals on the date stated in the request for proposals). Exceptions may be authorized only by the head of the procuring activity, and only where consideration of a late proposal is of extreme importance to the Government, as for example where it offers some important technical or scientific breakthrough or a substantially lower price. To determine the possible existence of such extreme importance, all late proposals shall be opened prior to award and if not considered for award shall be returned to the offeror. Accordingly, in these cases, the procedures in FPR 1-2.303-6 and 1-2.303-7 regarding the disposition of late bids will not apply.

(b) Substantially the following provision shall be included in each request for proposal:

LATE PROPOSAL

(a) Except as provided in 41 CFR 12-3.151, offers and modifications of offers received at the office designated in the solicitation after the exact hour and date specified for receipt will not be considered unless:

(1) They are received before award is made; and either

(2) They are sent by registered mail, or by certified mail for which an official dated post stamp (postmark) on the Original Receipt for Certified Mail has been obtained, or by telegraph if authorized, and it is determined by the Government that the late receipt was due solely to delay in the mails, or delay by the telegraph company, for which the offeror was not responsible; or

(3) If submitted by mail (or by telegram if authorized) it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; provided, that timely receipt at such installation is established upon examination of an appropriate date or time stamp (if any) of such installation, or of other documentary evidence of receipt (if readily available) within the control of such installation or of the post office serving it. However, a modification of an offer which makes the terms of the otherwise successful offer more favorable to the Government will be considered at any time it is received and may thereafter be accepted.

(b) Offerors using certified mail are cautioned to obtain a Receipt for Certified Mail showing a legible date postmark and to retain such receipt against the chance that it will be required as evidence that a late offer was timely mailed.

(c) The time of mailing of late offers submitted by registered or certified mail shall be deemed to be the last minute of the date shown in the postmark on the registered mail receipt or registered mail wrapper or on the Receipt for Certified Mail unless the offeror furnishes evidence from the post office station of mailing which establishes an earlier time. In the case of certified mail, the only acceptable evidence is as follows: (1) Where the Receipt for Certified Mail identifies the post office station or mailing, evidence furnished by the offeror which establishes that the business day of that station ended at an earlier time, in which case the time of mailing shall be deemed to be the last minute of the business day of that station; or (2) an entry in ink on the Receipt for Certified Mail showing the time of mailing and the initials of the postal employee receiving the item and making the entry, with appropriate written verification of such entry from the post office station of mailing, in which case the time of mailing shall be the time shown in the entry. If the postmark on the original Receipt for Certified Mail does not show a date, the offer shall not be considered.

(c) Offeror's submitting late proposals or modifications shall be notified in accordance with FPR 1-2.303-6, except that the notices provided for therein shall be appropriately modified to relate to the request for proposals.

(d) The provisions of paragraph (a) of this section are also applicable to late quotations. In the case of a request for quotations, the provision set forth in paragraph (b) of this section will be appropriately modified.

(e) In the exceptional circumstances where the head of the procuring activity concerned authorizes an exception from paragraph (a) of this section, the contracting officer shall resolicit all firms (including late offerors) which have submitted proposals and are determined to be capable of meeting current requirements. Such resolicitation shall specify a date for submission of new proposals and include the "Late Proposals" provision set forth in paragraph (b) of this section.

(f) The normal revisions of proposals by selected offerors occurring during the usual conduct of negotiations with such offerors are not to be considered as late proposals.

(g) Modifications of proposals (other than the normal revisions of proposals by selected offerors during the usual conduct of negotiations with such offerors) which are received in the office designated in the requests for proposals after the time specified for submission of proposals are "late modifications." Late modifications shall be subject to the rules applicable to late proposals set forth in this section. However, a modification received from an otherwise successful offeror which is favorable to the Government shall be considered at any time that such modification is received. The provisions of this section are also applicable to late modifications to quotations.

§ 12–3.152 Protests against award.

Protests against awards of negotiated procurements shall be processed in the same manner as prescribed in FPR 1-2.407-8 for protests against awards under Invitations for Bids.

Subpart 12–3.2—Circumstances Permitting Negotiation

§ 12–3.200 Scope of subpart.

Procurements by U.S. Coast Guard may be effected by negotiation under any one of the seventeen exceptions contained in 10 U.S.C. 2304(a).

Subpart 12–3.6—Small Purchases

§ 12–3.603–1 Solicitation.

(a) *Purchases not in excess of $250.* Small purchases not exceeding $250 may be accomplished without securing competitive quotations whenever there exists a basis for determining that the price to be paid is reasonable. However, such purchases shall be distributed equitably among qualified suppliers.

(b) *Purchases in excess of $250 but not in excess of $2,500.* Where the estimated dollar amount of the procurement exceeds $250, the solicitation shall normally be made of at least three sources of supply. Where there are more than three names on the source list for an item, the mailing list for a particular solicitation should include the vendor who received the award on the previous solicitation, and two other vendors (on a rotated basis) from the source list. While there may be instances where quotations should be solicited from additional sources, soliciting quotations from at least three suppliers ordinarily is sufficient. Care should be taken to prevent administrative costs from being disproportionate to the amount of the purchase. The number of quotations obtained and considered or the number of sources of supply utilized when making small purchases will depend to a large extent on what knowledge the purchasing officer has of the current availability and price of the desired item in commercial markets.

[F.R. Doc. 68-12314; Filed, Oct. 9, 1968; 8:46 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER A—GENERAL

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

Spanish Language on Labels and Labeling of Foods and Cosmetics Distributed Solely in Commonwealth of Puerto Rico

Section 1.103(c)(1) currently permits use of the Spanish language in lieu of the English language on labels and labeling of drugs and devices distributed solely in the Commonwealth of Puerto Rico. The Commissioner of Food and Drugs concludes that Part 1 should be amended as follows to similarly provide for such language substitution in the case of foods and cosmetics.

Accordingly, under the authority contained in the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055; 21 U.S.C. 371(a)) and delegated to the Commissioner of Food and Drugs (21 CFR 2.120), §§ 1.9(c)(1) and 1.203(b)(1) are revised to read as follows:

§ 1.9 Food; labeling; prominence of required statements.

* * * * *

(c)(1) All words, statements, and other information required by or under authority of the act to appear on the label or labeling shall appear thereon in the English language: *Provided, however,* That in the case of articles distributed solely in the Commonwealth of Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be substituted for English.

* * * * *

§ 1.203 Cosmetics; labeling requirements, form of stating.

* * * * *

(b)(1) All words, statements, and other information required by or under authority of the act to appear on the label or labeling shall appear thereon in the English language: *Provided, however,* That in the case of articles distributed solely in the Commonwealth of Puerto Rico or in a Territory where the predominant language is one other than English, the predominant language may be substituted for English.

* * * * *

This order is noncontroversial and nonrestrictive in nature and effects consistency in the subject requirements; therefore, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER.

(Sec. 701(a), 52 Stat. 1055; 21 U.S.C. 371(a))

Dated: September 30, 1968.

HERBERT L. LEY, Jr.,
Commissioner of Food and Drugs.

[F.R. Doc. 68-12344; Filed, Oct. 9, 1968; 8:48 a.m.]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

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

SUBCHAPTER C—DRUGS

PART 144—ANTIBIOTIC DRUGS; EXEMPTIONS FROM LABELING AND CERTIFICATION REQUIREMENTS

Chlortetracycline, Sulfamethazine

1. The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by American Cyanamid Co., Agricultural Division, Post Office Box 400, Princeton, N.J. 08540, and other relevant material, concludes that the food additive regulations should be amended to provide for the safe use of chlortetracycline with sulfamethazine in feed for beef cattle for specified conditions. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.208(d) is amended by adding to table 6 a new item 11, as follows:

§ 121.208 Chlortetracycline.

* * * * *

(d) * * *

TABLE 6—CHLORTETRACYCLINE IN CATTLE FEED

Principal ingredient	Amount	Combined with—	Amount	Limitations	Indications for use
	Mg. per head per day		*Mg. per head per day*		
* * *	* * *	* * *	* * *	* * *	* * *
11. Chlortetracycline...	350	Sulfamethazine....	350	For beef cattle; feed for 28 days; withdraw 7 days prior to slaughter.	Aid in the maintenance of weight gains in the presence of respiratory disease such as shipping fever.

* * * * * * *

2. Under the authority of the act (sec. 507(c), 59 Stat. 463, as amended; 21 U.S.C. 357(c)), delegated as cited above, the Commissioner finds that cattle feed containing chlortetracycline and sulfamethazine need not comply with the requirements of section 507 of the act to insure its safety and efficacy when used in accordance with § 121.208 as amended herein. Therefore, § 144.26(b) is amended by adding thereto a new subparagraph, as follows:

§ 144.26 Animal feed containing certifiable antibiotic drugs.

* * * * *

(b) * * *

(62) It is a medicated cattle feed containing antibiotics and sulfamethazine in the amounts and for the purposes indicated in § 121.208 of this chapter; its labeling bears adequate directions and warnings for such use; and there has been submitted to the Commissioner, in triplicate, adequate information of the kind required for Form FD-1800—Revised under § 130.4(c)(3) of this chapter and such application has been approved by the Food and Drug Administration. The exemption shall expire at the beginning of any act changing the labeling or potency of such drug unless an approved supplement to the application provides for the change or the change is made in conformance with other provisions of § 130.9 of this chapter.

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

are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

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

(Secs. 409(c)(1), 507(c), 59 Stat. 463, as amended, 72 Stat. 1786; 21 U.S.C. 348(e)(1), 357(c)).

Dated: October 1, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-12342; Filed, Oct. 9, 1968; 8:48 a.m.]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

SODIUM PENTACHLOROPHENATE

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 8H2310) filed by the Dewey & Almy Division of W. R. Grace & Co., 62 Whittemore Avenue, Cambridge, Mass. 02140, and other relevant material, concludes that the food additive regulations should be amended to provide for the safe use, as specified below, of sodium pentachlorophenate as a preservative in the manufacture of sealing compounds. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.2514(b)(3)(xxxii) is amended by alphabetically inserting in the list of side seam cements a new item, as follows:

§ 121.2514 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(xxxii) * * *

Sodium pentachlorophenate for use as a preservative at 0.1 percent by weight in can-sealing compounds on containers having a capacity of 5 gallons or more.

* * * * *

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

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

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

Dated: October 2, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-12343; Filed, Oct. 9, 1968; 8:48 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development

PART 0—STANDARDS OF CONDUCT

To conform with a change in the pertinent Civil Service Commission regulations, modify the limitations on outside employment, update the appendix, make miscellaneous minor corrections and conforming amendments, and consolidate amendments previously made, Part 0 of Subtitle A of Title 24 of the Code of Federal Regulations (32 F.R. 13921, Oct. 6, 1967, as amended at 33 F.R. 144, Jan. 5, 1968) is hereby revised to read as follows:

Subpart A—General Provisions

Sec.
0.735-101 Purpose.
0.735-102 Definitions.
0.735-103 Notification to employees and special Government employees.
0.735-104 Interpretation and advisory service.
0.735-105 Reviewing statements and reporting conflicts of interest.
0.735-106 Disciplinary and other remedial action.

Subpart B—Conduct and Responsibilities of Employees

0.735-201 Basic principle.
0.735-202 Proscribed actions.
0.735-203 Gifts, entertainment, and favors.
0.735-204 Outside employment and other activity.
0.735-205 Financial interests.
0.735-206 Use of Government property.
0.735-207 Misuse of information.
0.735-208 Indebtedness.
0.735-209 Gambling, betting, and lotteries.
0.735-210 General conduct; and conduct prejudicial to the Government.
0.735-211 Intermediaries and product recommendations.
0.735-212 Membership in organizations.
0.735-213 Prohibited activities by former employees.
0.735-214 Miscellaneous statutory provisions.

Subpart C—Conduct and Responsibilities of Special Government Employees

0.735-301 Use of Government employment.
0.735-302 Use of inside information.
0.735-303 Coercion.
0.735-304 Gifts, entertainment, and favors.
0.735-305 Applicability of other provisions.

Subpart D—Statements of Employment and Financial Interests

Sec.
0.735-401 Employees required to submit statements.
0.735-402 Employee's complaint on filing requirement.
0.735-403 Employees not required to submit statements.
0.735-404 Time and place for submission of employees' statements.
0.735-405 Supplementary statements.
0.735-406 Interests of employee's relatives.
0.735-407 Information not known by employees.
0.735-408 Information prohibited.
0.735-409 Confidentiality of employees' statements.
0.735-410 Effect of employee's statements on other requirements.
0.735-411 Specific provisions for special Government employees.
Appendix—List of Positions Subject to Subpart D

AUTHORITY: The provisions of this Part 0 issued under 18 U.S.C. 201 through 209; E.O. 11222 of May 8, 1965, 30 F.R. 6469, 3 CFR 1965 Supp.; 5 CFR 735.104.

Subpart A—General Provisions

§ 0.735-101 Purpose.

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

§ 0.735-102 Definitions.

(a) "Department" means the Department of Housing and Urban Development.

(b) "Employee" means an officer or employee of the Department, but does not include a special Government employee.

(c) "Special Government employee" means an officer or employee of the Department appointed to serve with or without compensation, for not more than 130 consecutive days during any period of 365 days, on a full-time, part-time, or intermittent basis, and who is retained, designated, appointed, or employed as a special Government employee under the provisions of section 202 of Title 18 of the United States Code.

(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) "Outside employment" means all gainful employment other than the performance of official duties. It includes,

but is not limited to, working for another employer, the management or operation of a private business for profit (including personally owned businesses, partnerships, corporations, and other business entities), and other self-employment.

§ 0.735–103 Notification to employees and special Government employees.

The provisions of this part and all revisions thereof shall be brought to the attention of and made available to:

(a) Each employee and special Government employee at the time of issuance and at least annually thereafter;

(b) Each new employee and special Government employee at the time of entrance on duty.

§ 0.735–104 Interpretation and advisory service.

(a) *Department counselor*. The General Counsel of the Department is designated Counselor for the Department and shall serve as the Department's designee to the Civil Service Commission on matters covered by this part. He shall be responsible for coordinating the Department's counseling services and for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by this part are available to designated deputy counselors. He may form ad hoc committees to evaluate the effectiveness of the standards, or to consider any new or unusual question arising from their application.

(b) *Deputy counselors*. Such deputy counselors as may be required shall be designated by the Secretary or his designee from among the staff of the Office of the General Counsel and other legal staff of the Department to give authoritative advice and guidance to current and prospective employees and special Government employees who seek advice and guidance on questions of conflicts of interest and on other matters covered by this part.

§ 0.735–105 Reviewing statements and reporting conflicts of interests.

(a) Subpart D of this part and the appendix to this part identify the categories of positions and, as necessary, the specific positions in which the incumbent is required to submit a statement of employment and financial interests to an appropriate Department official for review.

(b) When a statement submitted under Subpart D of this part and the appendix to this part or information from other sources indicates a conflict between the interests of an employee or special Government employee and the performance of his services for the Government and when the conflict or appearance of conflict is not resolved by the reviewing official, he shall report the information concerning the conflict or appearance of conflict to the Secretary through the Counselor.

(c) The employee or special Government employee concerned shall be provided an opportunity to explain the conflict or appearance of conflict.

(d) If the resolution of the conflict or appearance of conflict contemplates or includes any of the remedial action indicated in § 0.735–106 with the exception of paragraph (b)(2), appropriate personnel officers of the Department shall be notified and shall participate in the determination of the action proposed to be effected.

§ 0.735–106 Disciplinary and other remedial action.

(a) A violation of 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) When, after consideration of the explanation of the employee or special Government employee provided by § 0.735–105, the Secretary decides that remedial action is required, he shall take immediate action to end the conflicts or appearance of conflicts of interest. Remedial action may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee or special Government employee of his conflicting interest; and unless otherwise provided divestiture is to be completed within 60 days after notice of a decision that a conflict exists.

(3) Disciplinary action; or

(4) Disqualification for a particular assignment.

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

(c) If any of the remedial action indicated in this section with the exception of paragraph (b)(2) of this section is contemplated, appropriate personnel officers of the Department shall be notified and shall participate in the determination of the action proposed to be effected.

Subpart B—Conduct and Responsibilities of Employees

§ 0.735–201 Basic principle.

(a) Each employee must realize that the Government's basic and controlling purpose in employing him is the public interest, rather than his private or personal interest, and that he can never have a right of tenure that transcends the public good. He can properly be a Government employee only as long as it remains in the public interest for him to be one. Public trust and confidence in the integrity of the Government are paramount.

(b) (1) This basic principle applies with special force and effect in the Department of Housing and Urban Development, which deals directly with important segments of the public, and whose success depends upon public trust and confidence in its actions. The official actions of the Department often have a direct bearing upon the financial and other interests of individuals, firms, and institutions with which it does business. Furthermore, the effective accomplishment of the Department's mission is significantly dependent upon a public image that engenders confidence in the Department's integrity. Accordingly, the avoidance of any involvement that tends to damage that image is a responsibility of exceptional importance for all employees who participate in or influence official operating determinations that affect the interests of those with whom the Department does business.

(2) If there is knowledge of an employee's involvement in or association with circumstances reasonably construed to reduce public confidence in the acts or determinations of the Department, such knowledge may be sufficient cause for the initiation of action adverse to the employee. Employees, therefore, are alerted to the gravity with which the Department will view any such involvement, especially if it has to do with conflicts of interest or the compromise of integrity—whether real or only apparent.

§ 0.735–202 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by the regulations in this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

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

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

§ 0.735–203 Gifts, entertainment, and favors.

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

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

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

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

(b) The prohibitions of paragraph (a) of this section do not apply in the following cases:

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

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

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

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

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(e) Neither this section nor § 0.735–204 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses for 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 Department orders when reimbursement is proscribed by Decision B–128527 of the Comptroller General dated March 7, 1967.

§ 0.735–204 Outside employment and other activity.

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

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

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

(3) Activities that may be construed by the public to be the official acts of the Department;

(4) Activities that establish relationships or property interests that may result in a conflict between his private interests and his official duties; and

(5) Employment that may involve the use of information secured as a result of employment in the Department to the detriment of the Department or the public interest, or that may give preferential treatment to any person, corporation, public agency, or group.

(6) Engaging directly or indirectly in the purchase, sale or management of real estate, including the financing of realty transactions; except (i) the employee's residence, immediate past residence, vacation or retirement home, or (ii) realty transactions involving a moderate scale of investment properties which are not likely in the foreseeable future to be involved in a HUD program.

(7) Employment related to or similar to the substantive programs conducted by any part of the Department. This includes, but is not limited to, the broad fields of real estate, mortgage lending, property insurance, construction, construction financing, and land and real estate planning.

(8) Employment with any person, firm, or other private organization having business either directly or indirectly with the Department.

(b) 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).

(c) Full-time employees and part-time employees with a regularly scheduled tour of duty must obtain the prior approval of the appropriate deputy counselor before engaging in outside employment in the following categories:

(1) Employment in the same professional field as that of the individual's official position. However, an attorney in this Department may, in off-duty hours and consistent with his official responsibilities, participate, without compensation for his services, in a program to provide legal assistance and representation to poor persons. Such participation shall not include representation or assistance in any judicial matter or proceeding, whether Federal, State, or local, involving programs of this Department or in any other matter or proceeding in which the United States, including the District of Columbia, is a party or has a direct and substantial interest. Notice of intention to participate in such a program shall be given by the attorney in writing to his superior in such detail as that official shall require.

(2) Employment by State, local, or other governmental body.

(d) No full-time employee or part-time employee with a regularly scheduled tour of duty shall maintain a publicly listed place of business without the prior approval of the appropriate deputy counselor.

(e) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, Executive order, Civil Service Commission regulations, or this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service, 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 or his designee gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(1) Each employee including the Secretary, and including each full-time member of a committee, board, or commission appointed by the President, 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 the Department, or which draws substantially on official data or ideas which have not become part of the body of public information pursuant to the regulations in this part.

(2) An employee may use his name and title in connection with articles for publication which bear upon his work in the Department only if he obtains the approval of the appropriate deputy counselor.

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

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

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

§ 0.735–205 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.

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

(3) Acquire securities issued by the Federal National Mortgage Association.

(4) Acquire ownership of stock or other interest in a rental project financed with an FHA insured mortgage as long as the insurance is in force.

(5) Acquire ownership of FHA debentures or certificates of claim.

(6) Acquire interest in a cooperative or condominium housing project financed under the National Housing Act if the interest is not for obtaining a home for himself or his family.

(7) Be an officer or director of any organization which is an FHA approved mortgagee or lending institution or which services mortgages or other securities for the Department. An employee may hold stock or shares in such organizations provided his official duties are such that the holding will not create or tend to create a conflict of interest. The prohibitions of this paragraph do not apply to Federal Credit Unions that have been approved as Title I lending institutions.

(8) Participate directly or indirectly in any real estate activities for speculative purposes as distinguished from bona fide investment purposes on a moderate

scale. There is a presumption of speculation when the use of borrowed funds is involved on a continuing basis or in large sums or the income characteristic of an investment is disproportionate or absent.

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

§ 0.735–206 Use of Government property.

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

§ 0.735–207 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in § 0.735–204(e), directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

§ 0.735–208 Indebtedness.

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

§ 0.735–209 Gambling, betting, and lotteries.

An employee shall not participate, while on Government owned or leased property or while on duty for the Department, 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 number slip or ticket. However, this section does not preclude activities:

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

(b) Under section 3 of Executive Order 10927, namely, solicitations conducted by organizations composed of employees among their own members for organizational support or for benefit or welfare funds for their members, or similar Department-approved activities.

§ 0.735–210 General conduct; and conduct prejudicial to the Government.

(a) Each employee shall conduct himself in a manner that facilitates the effective accomplishment of the work of the Department, observing at all times the requirements of courtesy, consideration, and promptness in dealing with the public and with persons or organizations having business with the Department;

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

§ 0.735–211 Intermediaries and product recommendations.

No employee shall recommend or suggest the use of any particular or identified nongovernmental intermediary to deal with the Department nor shall he recommend any device or product tested by or for, or used by, the Department, except as required by his official duties.

§ 0.735–212 Membership in organizations.

(a) An employee may not, in his official capacity as an officer or employee of the Department, serve as a member of a non-Federal or private organization except where express statutory authority exists, or statutory language necessarily implies such authority, or where the Secretary has determined in writing that such service would be beneficial to the Department and consistent with such officer's or employee's service as a Department employee. However, an employee may serve in an individual capacity as a member of a non-Federal or private organization, provided that:

(1) His membership does not violate the restrictions noted in § 0.735–204; and

(2) His official title or organization connection is not shown on any listing or presented in any activity of the organization in such a manner as to imply that he is acting in his official capacity.

(b) An employee may be designated to serve as a liaison representative of the Department to a non-Federal or private organization provided that:

(1) The activity relates to the work of the Department.

(2) The employee does not participate by vote in the policy determinations of the organization.

(3) The Department is in no way bound by any vote or action taken by the organization.

§ 0.735–213 Prohibited activities by former employees.

A former officer or employee or former Special Government employee of the executive branch of the U.S. Government, of any independent agency of the United States or of the District of Columbia shall not:

(a) At any time after his Government employment has ended, knowingly act as an agent or attorney for anyone other than the United States in connection with any matter involving a specific party or parties in which the United States is a party or has a direct or substantial interest and in which he participated personally and substantially as an officer or employee for the Government through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise while so employed. (18 U.S.C. 207(a).)

(b) Within 1 year after his Government employment has ended, appear personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any matter involving a specific party or parties in which the United States is a party or directly or substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of one year prior to the termination of such responsibility (18 U.S.C. 202(b) and 207(b)).

§ 0.735–214 Miscellaneous statutory provisions.

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

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

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

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

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

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

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

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

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

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

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

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

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

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

(n) The prohibitions against (1) embezzlement of Government money or

property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

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

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

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

Subpart C—Conduct and Responsibilities of Special Government Employees

§ 0.735–301 Use of Government employment.

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

§ 0.735–302 Use of inside information.

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

(b) Special Government employees may teach, lecture, or write in a manner consistent with the provisions of § 0.735–204(e).

§ 0.735–303 Coercion.

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

§ 0.735–304 Gifts, entertainment, and favors.

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

(b) The exceptions of § 0.735–203(b), which are applicable to employees, are also applicable to special Government employees.

§ 0.735–305 Applicability of other provisions.

(a) Each special Government employee is subject to the provisions of §§ 0.735–201, 0.735–206 through 0.735–210, 0.735–212, 0.735–213, 0.735–214, and 0.735–411.

(b) Each special Government employee shall acquaint himself with each statute listed in § 0.735–214. A special Government employee engaged on an irregular or occasional basis is bound by the political activity restrictions of the former Hatch Act cited in § 0.735–214(p) only while in an active duty status and for the entire 24 hours of any day during which he is actually employed.

Subpart D—Statements of Employment and Financial Interests

§ 0.735–401 Employees required to submit statements.

Except as provided in § 0.735–403, the following categories of employees shall submit statements of employment and financial interest:

(a) Employees paid at a level of the Executive schedule in subchapter II of chapter 53 of title 5, United States Code.

(b) Employees classified at GS–13 or above who are in positions identified in the appendix to this part as positions the incumbents of which are responsible for making a Government decision or taking a Government action in regard to:

(1) Contracting or procurement;

(2) Administering or monitoring grants or subsidies;

(3) Regulating or auditing private or other non-Federal enterprise; or

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

(c) Employees classified at GS–13 or above who are in positions which the Department 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. The positions are identified in the appendix to this part.

(d) Employees classified below GS–13 who are in positions which otherwise meet the criteria in paragraph (b) or (c) of this section. These positions have been approved by the Civil Service Commission as exceptions that are essential to protect the integrity of the Government and avoid employee involvement in a possible conflict-of-interest situation. The positions are identified in the appendix to this part by footnote 1.

§ 0.735–402 Employee's complaint on filing requirement.

Employees have the opportunity for review through the Department's grievance procedures of a complaint by an employee that his position has been improperly included under these regulations as one requiring the submission of a statement of employment and financial interests.

§ 0.735–403 Employees not required to submit statements.

(a) Employees in positions that meet the criteria in paragraph (b) of § 0.735–401 may be excluded from the reporting requirement when the Department 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;

(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.

(b) A statement of employment and financial interests is not required by this subpart from the Secretary or a full-time member of a committee, board, or commission appointed by the President. These employees are subject to separate reporting requirements under section 401 of the Executive order.

§ 0.735–404 Time and place for submission of employees' statements.

(a) An employee required to submit a statement of employment and financial interests pursuant to § 0.735–401 and the appendix to this part shall submit that statement on Form HUD–844 (Revised) to the officials designated in paragraphs (c) and (d) of this section not later than:

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

(2) Thirty days after his entrance on duty, but not earlier than 90 days after the effective date, if appointed after that effective date.

(b) Additions to, deletions from, and other amendments of the list of positions in the appendix to this part may be made from time to time as necessary to carry out the purpose of the law, Executive Order 11222, and Part 735 of the Civil Service Commission Regulations (5 CFR Part 735). Such amendments are effective upon actual notification to the incumbents. The amended list shall be submitted at least annually for publication in the FEDERAL REGISTER.

(c) Employees reporting directly to the Secretary shall submit their statements directly to the Secretary for review; employees reporting directly to the Under Secretary shall submit their statements directly to the Under Secretary for review.

(d) Employees under the jurisdiction of Assistant Secretaries, the General Counsel of the Department, the President of FNMA, or the Regional Administrators shall submit their statements directly to the appropriate Assistant Secretary, the General Counsel of the Department, the President of FNMA, or the Regional Administrator for review.

§ 0.735–405 Supplementary statements.

(a) Changes in, or additions to, the information contained in an employee's

statement shall be reported to the appropriate reviewing official as described in § 0.735–404 in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required.

(b) Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest or engaging in outside employment or other activity that could result, or taking an 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.

§ 0.735–406 Interests of employee's relatives.

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

§ 0.735–407 Information not known by employees.

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

§ 0.735–408 Information prohibited.

This subpart does not require an employee to report information relating to his 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.

§ 0.735–409 Confidentiality of employees' statements.

(a) Each statement of employment and financial interests, and each supplementary statement, shall be held in confidence by the Department. To insure this confidentiality, the Civil Service Commission regulations provide that:

(1) The Department shall designate which officials and employees are to review and retain the statements;

(2) Officials and employees designated under subparagraph (1) of this paragraph 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; and

(3) The Department may not disclose information from a statement except as the Civil Service Commission or the Secretary may determine for good cause shown.

(b) For the purpose of carrying out the provisions of paragraph (a)(1) of this section, the officials and employees who:

(1) Review the statements are designated in § 0.735–404 (c) and (d);

(2) Retain the statements are the same officials and employees who review the statements.

§ 0.735–410 Effect of employee's statements on other requirements.

The statements and supplementary statements required of employees pursuant to this part 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.

§ 0.735–411 Specific provisions for special Government employees.

(a) Except as provided in paragraph (c) of this section each special Government employee shall submit to the appropriate official specified in § 0.735–404 (c) or (d), Form HUD–844A (Revised), Statement of Employment and Financial Interests. Each statement shall be forwarded to the General Counsel of the Department for review and custody, except that a special Government employee under the jurisdiction of a Regional Administrator shall submit his statement to the Regional Administrator for review and custody.

(b) The provisions of §§ 0.735–407 through 0.735–410 are applicable to a special Government employee who is required to file a statement.

(c) The Secretary or his designee may waive the provisions of this section for the submission of a statement in the case of a special Government employee who is not a consultant or an expert when the Department finds that the duties of the position held by that special Government employee are of a nature and at such level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual.

(d) A statement required to be submitted under this section shall be submitted not later than the time of employment of the special Government employee. Each special Government employee shall keep his statement current throughout his employment with the Department by the submission of supplementary statements.

The amendments in this revised part were approved by the Civil Service Commission on July 12, 1968, and are effective on publication in the FEDERAL REGISTER.

ROBERT C. WEAVER,
Secretary of Housing and Urban Development.

APPENDIX—LIST OF POSITIONS SUBJECT TO SUBPART D

Officers and employees in the following positions are subject to the provisions of Subpart D of this part:

(a) Employees paid at a level of the Federal Executive Salary Schedule established by the Federal Executive Salary Act of 1964, as amended, except the Secretary, who is subject to separate reporting requirements under section 401 of Executive Order 11222;

(b) Employees in the following positions.

OFFICE OF THE SECRETARY

Special Assistant to the Secretary.
Administrative Officer.
Director, Inspection Division.
Deputy Director, Inspection Division.
Director, Office of Equal Opportunity.
Executive Assistant to the Secretary.
Management Operations and Analysis Officer, Inspection Division.
Field Supervisory Investigators, Inspection Division.
Management Operations and Analysis Officer, Inspection Division.
Director, Office of Industry Participation.
Director, Office of Urban Technology and Research.
Assistant Director, Research and Planning Control.

ASSISTANT SECRETARY FOR MORTGAGE CREDIT AND FEDERAL HOUSING COMMISSIONER

Executive Assistant Commissioner.
Assistant Commissioner for Field Operations.
General Counsel.
Assistant Commissioner for Technical Standards.
Assistant Commissioner for Multifamily Housing.
Assistant Commissioner for Programs.
Assistant Commissioner for Home Mortgages.
Assistant Commissioner for Administration.
Assistant Commissioner for Property Disposition.
Assistant Commissioner for Property Improvement.
Assistant Commissioner-Comptroller.
Associate General Counsel.
Regional Operations Commissioner, Region I.
Regional Operations Commissioner, Region III.
Regional Operations Commissioner, Region IV.
Regional Operations Commissioner, Region V.
Regional Operations Commissioner, Region VI.
Deputy Assistant Commissioner for Technical Standards.
Deputy Assistant Commissioner for Programs.
Deputy Assistant Commissioner for Multifamily Housing.
Director, Project Mortgage Servicing Division.
Director, Project Mortgage Insurance Division.
Director, Architectural Division.
Director of Compliance Coordination.
Director, Audit Division.
Director, Management Division.
Supervisory Contract Specialist (Chief, Contracting Section).
Director, Community Disposition Staff.
Deputy Director, Community Disposition Staff.
Field Office Director, Community Disposition Staff.
Field:
Director, New York Multifamily Housing Insuring Office.
Director, Insuring Office.
Deputy Director, Insuring Office.
Assistant Director, Insuring Office.[1]
Assistant Director (Chief of Operations).[1]
Chief Underwriter.[1]
State Director (New York).
Assistant State Director.

[1] See § 0.735–401(d).

No. 198—Pt. I——3

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

Executive Vice President.
Vice President.
Assistant Vice President.
Loan Manager.
Assistant Loan Manager.
General Counsel.
Secretary-Treasurer.
Assistant Secretary-Treasurer.
Controller.
Deputy Controller.
Director of Examination and Audit.
Assistant Director of Examination and Audit.
Field:
Agency Manager.
Assistant Agency Manager.
Deputy Assistant Manager.
Agency Counsel.
Assistant Agency Counsel.
Agency Controller.
Assistant Agency Controller.
Agency Director of Examination and Audit.
Assistant Agency Director of Examination and Audit.

ASSISTANT SECRETARY FOR RENEWAL AND HOUSING ASSISTANCE

Deputy Assistant Secretary for Renewal and Housing Assistance.
Deputy Assistant for Problems of the Elderly and the Handicapped.
Assistant to the Assistant Secretary for Problems of the Elderly and the Handicapped.
Director, Program Development Division.
Director, Office of Community Development.
Director, Relocation Staff.
Director, Plans, Programs and Evaluation Staff.
Director, Operational Services Division.

Renewal Assistance Administration

Deputy Assistant Secretary for Renewal Assistance.
General Deputy, Renewal Assistance.
Director, Neighborhood Programs Division.
Director, Redevelopment Division.
Director, Rehabilitation and Codes Division.
Director, Program Management Division.
Chief Counsel, Renewal Assistance Administration.
Assistant Director for Federal Agency Liaison.

Housing Assistance Administration

Deputy Assistant Secretary for Housing Assistance.
General Deputy, Housing Assistance.
Director, Tenant Services Division.
Supply Management Officer, Tenant Services Division.

ASSISTANT SECRETARY FOR METROPOLITAN DEVELOPMENT

Deputy Assistant Secretary for Metropolitan Development.
Director of Intergovernmental Relations and Planning Assistance.
Director of Land and Facilities Development Administration.
Director, Division of Project Development.
Director, New Systems Study Project.

Land and Facilities Development Administration

Director, Land and Facilities Development Administration.
General Deputy, Land and Facilities Development Administration.
Director, Division of Public Facilities.
Deputy Director, Division of Public Facilities.
Chief, Field Services Branch.
Director, Division of Land Development.
Deputy Director, Division of Land Development.
Director, Program Coordination and Field Services Branch.
Deputy Director, Program Field Services Branch.
Director, Engineering Standards Staff.
Deputy Director for Finance Standards.

Urban Transportation Administration

Director, Urban Transportation Administration.
Deputy Director, Urban Transportation Administration.
Director, Division of Demonstration Programs and Studies.
Director, Division of Project Development.

Plans, Program and Evaluation Staff

Director, Plans, Program and Evaluation Staff.

Office of Planning Standards and Coordination

Director, Division of Metropolitan Area Analysis.
Director, Division of Planning Standards.
Director, Division of Planning Assistance.
Urban Planner (Director, Metropolitan Program Branch).
Supervisory Urban Planner, State and Local Program Branch.

Office of Intergovernmental Relations and Planning Assistance

Director, Intergovernmental Relations and Planning Assistance.
Assistant Director, Division of State and Local Relations.
Director, Division of Urban Manpower Development.
Director of Clearinghouse Services.

ASSISTANT SECRETARY FOR MODEL CITIES AND GOVERNMENTAL RELATIONS

Deputy Assistant Secretary for Model Cities and Governmental Relations.

Model Cities Administration

Director, Model Cities Administration.
Director, Division of Program Development and Evaluation.
Director, Division of Program Operations and Technical Assistance.
Staff Director, Neighborhood Centers Staff.

Federal Relations Staff

Director, Federal Relations Staff.

Defense Planning Staff

Director, Defense Planning Staff.

ASSISTANT SECRETARY FOR ADMINISTRATION

Deputy Assistant Secretary for Administration.

Financial Systems and Services

Director, Financial Systems and Services.

Office of General Services

Director, Office of General Services.
Deputy Director, Office of General Services.
Director, Contracts and Agreements Division, Office of General Services.
Assistant Director, Contracts and Agreements Division, Office of General Services.
Director, Supply and Facilities Management Division, Office of General Services.
Assistant Director, Supply and Facilities Management Division, Office of General Services.

Office of Audit

Director, Office of Audit.
Deputy Director, Office of Audit.
Regional Audit Managers, Office of Audit.

REGIONAL OFFICES OF THE DEPARTMENT

Regional Administrator.
Deputy Regional Administrator.
Director, Model Cities Staff.

Division of Administration

Assistant Regional Administrator for Administration.
Director, General Services Branch.

Northwest Area Office, Seattle, Wash.

Director, Northwest Area Office.
Deputy Director, Northwest Area Office.
Director, Metropolitan Development Division.
Director, Housing Assistance Division.
Chief, Administration Branch.

Program Coordination and Services Division

Assistant Regional Administrator for Program Coordination and Services.
Director, Planning Branch.
Director, Economic and Market Analysis Branch.
Director, Relocation Branch.
Assistant Regional Administrator for FHA.
Director, Project Review Branch.
Director, Low-Income Housing and Rent Supplement Branch.
Director of Zone Advisory and Technical Services.

Metropolitan Development Office

Assistant Regional Administrator for Metropolitan Development.
Deputy Assistant Regional Administrator for Metropolitan Development.
Director, Program Field Service Division.
Chief, Engineering Branch.

Housing Assistance Office

Assistant Regional Administrator for Housing Assistance.
Deputy Assistant Regional Administrator for Housing Assistance.
Chief, College Housing Loans Branch.
Chief, Elderly Housing Loans Branch.
Director, Housing Development Division.
Chief, Land Branch.
Director, Housing Management Division.

Renewal Assistance Office

Assistant Regional Administrator for Renewal Assistance.
Deputy Assistant Regional Administrator for Renewal Assistance.
Director, Field Service Division.
Neighborhood Facilities Program Director.
Chief, Rehabilitaton Loan and Grant Branch.
Chief, Real Estate Branch.
Chief, Real Estate Acquisition Branch.
Chief, Real Estate Disposition Branch.

[F.R. Doc. 68-12385; Filed, Oct. 9, 1968; 8:50 a.m.]

Title 49—TRANSPORTATION

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 1009]

PART 1033—CAR SERVICE

Railroad Operating Regulations for Freight Car Movement

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 3d day of October 1968.

It appearing, that there are acute shortages of freight cars throughout the

country; that certain carriers are unable to furnish an adequate supply of freight cars to shippers located on their lines; that these shortages of freight cars are impeding the movement of agricultural, forest, manufactured products, and other commodities; and that the existing car service rules, regulations and practices of the railroads are ineffective with respect to the use, supply, control, movement, distribution, exchange, interchange, and return of freight cars to meet the requirements of shippers. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than 30 days' notice.

It is ordered, That:

§ 1033.1009 Service Order No. 1009.

(a) *Railroad operating regulations for freight car movement.* Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations, and practices with respect to its car service:

(1) *Placing of cars.* (i) Loaded cars, which after placement will be subject to demurrage rules applicable to detention of cars awaiting unloading, shall be actually placed within 24 hours, exclusive of Sundays and holidays, following arrival at destination.

(ii) Actual placement means placing a car on industrial interchange tracks, on other-than-public-delivery tracks serving the consignee, or on public delivery tracks. Proper notice for cars placed on public delivery tracks shall be sent or given within 24 hours after placement, exclusive of Saturdays, Sundays, and holidays.

(iii) When delivery of a car, either empty or loaded, consigned or ordered to an industrial interchange track or to an other-than-public-delivery track cannot be made because of any condition attributable to the consignor or consignee, such car will be held at destination or, if it cannot reasonably be accommodated there, at an available hold point, and constructive placement notice shall be sent or given the consignor or consignee within 24 hours, exclusive of Saturdays, Sundays, and holidays, after arrival of car at destination or hold point.

(iv) Loaded cars held at destination for accessorial terminal services described in the applicable tariffs, such as holding for orders or inspection, shall be placed on unloading, hold, or inspection tracks, and proper notice given within 24 hours, exclusive of Saturdays, Sundays, and holidays, after arrival at destination. On cars set off and held short of billed destination, or on cars held at destination and short of inspection tracks, a written notice shall be sent or given to consignee or other party entitled to receive such notice, within 24 hours of arrival, exclusive of Saturdays, Sundays, and holidays, at the hold point. Time and charges shall be computed following such notice and demurrage or detention charges assessed in accordance with provisions of governing tariffs.

(2) *Removal of cars.* (i) Empty cars must be removed from point of unloading or interchange tracks of industrial plants within 24 hours, exclusive of Sundays and holidays, following unloading or release by consignee or shipper, unless such empty cars are ordered or appropriated by the shipper with approval of carrier for reloading within such 24-hour period. Empty foreign cars not ordered for loading at point where made empty must be forwarded, set aside for cleaning or repairs, or delivered to connecting lines within 24 hours, following removal of empty cars.

(ii) Outbound loaded freight cars must be removed from point of loading or interchange tracks of industrial plants within 24 hours, exclusive of Sundays and holidays, following acceptance by carrier of the shipping instructions covering the cars. Such cars must be forwarded, set aside for repairs, or delivered to connecting lines within 24 hours, following release and removal.

(iii) Cars subject to subdivisions (i) and (ii) of this subparagraph not made accessible to the carrier shall be subject to demurrage until such time as they become, and remain, accessible to the carrier.

(3) *Forwarding of cars.* (i) Loaded cars and empty cars of foreign or private ownership, and, when the holding line is the beneficiary of Car Distribution Directions or Orders issued by this Commission applicable to the kind of car held, empty system freight cars shall not be held in excess of 24 hours for any purpose, except as follows:

(ii) Loaded cars held subject to instructions of consignee, consignor, or other qualified owner of the freight contained therein.

(iii) Cars held for repairs or cleaning.

(iv) Cars held because no train or switch engine service is available between hold point and destination.

(4) *Cars held for repairs or cleaning.* (i) Loaded cars and empty cars of foreign or private ownership, and, when the holding line is the beneficiary of Car Distribution Directions or Orders issued by this Commission applicable to the kind of car held, empty system freight cars which are held for light repairs or cleaning shall be placed on repair or cleaning tracks not later than the first 7 a.m., exclusive of Sundays and holidays after time carded for repairs or cleaning, or after arrival at point where repairs or cleanings are performed. Light repairs or cleaning shall be accomplished on same calendar day, exclusive of Sundays and holidays, that cars are placed on repair or cleaning tracks; except that when necessary to order material from car owner to make the repairs to foreign or private cars, repairs to foreign or private cars held awaiting such material shall be completed prior to 11:59 p.m., of the calendar day which includes the first 7 a.m., inclusive of Sundays and holidays, after receipt of such material at the station at which the repair point is located.

(ii) Light repairs are defined as repairs requiring less than 20 man-hours by repair track forces to complete.

(5) *Railroad operating regulations for the movement of freight cars.* (i) No common carrier by railroad subject to the Interstate Commerce Act shall delay the movement of cars by holding such cars in yards, terminals, or sidings for the purpose of increasing the time in transit of such cars.

(ii) Cars shall not be set out between terminals except in cases of emergencies or sound operating practices.

(iii) Backhauling cars for the purpose of increasing the time in transit is prohibited.

(iv) Through cars shall not be handled on local or way freight trains for the purpose of increasing the time in transit of such cars.

(v) The use by any common carrier by railroad for the movement of cars over its line, of any route other than its usual and customary fast freight route from point of receipt of the car from consignor, or connecting line, to point of delivery to consignee, or to next connecting line, except for the purpose of according a lawfully established transit privilege (not including a diversion or reconsignment privilege) is hereby prohibited.

(b) *Application.* (1) The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(2) Holidays shall be those listed in Item 25 of Agent B. B. Maurer's Tariff ICC H-36, naming Car Demurrage Rules and Charges, supplements thereto or successive issues thereof.

(c) *Rules and regulations suspended.* The operation of all rules and regulations, insofar as they conflict with the provisions of this order, is hereby suspended.

(d) *Effective date.* This order shall become effective at 12:01 a.m., October 7, 1968.

(e) *Expiration date.* This order shall expire at 11:59 p.m., November 16, 1968, unless otherwise modified, changed, or suspended by order of this Commission.

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

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

By the Commission, Railroad Service Board.

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

[F.R. Doc. 68-12337; Filed, Oct. 9, 1968; 8:48 a.m.]

[S.O. 1010]

PART 1033—CAR SERVICE

Distribution of Boxcars

At a session of the Interstate Commerce Commission, Railroad Safety and Service Board, held in Washington, D.C., on the 4th day of October A.D. 1968.

It appearing, that an acute shortage of plain boxcars with inside length of fifty feet or longer and boxcars with inside length of forty feet or longer with side-door openings of eight feet or wider exists in the areas served by the Southern Pacific Co., the Union Pacific Railroad Co., the Northern Pacific Railway Co., and the Great Northern Railway Co., and that shippers served by these railroads are being deprived of cars required for loading, resulting in a very severe emergency thus creating a great economic loss; that present rules, regulations, and practices with respect to the use, supply, control, movement, distribution, exchange, interchange and return of such boxcars owned by these railroads are ineffective. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1010 Service Order No. 1010.

(a) Distribution of boxcars: Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations, and practices with respect to its car service:

(1) Withdraw from distribution and return to owners empty, except as otherwise provided in subparagraph (2) or (3) of this paragraph, all plain boxcars owned by the Southern Pacific Co., the Union Pacific Railroad Co., the Northern Pacific Railway Co., and the Great Northern Railway Co. which are listed in the Official Railway Equipment Register, ICC R.E.R. 368, issued by E. J. McFarland, or reissues thereof, as having mechanical designation XM, with inside length of fifty feet or longer, or with inside length forty feet or longer and with side-door openings eight feet wide or wider, or equipped with plug doors regardless of length.

(2) Southern Pacific Co., Union Pacific Railroad Co., the Northern Pacific Railway Co., and the Great Northern Railway Co. boxcars described in subparagraph (1) of this paragraph available empty at a station other than a junction with the owner may be loaded to stations on or via the owner, or to any station which is closer to the owner than the point where loaded.

(3) Southern Pacific Co., Union Pacific Railroad Co., the Northern Pacific Railway Co., and the Great Northern Railway Co. boxcars described in subparagraph (1) of this paragraph available empty at a junction with the owner must be delivered to the owner at that junction, either loaded or empty.

(4) Boxcars described in subparagraph (1) of this paragraph must not be back-hauled empty, nor held empty more than 24 hours awaiting placement for loading for the purpose of obtaining a load as authorized in subparagraphs (2) and (3) of this paragraph.

(b) No common carrier by railroad shall accept from shipper any Southern Pacific Co., Union Pacific Railroad Co., the Northern Pacific Railway Co., or Great Northern Railway Co. boxcar described in paragraph (a)(1) of this section for movement contrary to the provisions of paragraph (a) (2) or (3) of this section.

(c) Application: The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) Effective date: This order shall become effective at 12:01 a.m., October 7, 1968.

(e) Expiration date: This order shall expire at 11:59 p.m., November 2, 1968, unless otherwise modified, changed, or suspended by order of this Commission.

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

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

By the Commission, Railroad Service Board.

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

[F.R. Doc. 68-12338; Filed, Oct. 9, 1968; 8:48 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 32—HUNTING

Bombay Hook National Wildlife Refuge, Del.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

DELAWARE

BOMBAY HOOK NATIONAL WILDLIFE REFUGE

Public hunting of ducks, geese, brant, and coots on the Bombay Hook National Wildlife Refuge, Del., is permitted on areas designated by signs as open to hunting including the South Public Hunting Area, the West Public Hunting Area, the Youth Hunt Area, and the Upland Game Hunting Area. These open areas are delineated on maps available at the refuge headquarters, Smyrna, Del., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Mass. 02109.

Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of ducks, geese, brant, and coots subject to the following special conditions:

(1) Hunting is permitted on the West Public Hunting Area from one-half hour before sunrise to 12 noon, local standard time, Tuesdays, Thursdays, and Saturdays during the goose season.

(2) Hunting in the South, West, and Youth Hunt Public Hunting Areas shall be from existing numbered blinds. The possession of a loaded gun or shooting while outside of a blind is prohibited on these areas.

(3) No person shall have in his possession or use in 1 day more than 10 shells on the West Public Hunting Area.

(4) The necessary permit to enter the South Public Hunting Area may be obtained from 1 hour before shooting time until 3 p.m. local standard time at the checking station located at Port Mahon. The necessary permit to enter the West Public Hunting Area may be obtained by applying to the Refuge Manager for advance reservation. The permits for advance reservations will be canceled if the holder is not present 1 hour prior to the start of legal shooting time on the date of his reservation. These forfeited permits and permits not reserved by advance reservation will be awarded to other hunters by lot on the morning of the hunt. All hunters will check out through the headquarters checking station prior to leaving the refuge.

(5) Each hunting permittee using the West Public Hunting Area will pay a blind fee of $5 on the day of the hunt. A User Fee of $1 per hunter will be charged on the South Public Hunting Area.

(6) Not more than four persons may occupy a blind at any one time on the West Public Hunting Area nor more than three on the South Public Hunting Area.

(7) The Youth Hunt Area will be open on Saturdays and holidays to young hunters who present evidence of having completed the prescribed training program. Two youths accompanied by an instructor who may not discharge a firearm may use one blind. Youths who may hunt will be selected by a drawing of reservation cards.

The provisions of this special regulation supplement the regulations which

govern hunting of wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 31, 1969.

RICHARD E. GRIFFITH,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 68-12310; Filed, Oct. 9, 1968; 8:46 a.m.]

PART 32—HUNTING

Tule Lake, Lower Klamath National Wildlife Refuges, Calif.

The following regulations are issued and are effective on date of publication in the FEDERAL REGISTER. These regulations apply to public hunting on National Wildlife Refuges in California.

General conditions. Hunting shall be in accordance with applicable State regulations. Portions of refuges which are open to hunting are designated by signs and/or delineated on maps—special conditions applying to individual refuges are listed on the reverse side of the refuge hunting map. Maps are available at refuge headquarters and from the Office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 730 Northeast Pacific Street, Portland, Oreg. 97208.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Ring-necked pheasants may be hunted on the following refuges:

Tule Lake National Wildlife Refuge, Route 1, Box 74, Tulelake, Calif. 96134.

Special conditions. Additional refuge area designated by special posting will be open to hunting the last 2 days of the State pheasant hunting season.

Lower Klamath National Wildlife Refuge (Headquarters: Tule Lake NWR, Route 1, Box 74, Tulelake, Calif. 96134).

Special conditions. Additional refuge area designated by special posting will be open to hunting the last 2 days of the State pheasant hunting season.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 31, 1968.

JOHN D. FINDLAY,
Regional Director, Bureau of Sport Fisheries and Wildlife.

OCTOBER 1, 1968.

[F.R. Doc. 68-12321; Filed, Oct. 9, 1968; 8:47 a.m.]

PART 32—HUNTING

Tewaukon National Wildlife Refuge, N. Dak.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

NORTH DAKOTA

TEWAUKON NATIONAL WILDLIFE REFUGE

Hunting of pheasants on the Tewaukon National Wildlife Refuge, N. Dak., is suspended for the 1968 season due to a low population on the refuge.

HERBERT G. TROESTER,
Refuge Manager, Tewaukon National Wildlife Refuge, Cayuga, N. Dak.

OCTOBER 3, 1968.

[F.R. Doc. 68-12324; Filed, Oct. 9, 1968; 8:47 a.m.]

PART 32—HUNTING

Bombay Hook National Wildlife Refuge, Del.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

DELAWARE

BOMBAY HOOK NATIONAL WILDLIFE REFUGE

Public hunting of deer with shotguns on the Bombay Hook National Wildlife Refuge, Del., is permitted only on the Deer Hunting Area and Upland Hunting Area designated by signs as open to hunting. These open Deer Hunting Areas are delineated on maps available at refuge headquarters, Smyrna, Del. 19977 and from the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Mass. 02109. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of deer with firearms subject to the following special condition:

(1) A Federal permit is required and may be obtained by applying to the Refuge Manager in writing for an advance reservation. An individual with an advance reservation will forfeit his permit if he is not present one hour prior to the start of legal shooting time on the date of his reservation. These forfeited permits and permits not reserved by advance reservations will be awarded to other hunters by lot one-half hour before the start of legal shooting time. The number of hunters admitted to the open area at one time will be restricted to 50 and a User Fee of $1 per hunter will be charged. Permits must be surrendered prior to departure from the refuge and deer taken must be checked out at refuge headquarters.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 31, 1969.

RICHARD E. GRIFFITH,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 68-12309; Filed, Oct. 9, 1968; 8:46 a.m.]

PART 32—HUNTING

Agassiz National Wildlife Refuge, Minn.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

MINNESOTA

AGASSIZ NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Agassiz National Wildlife Refuge, Minn., is permitted from sunrise to sunset November 9 through November 13, 1968, inclusive, only on the area designated by signs as open to hunting. This open area comprises 58,660 acres, is delineated on a map available at the refuge headquarters at Middle River, Minn., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis, Minn. 55408. Hunting shall be in accordance with all applicable State regulations covering the hunting of deer.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 13, 1968.

CLAUDE R. ALEXANDER,
Refuge Manager, Agassiz National Wildlife Refuge, Middle River, Minn.

OCTOBER 3, 1968.

[F.R. Doc. 68-12335; Filed, Oct. 9, 1968; 8:48 a.m.]

PART 32—HUNTING

Rice Lake National Wildlife Refuge, Minn.; Correction

In F.R. Doc. 68-10586, appearing on page 12374 of the issue for Wednesday, September 4, 1968, sentence 1 of paragraph 1 under § 32.32 should read as follows: Public hunting of deer on the Rice Lake National Wildlife Refuge is permitted from sunrise to sunset November 9 through November 15, 1968, and with bow and arrow only from sunrise November 30, 1968 to sunset December 22, 1968, inclusive, only on the area designated by signs as open to hunting.

R. W. BURWELL,
Regional Director, Bureau of Sport Fisheries and Wildlife.

OCTOBER 3, 1968.

[F.R. Doc. 68-12311; Filed, Oct. 9, 1968; 8:46 a.m.]

PART 32—HUNTING

Tewaukon National Wildlife Refuge, N. Dak.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

NORTH DAKOTA

TEWAUKON NATIONAL WILDLIFE REFUGE

Public bow hunting of deer on the Tewaukon National Wildlife Refuge, N. Dak., is permitted from November 18, 1968, through December 15, 1968, on the entire refuge as posted. This area, comprising 7,804 acres, is delineated on maps available at refuge headquarters, Cayuga, N. Dak. 58013, and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis, Minn. 55408. Hunting shall be in accordance with all applicable State and Federal regulations.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 15, 1968.

HERBERT G. TROESTER,
Refuge Manager, Tewaukon National Wildlife Refuge, Cayuga, N. Dak.

OCTOBER 3, 1968.

[F.R. Doc. 68-12323; Filed, Oct. 9, 1968; 8:47 a.m.]

PART 33—SPORT FISHING

Tewaukon National Wildlife Refuge, N. Dak.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NORTH DAKOTA

TEWAUKON NATIONAL WILDLIFE REFUGE

Sport fishing on the Tewaukon National Wildlife Refuge, Cayuga, N. Dak., is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 1,470 acres, are delineated on maps available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis, Minn. 55408. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge extends from December 15, 1968, through March 23, 1969, daylight hours only.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Part 33, and are effective through March 23, 1969.

HERBERT G. TROESTER,
Refuge Manager, Tewaukon National Wildlife Refuge, Cayuga, N. Dak.

OCTOBER 3, 1968.

[F.R. Doc. 68-12322; Filed, Oct. 9, 1968; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 982]

FILBERTS GROWN IN OREGON AND WASHINGTON

Expenses of Filbert Control Board and Rate of Assessment for 1968–69 Fiscal Year

Notice is hereby given of a proposal regarding expenses of the Filbert Control Board for the 1968–69 fiscal year and rate of assessment for that fiscal year, pursuant to §§ 982.60 and 982.61 of the marketing agreement, as amended, and Order No. 982, as amended (7 CFR Part 982), regulating the handling of filberts grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The Board has recommended for the 1968–69 fiscal year beginning August 1, 1968, a budget of expenses in the total amount of $27,841. Based on the volume of filberts estimated to be subject to this regulatory program during the 1968–69 fiscal year, an assessment rate of 0.20-cent per pound of assessable filberts is expected to provide sufficient funds to meet the estimated expenses of the Board.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposal should file the same in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 8th day after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposal is as follows:

§ 982.313 Expenses of the Filbert Control Board and rate of assessment for the 1968–69 fiscal year.

(a) *Expenses.* Expenses in the amount of $27,841 are reasonable and likely to be incurred by the Filbert Control Board during the fiscal year beginning August 1, 1968, for its maintenance and functioning and for such purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate.

(b) *Rate of assessment.* The rate of assessment for said fiscal year, payable by each handler in accordance with § 982.61, is fixed at 0.20-cent per pound of filberts.

Dated: October 7, 1968.

PAUL A. NICHOLSON,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 68–12365; Filed, Oct. 9, 1968; 8:50 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 68–CE–10–AD]

AIRWORTHINESS DIRECTIVE

Beech Model 18 Series Airplanes; Extension of Comment Period

On July 4, 1968, an advance notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 9712) soliciting comments regarding the proposed amendment of Part 39 of the Federal Aviation Regulations by issuing an airworthiness directive requiring either inspection or reinforcement of the entire steel lower spar cap on Beech Model 18 Series airplanes.

The advance notice stated that consideration would be given all comments received on or before October 1, 1968. By telegram dated September 30, 1968, the National Business Aircraft Association has requested that the time for making comments be extended thirty (30) days. The agency has determined that such an extension of the comment period would be in the public interest to assure that all interested persons have been afforded adequate opportunity to study and comment on the proposal. Therefore, pursuant to the authority delegated to me by the Administrator, the time within which comments on this advance notice will be received is extended to November 9, 1968.

Issued at Kansas City, Mo., on October 1, 1968.

EDWARD C. MARSH,
Director, Central Region.

[F.R. Doc. 68–12358; Filed, Oct. 9, 1968; 8:49 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 68–WE–64]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations which would alter the description of the Burbank, Calif., transition area by designating additional 700-foot transition area.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 5651 West Manchester Avenue, Post Office Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the General Counsel, Federal Aviation Administration, 5651 West Manchester Avenue, Los Angeles, Calif. 90045.

The additional 700-foot transition area is required to provide for more effective utilization of airspace by allowing use of lower radar vectoring altitudes for aircraft arriving/departing the Van Nuys/Hollywood-Burbank area. The lower vector altitudes will enhance the flexibility and traffic handling capacity of the Burbank Tower facility.

In view of the foregoing, the FAA proposes the following airspace action:

In § 71.181 (33 F.R. 2155) the 700-foot portion of the Burbank, Calif., transition area is amended to read as follows:

BURBANK, CALIF.

That airspace extending upward from 700 feet above the surface bounded by a line beginning at latitude 34°14'00" N., longitude 118°27'00" W.; to latitude 34°14'00" N., longitude 118°15'00" W.; to latitude 34°12'00" N., longitude 118°15'00" W.; to latitude 34°12'00" N., longitude 117°59'00" W.; to latitude 33°56'00" N., longitude 117°59'00" W.; to latitude 33°56'00" N., longitude 118°07'00" W.; to latitude 34°00'00" N., longitude 118°07'00" W.; to latitude 34°00'00" N., longitude 118°15'00" W.; to latitude 34°05'00" N., longitude 118°15'00" W.; to latitude 34°05'00" N., longitude 118°33'00" W.; to latitude 34°02'30" N., longitude 118°33'00" W.; to latitude 34°02'30" N., longitude 118°53'30" W.; to latitude 34°21'30" N., longitude 118°53'00" W.; to latitude 34°30'30" N., longitude 118°27'00" W.; thence to point of beginning.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (72 Stat. 749; 49 U.S.C. 1348).

Issued in Los Angeles, Calif., on October 1, 1968.

ARVIN O. BASNIGHT,
Director, Western Region.

[F.R. Doc. 68-12359; Filed, Oct. 9, 1968; 8:49 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 68-WE-76]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the 1,200 foot portion of the Medford, Oreg., transition area.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 5651 West Manchester Avenue, Post Office Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 5651 West Manchester Avenue, Los Angeles, Calif. 90045.

The FAA has developed a new ILS approach to runway 14 for Medford-Jackson County Airport. Incorporated into this procedure is a proposed 15 NM DME arc transition routing extending counterclockwise from the Medford VORTAC 118° T (098° M) radial to the Medford ILS localizer northwest course. Additional 1,200-foot transition area will be required to provide controlled airspace protection for aircraft executing the proposed transition routing.

In view of the foregoing, the FAA proposes the following airspace action:

In § 71.181 (33 F.R. 2217) the Medford, Oreg., transition area is amended to read as follows:

MEDFORD, OREG.

That airspace extending upward from 700 feet above the surface within 2 miles each side of the Medford ILS localizer northwest course, extending from 3 to 9 miles northwest of the OM; that airspace extending upward from 1,200 feet above the surface within a 23-mile radius of the Medford VORTAC; that airspace extending from the 23-mile radius area bounded on the north by latitude 42°28'00" N., on the east by the arc of a 40-mile radius circle centered on the Klamath Falls, Oreg. VORTAC, on the south by latitude 42°04'00" N., and on the southwest by the southwest edge of V-23W; that airspace north of Medford within 16 miles west and 11 miles east of the Medford VORTAC 353° radial, extending from 25 to 65 miles north of the VORTAC, and that airspace extending upward from 6,200 feet MSL within 5 miles each side of the Medford VORTAC 271° radial, extending from the 23-mile radius area to V-27.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (72 Stat. 749; 49 U.S.C. 1348).

Issued in Los Angeles, Calif., on October 1, 1968.

ARVIN O. BASNIGHT,
Director, Western Region.

[F.R. Doc. 68-12360; Filed, Oct. 9, 1968; 8:50 a.m.]

[14 CFR Part 73]

[Airspace Docket No. 67-SW-24]

TEMPORARY RESTRICTED AREA

Withdrawal of Notice of Proposed Designation

On August 20, 1968, F.R. Doc. 68-9950 was published in the FEDERAL REGISTER (33 F.R. 11784) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 73 of the Federal Aviation Regulations that would designate a temporary Restricted Area R-5111C at Elephant Butte, N. Mex.

Subsequent to publication of the notice of proposed rule making, the Department of the Air Force notified the FAA that the proposed restricted area is no longer required.

In consideration of the foregoing, notice is hereby given that the proposal contained in Airspace Docket No. 67-SW-24, published in the FEDERAL REGISTER on August 20, 1968, as F.R. Doc. 68-9950, is withdrawn.

This notice of withdrawal is made under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348).

Issued in Washington, D.C., on October 3, 1968.

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

[F.R. Doc. 68-12361; Filed, Oct. 9, 1968; 8:50 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 46]

PACKAGED NUTS

Extension of Time for Filing Comments on Proposed Standards of Identity and Fill of Container

In the matter of establishing definitions and standards of identity for mixed nuts without peanuts (§ 46.51), mixed nuts (§ 46.52), and peanuts with mixed nuts (§ 46.53) and a standard of fill of container for these and other packaged nut products (§ 46.54):

The notice of proposed rule making in the above-identified matter published in the FEDERAL REGISTER of September 4, 1968 (33 F.R. 12383), provided for the filing of comments thereon within 60 days of said publication date.

The Commissioner of Food and Drugs has received requests for an extension of such time and, good reason therefor appearing, the time for filing comments in this matter is extended to January 2, 1969.

This action is taken pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: October 2, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-12345; Filed, Oct. 9, 1968; 8:49 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

[492.211]

CUE CASES

Proposed Tariff Classification

OCTOBER 3, 1968.

Certain wood cue cases and simulated leather cue cases appear to be classifiable under the provision of other luggage, in item 706.60, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 20 percent ad valorem.

Such a classification appears to be required in view of Schedule 7, Part 5, Subpart D, Headnote 1(vii), TSUS, which states "This subpart covers equipment designed for indoor or outdoor games, sports, gymnastics, or athletics, but does not cover luggage (see part 1D of this schedule)" and Schedule 7, Part 1, Subpart D, Headnote 2(a)(ii), TSUS, which states "For the purposes of the tariff schedules the term 'luggage' covers brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (physicians', sample, etc.), and like containers and cases designed to be carried with the person, except handbags as defined herein."

Pursuant to § 16.10a(d) of the Customs Regulations (19 CFR 16.10a(d)), notice is hereby given that there is under review in the Bureau of Customs the existing established and uniform practice of classifying these cue cases under the provision for other billiard and pool equipment, in item 734.10, TSUS, with duty at the present rate of 15 percent ad valorem.

Consideration will be given to any relevant data, views, or arguments pertaining to the correct tariff classification of this merchandise which are submitted in writing to the Bureau of Customs, Washington, D.C. 20226. To assure consideration, such communications must be received in the Bureau not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER. No hearings will be held.

[SEAL] LESTER D. JOHNSON,
Commissioner of Customs.

[F.R. Doc. 68-12318; Filed, Oct. 9, 1968; 8:46 a.m.]

[T.D. 68-250]

COMPOUND OPTICAL MICROSCOPES

Tariff Classification

OCTOBER 3, 1968.

Pursuant to § 16.10a(d), Customs Regulations (19 CFR 16.10a(d)), the Bureau of Customs gave notice in the FEDERAL REGISTER for July 20, 1968 (33 F.R. 10407), that it would review the tariff classification of compound optical microscopes with and without means for photographing the image and equipment imported for use with such microscopes. This review has been completed and all representations received have been carefully considered.

As a result of this review, the Bureau has concluded that: (1) A compound optical microscope, not provided with means for photographing the image and a photographic camera with an adaptor imported as a unit in the same shipment do not constitute a single entity for tariff purposes and are classifiable in the following manner: Compound optical microscope under the provision for compound optical microscopes * * *: * * *: Not provided with means for photographing or projecting the image, in items 708.71 through 708.73, Tariff Schedules of the United States (TSUS), according to value; photographic camera, under the provision for photographic cameras, in items 722.10 through 722.16, according to the type in question; adaptor, as an article not specially provided for, according to its component material; (2) compound optical microscopes specially constructed for photomicrography, as evidenced by a heavy duty vibration free microscope stand, built-in illumination system fulfilling the basic requirements of the so-called "Koehler" illumination, and a photomicrographic attachment which (a) can be readily attached or is permanently affixed to the microscope, (b) includes special device for sharp focus in the film plane either in the observation optics or a special focusing lens or screen, (c) includes automatic or manual means of controlling exposure time, and shutter mechanism, apart from the camera body itself, and (d) when employed with such a unit a conventional camera body is used only as a film holder and transporter, without requiring its lens, shutter, or focusing mechanism, are classifiable under the provision for compound optical microscopes * * * provided with means for photographing * * * the image * * *: * * *: Other, in item 708.76, TSUS. Inasmuch as this decision results in the assessment of duty at a higher rate than previously assessed under a uniform and established practice, the higher rate shall be applied only to such or similar merchandise entered, or withdrawn from warehouse, for consumption after the expiration of 90 days after the date of publication of this abstract in the Customs Bulletin.

[SEAL] LESTER D. JOHNSON,
Commissioner of Customs.

[F.R. Doc. 68-12368; Filed, Oct. 9, 1968; 8:50 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A 2735]

ARIZONA

Notice of Proposed Withdrawal and Reservation of Lands

The Forest Service, U.S. Department of Agriculture, has filed an application, serial number A2735, for the withdrawal of the land described below, from mineral location and entry under the General Mining Laws, subject to existing valid rights.

The Forest Service has requested the withdrawal of this land for the Palace Station Administrative Site. The area is a historical attraction of local significance and is to be used for recreation and public purposes. The withdrawal will assure that the land will remain in Federal ownership and prevent activities adverse to administrative use and public enjoyment.

For a period of 30 days from the date of publication of this notice all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal, may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 3022 Federal Building, Phoenix, Ariz. 85025.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The land involved in the application is:

GILA AND SALT RIVER MERIDIAN, ARIZONA

PALACE STATION ADMINISTRATIVE SITE

T. 12 N., R. 1 W.,
Sec. 18, lot 6 and SE¼SW¼.

The area described aggregates 87.18 acres in the Prescott National Forest.

Dated: October 3, 1968.

FRED J. WEILER,
State Director.

[F.R. Doc. 68-12320; Filed, Oct. 9, 1968; 8:47 a.m.]

[N-2573]

NEVADA

Notice of Classification of Public Lands for Transfer Out of Public Ownership

OCTOBER 3, 1968.

1. The following public lands are hereby classified for transfer out of Federal

ownership by exchange under section 8 of the Taylor Grazing Act:

MOUNT DIABLO MERIDIAN

T. 21 N., R. 21 E.,
  Sec. 36.
T. 21 N., R. 22 E.,
  Sec. 12;
  Sec. 24;
  Sec. 32;
  Sec. 34;
  Sec. 36.
T. 22 N., R. 22 E.,
  Sec. 36.

The lands described above total 4,480 acres and are located in Washoe County.

2. The notice of proposed classification, F.R. Doc. 68-8905, appearing on page 10583 of the issue of July 25, 1968, segregated the affected lands from all forms of disposal under the public land laws, including the mining laws, except for exchange under section 8 of the Taylor Grazing Act. However, publication did not alter the applicability of the public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral and vegetative resources, other than under the mining laws.

3. For a period of 30 days, interested parties may submit comments to the Secretary of the Interior, LLM, 721, Washington, D.C. 20240 (43 CFR 2411.-12(d)).

NOLAN F. KEIL,
State Director, Nevada.

[F.R. Doc. 68-12319; Filed, Oct. 9, 1968; 8:46 a.m.]

National Park Service

BIGHORN CANYON NATIONAL RECREATION AREA, MONT.

Adjustment of Boundaries

Notice was given by me, in the FEDERAL REGISTER of May 28, 1968 (30 F.R. 7765), of a description of the detailed boundaries of the Bighorn Canyon National Recreation Area (hereinafter referred to as recreation area), pursuant to the Act of October 15, 1966 (80 Stat. 913; 16 U.S.C. 460t).

The said Act also authorizes the Secretary of the Interior to subsequently make adjustments in the boundary of the recreation area, subject to the limitation that tribal mountain lands and other lands of the Crow Indian Tribe of Montana may not be included in such area unless requested by the Council of the Tribe.

The Council of the Crow Indian Tribe of Montana on December 1, 1967, agree to make available certain tribally-owned lands for public recreational use and for development and administration by the National Park Service of administrative and public-use facilities, with the understanding that such tribal and other lands within the Crow Indian Reservation (all depicted on a map accompanying the Dec. 1, 1967, agreement), would be included in the boundaries of the recreation area.

Since the tribally-owned and other lands proposed for addition to the recreation area in the aforesaid agreement are determined to be desirable for inclusion within the boundaries of such area, notice is hereby given that that portion of the boundary of the Bighorn Canyon National Recreation Area, Montana, lying within the Crow Indian Reservation is adjusted as follows, and all lands lying between such adjusted boundary and the boundary previously described are included in the recreation area:

Beginning at the northeast corner of lot 1 of sec. 17, T. 7 S., R. 29 E., Principal Meridian, said point being on the described boundary as set forth in the FEDERAL REGISTER, Vol. 33, No. 104, dated May 28, 1968, at pages 7765 to 7767, said point being also on the Bighorn-Carbon County line, and on the south boundary of the Crow Indian Reservation; thence westerly along said south line of the Crow Indian Reservation to the southeast corner of sec. 14, T. 7 S., R. 28 E., Principal Meridian; thence northerly along the east line of secs. 14, 11, and 2, T. 7 S., R. 28 E., and sec. 35, T. 6 S., R. 28 E., to the northeast corner thereof; thence easterly along the north line of sec. 36, T. 6 S., R. 28 E., and sec. 31, T. 6 S., R. 29 E., to the north quarter corner of said sec. 31; thence northerly to the northwest corner of the SE¼ of sec. 30; thence easterly along the east-west center line of secs. 30, 29, and 28 to the northeast corner of the SW¼ of said sec. 28; thence northerly along the north-south center line of said sec. 28, to the north quarter corner thereof; thence easterly along the north line of secs. 28 and 27 to the northeast corner of said sec. 27; thence northerly along the west line of sec. 23 to the west quarter corner thereof; thence easterly along the east-west center line of secs. 23 and 24, T. 6 S., R. 29 E., and sec. 19, T. 6 S., R. 30 E., to the northwest corner of the SE¼ of said sec. 19; thence northerly along the north-south center line of said sec. 19 to the north quarter corner thereof; thence easterly along the north line of secs. 19, 20, and 21 to the northwest corner of the NE¼NE¼ of said sec. 21;

Thence northerly along the west line of the E½SE¼ of sec. 16 to the northwest corner thereof; thence easterly to the west quarter corner of sec. 15; thence northerly along the west line of secs. 15 and 10 to the northwest corner of said sec. 10; thence easterly along the north line of secs. 10, 11, and 12 to the northeast corner of sec. 12, T. 6 S., R. 30 E.; thence northerly to the northwest corner of lot 1, sec. 7, T. 6 S., R. 31 E.; thence easterly along the north line of said lot 1 to the northeast corner thereof; thence southerly to the southeast corner of said lot 1; thence easterly to the southeast corner of the NE¼NW¼ of said sec. 7; thence northerly to the north quarter corner of said sec. 7; thence easterly along the north line of sec. 7 to the northeast corner thereof; thence southerly along the west line of sec. 8 to the northwest corner of the SW¼SW¼SW¼ of said sec. 8; thence easterly approximately 660 feet north of and parallel to the south lines of secs. 8 and 9 to the northeast corner of the S½SW¼SW¼ of said sec. 9; thence southerly to the southeast corner of the S½SW¼SW¼ of sec. 9; thence easterly along the south line of sec. 9 to the southwest corner of lot 1, of said sec. 9; thence northerly along the west line of lot 1, sec. 9, to the northwest corner thereof; thence easterly to the northeast corner of lot 1, said sec. 9; thence northerly along the west line of the NE¼SE¼ and the SE¼NE¼ of said sec. 9 to the northwest corner of said SE¼NE¼; thence easterly along the north line of the SE¼NE¼ of sec. 9 to the northeast corner thereof; thence northerly along the west line of secs. 10 and 3 to the northwest corner of lot 5 of said sec. 3; thence easterly to the southwest corner of the E½ of lot 2 of said sec. 3; thence northerly along the west line of the E½ of lot 2 to the south line of sec. 33, T. 5 S., R. 31 E.;

Thence easterly to the southwest corner of the SE¼SW¼SE¼ of said sec. 33; thence northerly to the northwest corner of the SE¼SW¼SE¼ of said sec. 33; thence easterly to the southwest corner of the N½ of lot 10, sec. 34; thence northerly along the section line to the northwest corner of lot 10 of said sec. 34; thence easterly along the north line of lot 10 to the southwest corner of lot 9, sec. 34; thence northerly along the west line of lots 9 and 7 to the northwest corner of lot 7, sec. 34; thence easterly along the north line of lots 7 and 8 to the northeast corner of lot 8, sec. 34; thence northerly along the west line of lot 6 to the northeast corner of the SE¼NW¼NE¼ of sec. 34; thence easterly along the south line of the N½ of lot 6 to the west line of sec. 35; thence northerly along the west line of secs. 35 and 26 to the northwest corner of the SW¼SW¼SW¼SW¼ of sec. 26; thence easterly to the northeast corner of the SE¼SW¼SW¼SE¼ of sec. 26; thence southerly to the southeast corner of the SE¼SW¼SW¼SE¼ of said sec. 26; thence easterly along the south line of said secs. 26 and 25 to the southwest corner of the SE¼SW¼SW¼ of sec. 25; thence northeasterly along a diagonal line to the northwest corner of the E½ of lot 3, sec. 25; thence northeasterly along a diagonal line through sec. 24, T. 5 S., R. 31 E., and sec. 19, T. 5 S., R. 32 E, to the southwest corner of the SE¼SE¼NW¼SW¼ of said sec. 19; thence northerly to the northwest corner of the NE¼NE¼NW¼SW¼ of said sec. 19; thence northeasterly along a diagonal line to the northeast corner of the W½ of lot 6, sec. 19; thence northwesterly along a diagonal line to the northwest corner of the SE¼NW¼NW¼ of said sec. 19; thence northeasterly along a diagonal line through secs. 19 and 18 to the northwest corner of the NE¼NE¼NW¼ of sec. 18; thence northeasterly along a diagonal line through secs. 7, 8, 5, and 4 in T. 5 S., R. 32 E., and secs. 33 and 34 in T. 4 S., R. 32 E., to the southwest corner of the SE¼NW¼NW¼NW¼ of said sec. 34; thence northerly to the north line of sec. 34; thence easterly along the north line of sec. 34 to the north quarter corner thereof; thence southerly along the northsouth center line of sec. 34 to the southeast corner of the N½ of lot 4 thereof;

Thence westerly to the southeast corner of the NW¼NW¼SW¼ of said sec. 34; thence southwesterly along a diagonal line through secs. 34 and 33, of T. 4 S., R. 32 E., and sec. 4. T. 5 S, R. 32 E., to the southwest corner of said sec. 4; thence southwesterly along a diagonal line through sec. 8, T. 5 S., R. 32 E., to the southeast corner of the NW¼SW¼SW¼ thereof; thence southerly through secs. 8 and 17, to the southeast corner of the NW¼NW¼SW¼ of sec. 17; thence southwesterly along a diagonal line to the southwest corner of sec. 17; thence southwesterly along a diagonal line through sec. 19 to the southwest corner of the SE¼NE¼ thereof; thence southeasterly along a diagonal line through sec. 19 to the southeast corner of the SW¼NE¼SE¼ thereof; thence southwesterly along a diagonal line to the southwest corner of the SE¼SE¼ of said sec. 19; thence westerly along the south line of said sec. 19, to the south quarter corner thereof; thence southwesterly along a diagonal line through sec. 30 to the west quarter corner thereof; thence continuing southwesterly along a diagonal line through sec. 25, T. 5 S., R. 31 E., to the southwest corner of the SE¼SE¼ thereof; thence westerly along the south line of sec. 25 to the southeast corner of the

SW¼SW¼SE¼ thereof; thence southwesterly along a diagonal line through sec. 36, T. 5 S., R. 31 E., to the southwest corner of the NW¼NE¼ thereof; thence southerly along the north-south center line of said sec. 36 to the southeast corner of the NE¼NE¼NE¼SW¼ thereof; thence westerly through secs. 36 and 35, parallel to an approximately 330 feet south of the east-west center lines thereof, to the southeast corner of the NE¼NW¼NE¼SW¼ of sec. 35; thence southerly through said sec. 35 to the southeast corner of the NW¼NE¼SW¼ thereof; thence westerly through said secs. 35 and 34, to a point 990 feet west of the east line of said sec. 34; thence southerly, parallel to and approximately 990 feet west of the east line of sec. 34 to the south line thereof; thence easterly along the north line of sec. 2, T. 6 S., R. 31 E., to the northeast corner thereof;

Thence southerly along the east line of said sec. 2 to the southeast corner thereof; thence southerly approximately 400 feet along the east line of sec. 11, to its intersection with the center line of Montana State Route 313; thence southwesterly along the center line of Montana State Route 313 through secs. 11, 10, 15, and 16 to the west line of the SE¼ of said sec. 16; thence southerly along the north-south center line of secs. 16 and 21 to the southwest corner of the NW¼NE¼ of sec. 21; thence easterly to the northwest corner of the SW¼NE¼ of sec. 21; thence southerly along the west line of the E½E½ of secs. 21, 28, and 33 to the southeast corner of the SW¼NE¼ of sec. 33; thence westerly to the northwest corner of the SE¼ of said sec. 33; thence southerly to the south quarter corner of said sec. 33; thence westerly along the south line of secs. 33, 32, and 31, T. 6 S., R. 31 E., to a point on the south line of the SW¼ of said sec. 31, said point being the point of intersection with a line measured 1,320 feet easterly and upslope of the 3,675-foot contour in Black Canyon; thence along a line measured 1,320 feet on the upslope side of said 3,675-foot contour, upstream to a point in Devil Canyon (Porcupine Creek), where said line intersects the 4,600-foot contour, said point having an approximate latitude of north 45°01'10'' and an approximate longitude of west 108°13'20'' as shown on U.S.G.S. map of Hillsboro, Montana-Wyoming dated 1964 with a scale of 1:24,000; thence easterly to a point on a line 1,320 feet northerly of said 4,600-foot contour, said point having an approximate latitude of north 45°01'13'' and an approximate longitude of west 108°13'01'' as shown on said U.S.G.S. map; thence easterly, upstream along said Porcupine Creek and Devil Canyon, along the projected line 1,320 feet north of the 4,600-foot contour on the northerly side of Devil Canyon, to its intersection with the Montana-Wyoming State line; thence westerly along the Montana-Wyoming State line to the northeast corner of sec. 19, T. 58 N., R. 94 W., 6th Principal Meridian (Wyoming), said point being the point where the previously described boundary of the Bighorn Canyon National Recreation Area, as published in the aforesaid FEDERAL REGISTER, intersects said State line.

The above-described boundary adjustment adds 55,947 acres, more or less, to the recreation area which thereupon will comprise an aggregate area of 122,623 acres, more or less.

A map entitled "Bighorn Canyon National Recreation", numbered 617-92001, and dated May 1968, depicting the overall boundaries of the area, as herein adjusted, is on file in the Office of the Superintendent, Bighorn Canyon National Recreation Area and in the Office of the National Park Service, Department of the Interior, Washington, D.C.

Any further adjustments in the boundary of this recreation area will be made subject to and in accordance with the provisions of the Act of October 15, 1966, referred to above.

Dated: October 2, 1968.

STEWART L. UDALL,
Secretary of the Interior.

[F.R. Doc. 68-12312; Filed, Oct. 9, 1968; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[Notice No. 39]

ORANGES IN CALIFORNIA

Extension of Closing Date for Filing of Applications for 1968 Crop Year

Pursuant to the authority contained in §406.3 of Title 7 of the Code of Federal Regulations, and pursuant to paragraph 1 of the resolution adopted by the Board of Directors of the Federal Crop Insurance Corporation on March 19, 1954, the time for filing applications for orange crop insurance for the 1968 crop year in all counties in California where such insurance is otherwise authorized to be offered is hereby extended until the close of business on October 31, 1968. Such applications received during this period will be accepted only after it is determined that no adverse selectivity will result.

JOHN N. LUFT,
Manager, Federal Crop Insurance Corporation.

[F.R. Doc. 68-12366; Filed, Oct. 9, 1968; 8:50 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

E. I. DU PONT DE NEMOURS & CO., 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 9A2338) has been filed by E. I. du Pont de Nemours & Co., Inc., Wilmington, Del. 19898, proposing the issuance of a regulation (21 CFR Part 121) to provide for the safe use of sodium mono- and dimethyl naphthalene sulfonates as an anticaking agent in sodium nitrite (in an amount not to exceed 0.05 percent by weight thereof) for authorized uses in cured fish and meat.

Dated: October 2, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-12347; Filed, Oct. 9, 1968; 8:49 a.m.]

Office of the Secretary

OFFICE OF THE GENERAL COUNSEL

Statement of Organization

The Statement of Organization, Functions, and Delegation of Authority of the Department (22 F.R. 1945), Part 2 thereof, under the heading "Office of the General Counsel" (as amended by 30 F.R. 14225) is hereby amended to include reference to the Civil Rights Division (approved by the Secretary on Sept. 25, 1967), to change the names of the Food and Drug Division, the Public Health Division, and the Welfare and Rehabilitation Division, and to change a reference to the "Associate General Counsel" to the "Deputy General Counsel", as follows:

1. Section 2-300.10 is revised to read as follows:

2-300.10 *Organization.* The Office of the General Counsel, under the supervision of a General Counsel, shall consist of:

Immediate Office of the General Counsel
Regional Attorneys.
Division of Business and Administrative Law.
Division of Civil Rights.
Division of Education.
Division of Food, Drug, and Environmental Health.
Division of Health Insurance.
Division of Legislation.
Division of Old-Age and Survivors Insurance.
Division of Public Health Grants and Services.
Division of Social and Rehabilitation Service.

2. Section 2-300.20 is revised to read as follows:

2-300.20 *General Counsel.* A. The General Counsel is directly responsible to the Secretary. He serves as special adviser to the Secretary on legal matters in connection with the administration of the Department.

B. In the absence or disability of the General Counsel the Deputy General Counsel shall act for him.

Dated: October 3, 1968.

DONALD F. SIMPSON,
Assistant Secretary for Administration.

[F.R. Doc. 68-12348; Filed, Oct. 9, 1968; 8:49 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-163]

GULF GENERAL ATOMIC, INC.

Notice of Issuance of Amended Facility License

The Atomic Energy Commission has issued Amendment No. 21, as set forth below, to Facility License No. R-67. The license authorizes Gulf General Atomic, Inc. (formerly General Dynamics Corp.) of San Diego, Calif., to possess and operate its TRIGA Mark F nuclear reactor located at Torrey Pines Mesa in San Diego, Calif. The amendment, effective as of the date of issuance, incorporates Technical Specifications for operation of the reactor facility in accordance with the application for license amendment

dated December 22, 1966, and supplements thereto dated July 25, 1967, November 27, 1967, and August 9, 1968. The amendment also republishes the license in its entirety to incorporate previously issued amendments and to more clearly state the recordkeeping and reporting requirements.

The Commission has found that prior public notice of proposed issuance of this amended license is not necessary in the public interest since the operation of the reactor in accordance with the terms of the amended license does not involve significant hazard considerations different from those previously evaluated.

Within fifteen (15) days from the date of publication of this notice in the FEDERAL REGISTER, the applicant may file a request for a hearing, and any person whose interest may be affected by the issuance of this amended license may file a petition for leave to intervene. Requests for a hearing and petitions to intervene shall be filed in accordance with the provisions of the Commission's rules of practice, 10 CFR Part 2. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this amendment, see (1) the licensee's application for license amendment dated December 22, 1966, and supplements thereto dated July 25, 1967, November 27, 1967, and August 9, 1968, (2) a related Safety Evaluation prepared by the Division of Reactor Licensing, and (3) the Technical Specifications, all of which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of item (2) above may be obtained at the Commission's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 27th day of September 1968.

For the Atomic Energy Commission.

FRANK L. KELLY,
Acting Assistant Director for Reactor Operations, Division of Reactor Licensing.

AMENDED FACILITY LICENSE

[License R-67, Amdt. 21]

The Atomic Energy Commission (hereinafter "the Commission") has found that:

A. The application for license, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (hereinafter "the Act"), and the Commission's regulations set forth in Title 10, CFR, Chapter I;

B. The reactor has been constructed in conformity with Construction Permit No. CPRR-59 and will operate in conformity with the application and in conformity with the Act and the rules and regulations of the Commission;

C. There is reasonable assurance that the reactor can be operated at the designated location without endangering the health and safety of the public;

D. Gulf General Atomic, Inc., is technically and financially qualified to operate the reactor;

E. The possession and operation of the reactor in the manner proposed in the application will not be inimical to the common defense and security or to the health and safety of the public;

F. Gulf General Atomic, Inc., has submitted proof of financial protection which satisfies the requirements of Commission regulations currently in effect. Gulf General Atomic, Inc., has executed an indemnity agreement pursuant to 10 CFR Part 140. Facility License No. R-67, as amended, is hereby amended in its entirety to read as follows:

A. This license applies to the TRIGA Mark F tank-type nuclear reactor (herein "the reactor") which is owned by Gulf General Atomic, Inc., (formerly General Dynamics Corp.) and located at its John Jay Hopkins Laboratory for Pure and Applied Science, Torrey Pines Mesa, in San Diego, Calif., and described in the application dated March 1, 1960, and amendments thereto, including the amendment dated December 22, 1966, and supplements thereto dated July 25, 1967, November 27, 1967, and August 9, 1968 (hereinafter referred to as "the application"), and authorized for construction by Construction Permit No. CPRR-59.

B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses Gulf General Atomic, Inc.:

1. Pursuant to section 104c of the Act and Title 10, CFR, Chapter I, Part 50, "Licensing of Production and Utilization Facilities", to possess and operate the reactor in accordance with the procedures and limitations described in the application and in this license.

2. Pursuant to the Act and Title 10, CFR, Chapter I, Part 70, "Special Nuclear Material", to receive, possess and use up to 30 kilograms of contained uranium-235 and one gram of plutonium in connection with operation of the reactor.

3. Pursuant to the Act and Title 10, CFR, Chapter I, Part 30, "Rules of General Applicability to Licensing of Byproduct Material", to possess but not to separate such byproduct material as may be produced by operation of the reactor.

C. This license shall be deemed to contain and be subject to the conditions specified in Part 20, § 30.34 of Part 30, §§ 50.54 and 50.59 of Part 50 and § 70.32 of Part 70 of the Commission's regulations; is subject to all applicable provisions of the Act and rules, regulations and orders of the Commission now or hereafter in effect, and is subject to the additional conditions specified or incorporated below:

1. *Maximum power level.* Gulf General Atomic, Inc., may operate the reactor at steady-state power levels up to a maximum of 1500 kilowatts (thermal).

2. *Technical specifications.* The Technical Specifications contained in Appendix A hereto [1] for operation at power levels up to 1500 kilowatts (thermal) are hereby incorporated in this license. Gulf General Atomic, Inc., shall operate the reactor in accordance with these Technical Specifications. No changes shall be made in the Technical Specifications unless authorized by the Commission as provided in § 50.59 of 10 CFR Part 50.

3. *Records.* In addition to those otherwise required under this license and applicable regulations, Gulf General Atomic, Inc., shall keep the following records:

(a) Reactor operating records, including power levels and periods of operation at each power level.

(b) Records showing radioactivity released or discharged into the air or water beyond the effective control of Gulf General Atomic, Inc., as measured at or prior to the point of such release or discharge.

(c) Records of emergency shutdowns and inadvertent scrams, including reasons therefor.

(d) Records of maintenance operations involving substitution or replacement of reactor equipment or components.

(e) Records of experiments installed including description, reactivity worths, locations, exposure time, total irradiation, and any unusual events involved in their handling.

(f) Records of tests and measurements required by the Technical Specifications.

4. *Reports.* In addition to reports otherwise required by applicable regulations:

(a) Gulf General Atomic, Inc., shall inform the Commission of any incident or condition relating to the operation of the reactor which prevented or could have prevented a nuclear system from performing its safety function as described in the Technical Specifications or in the safety analysis report. For each such occurrence, Gulf General Atomic, Inc., shall promptly notify by telephone or telegraph the Director of the appropriate Atomic Energy Commission Regional Compliance Office listed in Appendix D of 10 CFR Part 20 and shall submit within ten (10) days a report in writing to the Director, Division of Reactor Licensing (hereinafter, "Director, DRL"), with a copy to the Regional Compliance Office.

(b) Gulf General Atomic, Inc., shall report to the Director, DRL, in writing within thirty (30) days of its occurrence any substantial variance disclosed by operation of the reactor from performance specifications contained in the safety analysis report or in the Technical Specifications.

(c) Gulf General Atomic, Inc., shall report to the Director, DRL, in writing within thirty (30) days of its occurrence any significant change in the transient or accident analysis as described in the safety analysis report.

D. This license is effective as of the date of issuance and shall expire at midnight, July 1, 1970.

Date of issuance: September 27, 1968.

For the Atomic Energy Commission.

FRANK L. KELLY,
Acting Assistant Director for Reactor Operations, Division of Reactor Licensing.

[F.R. Doc. 68-12313; Filed, Oct. 9, 1968; 8:46 a.m.]

[1] This item was not filed with the Office of the Federal Register but is available for inspection in the Public Document Room of the Atomic Energy Commission.

CIVIL AERONAUTICS BOARD

[Docket No. 20332; Order 68-10-24]

OVERSEAS NATIONAL AIRWAYS, INC.

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 7th day of October 1968.

On September 9, 1968, Overseas National Airways, Inc. (ONA), filed new rates and revisions, effective October 9, 1968, to its charter tariffs.[1] New L-188C Electra charter rates of $2 per live air-

[1] Revisions to ONA's Charter Tariff No. 17, CAB No. 22, Local Military Charter Tariff No. M-1, CAB No. 39, and Charter Tariff No. 142, CAB No. 148.

craft mile and $1.75 per ferry aircraft mile are proposed for the transportation of passengers within the continental United States and between points in the continental United States, on the one hand, and points in Puerto Rico and the Virgin Islands, on the other hand. The same rates are proposed for the transportation of military personnel, baggage, and military impedimenta within the continental United States.

No complaints have been filed.

Upon consideration of all relevant matters, the Board finds that ONA's proposed rates for passenger transportation may be unjust, unreasonable, unjustly discriminatory, unduly preferential, or unduly prejudicial, or otherwise unlawful, and should be suspended pending investigation. The Board generally has permitted considerable latitude in the filing of charter rates. However, the proposed rates of $2 live/$1.75 ferry for passengers and military traffic raise serious questions as to whether they are economic or properly related to other rates. The carrier has presented no support for the proposed low charter rates for the L–188C other than that they have been filed for economic and competitive reasons.

The proposed live rate is substantially less than the charter rates of any other carrier for such type aircraft, and the ferry rate is at the bottom of the rate scale, as shown in the table below.

LOCKHEED ELECTRA (L–188)

Carrier	Charter		Ferry		Layover	
	Departure charge	Per mile	Departure charge	Per mile	Per hour	Maximum per 24 hours
Overseas National (Proposed).		$2.00		$1.75		$500.00 (per 8 hours or fraction thereof).
AA		$3.25		$2.00		
BN		$3.25		$2.00		
EA	$700.00	$2.15	$300.00	$1.35	$55.00	$550.00.
NA		$3.50		$1.75		
NW		$3.25		$2.00		
WA		$3.00 day		$2.00 day	68.00	$680.00.
		$2.75 night		$1.50 night	68.00	$680.00.
American Flyers		$2.35		$2.35	150.00	$1,800.00.
Universal Airlines		$2.50		$2.50	50.00	

The proposed passenger and military traffic rate of $2 live and $1.75 ferry is lower than ONA's reduced cargo rate of $2.40 live and $2.20 ferry;[2] whereas the additional costs of passenger handling, food service and steward or stewardess expenses should reflect a higher rate as the DC–9 rates indicate (passenger $3.00/$2.50 vs. cargo $2.40/$2.20). Moreover, it does not appear that the 33⅓ percent variance in the passenger rate for L–188C aircraft from the comparable DC–9 charges could be supported.

The current minimum charter rate for scheduled Logair all-cargo military services applicable to L–188C and DC–9 aircraft is $1.6013 per course-flown statute mile, plus $150 per directed landing[3] (ER–544, amendment No. 5 to Part 288, adopted Sept. 9, 1968, effective July 23, 1968). This yields the following rate per mile for the indicated stage lengths:

Stage Length	*Logair rate per course-flown mile*[4]
435.8	$1.95
500	1.90
1,000	1.75

The Logair services reflect significant savings in landing fees, fuel procured at military prices, and that loading and unloading is provided by the military, and, of course, do not require passenger services.

[2] ONA is by a concurrent filing reducing its Electra cargo charter rate from $2.50 to $2.40 per mile live, retaining a $2.20 ferry rate.

[3] ONA's L–188C and DC–9 costs are preponderantly reflected in the derivation of the Logair minimum rates.

[4] If converted to a direct airport-to-airport mileage basis these rates would be shown about 5 to 10 percent higher.

In view of the significant question as to the economics of charter service at these rates, the disparity between ONA's proposed rate for L–188C aircraft and other carriers' charges, the inverse relationship to cargo rates, and the level of the Logair rate for L–188 aircraft, the Board will initiate an investigation of the proposed rates of $2 per live aircraft mile and $1.75 per ferry aircraft mile and suspend the effectiveness of such tariffs pending investigation.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof:

It is ordered, That:

1. An investigation be instituted to determine whether the rates, charges and provisions described in Appendix A, attached hereto,[5] and rules, regulations, and practices affecting such rates, charges, and provisions, are or will be unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful rates, charges and provisions, and rules, regulations, or practices affecting such rates, charges and provisions;

2. Pending hearing and decision by the Board, the rates, charges and provisions described in Appendix A hereto[5] are suspended and their use deferred to and including January 6, 1969, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The proceeding herein be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated; and

4. Copies of this order shall be filed with the tariffs and served upon Overseas National Airways, Inc., which is hereby made a party to this proceeding.

[5] Appendix A filed as part of the original document.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 68–12350; Filed, Oct. 9, 1968; 8:49 a.m.]

CIVIL SERVICE COMMISSION

SOCIAL SCIENCE RESEARCH ANALYST, SOCIAL SECURITY ADMINISTRATION

Manpower Shortage

Under the provisions of 5 U.S.C. 5723, the Civil Service Commission found a manpower shortage on September 26, 1968, for the single position of Social Science Research Analyst (specializing in the economics of drug insurance) GS–101–14, Office of Research and Statistics, Social Security Administration, Department of Health, Education, and Welfare, Washington, D.C. This finding is self-canceling after the agency has used the authority.

Assuming other legal requirements are met, the appointee to this position may be paid for the expense of travel and transportation to first post of duty.

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

[F.R. Doc. 68–12333; Filed, Oct. 9, 1968; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Report 408]

COMMON CARRIER SERVICES INFORMATION[1]

Domestic Public Radio Services Applications Accepted for Filing[2]

OCTOBER 7, 1968.

Pursuant to §§ 1.227(b)(3) and 21.26 (b) of the Commission's rules, an application, in order to be considered with

[1] All applications listed in the appendix are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations, and other requirements.

[2] The above alternative cutoff rules apply to those applications listed in the appendix as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio, and Local Television Transmission Services (Part 21 of the rules).

any domestic public radio services application appearing on the list below, must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cutoff dates are set forth in the alternative—applications will be entitled to consideration with those listed in the appendix if filed by the end of the 60-day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

APPENDIX

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

File No., applicant, call sign and nature of application

1638–C2–TC–(2)–69—ATS Mobile Telephone, Inc.; Consent to transfer of control from: Ben and Mary Ciaccio, Transferors, to: Frank O Rizzuto, Transferee Stations: KBM512 Omaha, Nebr. (two-way), KBM513 Omaha, Nebr. (one-way).
1891–C2–P–69—Baxley Radio; (New); C.P. for a new two-way station to be located at 109 Park Avenue, Baxley, Ga., to operate on frequency 152.21 MHz.
1892–C2–P–69—Utah Telephone Co.; (KFL906); C.P. to replace the transmitters operating on frequencies 152.60 and 152.72 MHz and change the antenna system of station located at 40 West First North, Tremonton, Utah.
1894–C2–P–69—RCC of Virginia, Inc.; (KIY394); C.P. to change the antenna system of station located at 801 East Main Street, Richmond, Va., operating on base frequency 152.21 MHz.
1895–C2–MP–69—American Radio-Telephone Service, Inc.; (KGA248); Modification of C.P. to relocate the base facilities to the National Press Building, 14th and F Streets NW., Washington, D.C. operating on frequency 152.03 MHz.
1901–C2–P–69—Day Radio-Telephone Dispatch, Inc.; (New); C.P. for a new two-way station to be located at 1758 Cass Street, Green Bay, Wis., to operate on frequency 152.12 MHz.
1902–C2–P–69—Chapman Radio and Television Co.; (KIF650); C.P. for an additional transmitter to operate on 35.58 MHz at (one-way) station located at Red Mountain, 2 miles south of Birmingham, Ala.
1907–C2–P–69—New Jersey Exchanges, Inc.; (KEC738); C.P. to replace transmitter operating on 454.10 MHz at station located at 40 Hillcrest Avenue, Hawthorne, N.J.
1908–C2–P–69—Central Mobile Radio Phone Service; (KQA770); C.P. to add a second channel to operate on 152.09 MHz at station located at 1000 Urlin Place, Columbus, Ohio.
1909–C2–P–69—Intrastate Radio Telephone, Inc. of L.A.; (KMA200); C.P. to add a second channel to operate on 454.275 MHz at location No. 1: 8999 Cedro Drive, Los Angeles, Calif., and add a third channel to operate on 454.275 MHz at location No. 2: End of TV Row, Mount Wilson, Calif.
1898–C2–P–69—Ohio Mobile Telephone Co., Inc.; (KQK733); C.P. to relocate base facilities operating on 152.21 MHz to 20th and Schleppi Road, approximately 3 miles north-northwest of New Albany, Ohio.
1899–C2–P–69—Ohio Mobile Telephone Co., Inc.; (KQK733); C.P. to add a second channel to operate on frequency 152.06 MHz, same location as above.

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE—continued

File No., applicant, call sign and nature of application—Continued

1917–C2–P–69—Albert F. Broda, Jr.; (New); C.P. for a new two-way station to be located on Prospect Street, Mountainside, N.J., to operate on frequency 454.275 MHz.
1918–C2–P–69—Rogers Radio Communications Services, Inc.; (KSA262); C.P. for additional two-way facilities to operate on frequency 454.325 MHz to be located at a new site described as location No. 3: 1 North La Salle Street, Chicago, Ill.
1919–C2–P–69—Long Island Telephone Co.; (KEJ885); C.P. for additional two-way facilities to operate on frequency 454.25 MHz to be located at a new site described as location No. 2: Southeast corner of Sunrise Highway and Ocean Avenue, Rockville Centre, N.Y.
1920–C2–P–69—American Radio-Telephone Service, Inc.; (KGA249); C.P. for additional two-way facilities to operate on frequency 454.05 MHz to be located at a new site described as location No. 2: Rolling Road, 0.23 mile north of U.S. Route 40, Catonsville, Md.
1921–C2–MP–69—South Central Bell Telephone Co.; (KIC343); Modification of C.P. to change the antenna system. All other terms of the existing C.P. to remain the same.
1922–C2–P–69—The Bell Telephone Company of Pennsylvania (KGA475); C.P. to relocate all facilities operating on base frequencies 152.63 and 152.81 MHz and test frequencies 157.89, 157.95, and 158.07 MHz from location No. 1 to location No. 2: 3.5 miles northwest of Enola, Pa. (all references to location No. 1 will be deleted) also add a fifth channel to operate on frequency 152.75 MHz and test frequency 158.01 MHz at location No. 2.
2015–C2–P–69—L. C. McCall (KIM900); C.P. to add a second channel on base frequency 152.18 MHz at location No. 1: Dug Gap Mountain, approximately 4 miles southwest of Dalton, Ga.
2045–C1–TC–(2)–69—Ohio Mobile Telephone Company, Inc.; Consent to transfer of control from Albert J. White, Transferor, to: Del Mintz, Irving Spitz, Stanley Ronsky, and Arnold Branan, Transferees. Stations: KQK711 Mansfield, Ohio, KQK733 Westerville, Ohio.
2047–C2–TC–69—Mobile Radio Dispatch Service, Inc. (KEA256); Consent to transfer of control from Estate of Peter T. Kroeger, Transferor to: John Warren, Jr., Executor of Estate of Peter T. Kroeger, Transferee.
2049–C2–MP–69—Electropage, Inc. (KMD986); Modification of C.P. to change frequency to 43.58 MHz and replace the transmitter operating on same. All other particulars of existing C.P. to remain unchanged.
2050–C2–ML–69—Electropage, Inc. (KMD986); Modification of license to change frequency to 43.22 MHz. All other particulars of existing license to remain unchanged.
2054–C2–P–69—Eagle Valley Telephone Co. (KDT221); C.P. to change the antenna system operating on frequency 152.69 MHz at location No. 1: On Castle Peak, 8.6 miles northwest of Eagle, Colo.

MAJOR AMENDMENT

758–C2–P–69—The Chesapeake and Potomac Telephone Co. of Virginia (KIB529); Change base station frequency of proposed fourth channel from 152.75 MHz to 152.60 MHz at location No. 2: 1619 Logan Street, Richmond, Va., change additional test station frequency from 158.01 to 157.86 MHz at location No. 1: All other particulars same as reported on public notice dated Aug. 12, 1968, Report No. 400.

CORRECTION

1073–C2–P–69—North Shore Communications Inc. (New); Correct "for a new 2-way station" to read: "for a 1-way-signaling station". All other particulars same as reported on public notice dated Sept. 3, 1968, Report No. 403.

The U.S. Court of Appeals for the Second Circuit on September 30, 1968, denied Radio Relay Corp.'s motion for a stay pending review on the merits of the Commission's action of August 21, 1968, denying Radio Relay's request for a hearing before adopting rules designating frequencies 152.85 Mc/s and 158.01 Mc/s for exclusive use by wireline common carriers for one-way paging.

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

File No., applicant, call sign, and nature of application

1471–C2–P–69—James D. and Lawrence D. Garvey, doing business as Radiofone; (New); C.P. for a new one-way-signaling station. Frequency: 152.24 MHz. Location: Corner O'Keefe and Howard Streets, New Orleans, La.

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE—continued

File No., applicant, call sign and nature of application—Continued

1472–C2–P–69—Rogers Radio Communication Services, Inc.; (New); C.P. for a new one-way-signaling station. Frequency 152.24 MHz. Location No. 1—Pittsfield Building, 55 East Washington Street, Chicago, Ill. Location No. 2—5110 Tollview Road, Rolling Meadows, Ill. Location No. 3—2425 Main Street, Evanston, Ill. Location No. 4—Flamingo Apartments, 5500 South Shore Drive, Chicago, Ill. Location No. 5—10280 Harlem Avenue, Bridgeview, Ill.

1473–C2–P–69—The Southern New England Telephone Co.; (New); C.P. for a new one-way-signaling station. Frequency: 158.10 MHz. Locations: Location No. 2—20 Spring Street, Windsor Locks, Conn. Location No. 3—419 Broad Street, Windsor, Conn. Location No. 4—75 Wells Road, Wethersfield, Conn. Location No. 5—849 Hopmeadow Street, Simsbury, Conn. Location No. 6—52 East Center Street, Manchester, Conn. Location No. 7—125 South Main Street, West Hartford, Conn. Location No. 8—82 Lovely Street, Unionville, Conn.

1474–C2–P–69—Telephone Answering Exchange; (New); C.P. for a new one-way-signaling station. Frequency: 152.24 MHz. Location: WWDL–FM, Bald Mountain, Scranton, Pa.

1475–C2–P–69—Tel-Car Corp.; (New); C.P. for a new station (one-way-signaling). Frequencies: 152.24 and 158.70 MHz. Locations: Location No. 1—15850 West Dixie Highway, North Miami Beach, Fla. Location No. 2—2451 Bricknell Avenue, Miami, Fla. Location No. 3—7400 Southwest 62d Avenue, South Miami, Fla.

5809–C2–P–68—The Ohio Bell Telephone Co.; (New); Resubmitted C.P. for a new one-way-signaling station. Frequency: 152.84 MHz. Locations: Location No. 1—739 South Broadway Avenue, Bedford, Ohio. Location No. 2—20–22 West Bagley Road, Berea, Ohio. Location No. 3—7411 Chippewa Road, Brecksville, Ohio. Location No. 4—13630 Lorain Avenue, Cleveland, Ohio. Location No. 5—16351 Brookpark Road, Brookpart, Ohio. Location No. 6—1424 Argonne Road, South Euclid, Ohio. Location No. 7—12223 St. Clair Avenue, Cleveland, Ohio. Location No. 8—7207 Valley View Road, Independence, Ohio. Location No. 9—3445 Richmond Road, Beachwood, Ohio. Location No. 10—750 Huron Road, Cleveland, Ohio. Location No. 11—7225 Broadway Avenue, Cleveland, Ohio. Location No. 12—14090 Ridge Road, North Royalton, Ohio. Location No. 13—25900 Lakeland Boulevard, Euclid, Ohio. Location No. 14—4314 State Road, Cleveland, Ohio. Location No. 15—14001 Pearl Road, Strongsville, Ohio. Location No. 16—24150 Lorain Road, North Olmstead, Ohio. Location No. 17—7205 Southington Drive, Parma, Ohio. Location No. 18—15715 Chagrin Boulevard, Shaker Heights, Ohio.

1548–C2–P–69—Gerard T. Uht; (New); C.P. for a new one-way-signaling station. Frequency: 152.24 MHz. Location: On U.S. Route No. 19, 5 miles south of Erie, Pa.

1549–C2–P–69—Shaw-Rose Communications, Inc.; (New); C.P. for a new one-way-signaling station. Frequency: 152.24 MHz. Location: 337 Driftway Road, Greenbrook, N.J.

1567–C2–P–69—Medical Business Bureau, Inc., doing business as Mobilradio Telephone Service; (New); C.P. for a new one-way-signaling station. Frequency: 158.70 MHz. Location: State Route No. 4 and Gettysburg Road, Dayton, Ohio.

1570–C2–P–69—Telephone Answering Service, Inc.; (New); C.P. for a new one-way-signaling station. Frequency: 152.24 MHz. Location: First National Bank Building, 410 Main Street, Peoria, Ill.

1630–C2–P–69—Joseph D. Nix doing business as Radio Telephone Service; (New); C.P. for a new one-way-signaling station. Frequency: 158.70 MHz. Location: No. 2—Peachtree Street, Atlanta, Ga.

1911–C2–P–69—Central Mobile Radio Phone Service; (New); C.P. for a new one-way-signaling station. Frequency 158.70 MHz. Location: Frytown Road, 500 feet east of West Carrollton Road, Jefferson Township, Ohio.

1912–C2–P–69—Central Mobile Radio Phone Service; (New); C.P. for a new one-way-signaling station. Frequency: 152.24 MHz. Location: 21 South Belmont Avenue, Springfield, Ohio.

1913–C2–P–69—Joseph Giorgianni; (New); C.P. for a new one-way-signaling station. Frequency: 152.24 MHz. Location: Falmouth Street, 300 yards from Ashby Street, Johnston, R.I.

1927–C2–P–69—Central Mobile Radio Phone Service; (New); C.P. for a new one-way-signaling station. Frequency: 152.24 MHz. Location: 2200 Victory Parkway, Cincinnati, Ohio.

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE—continued

File No., applicant, call sign and nature of application—Continued

1928–C2–P–69—Central Mobile Radio Phone Service; (New); C.P. for a new one-way-signaling station. Frequency: 158.70 MHz. Location: 505 Jefferson Avenue, Toledo, Ohio.

2016–C2–P–69—Central Mobile Radio Phone Service; (New); C.P. for a new one-way-signaling station. Frequency: 158.70 MHz. Location: 1000 Urlin Place, Columbus, Ohio.

2053–C2–P–69—McLean County Telephone Answering Service, Inc.; (New); C.P. for a new one-way-signaling station. Frequency: 152.24 MHz. Location: 0.25 mile south of Bloomington, Ill.

RURAL RADIO SERVICE

1897–C1–P/L–69—New England Telephone and Telegraph Co.; (New); C.P. and license for a new rural subscriber fixed station to be located at Swan's Island, 2.2 miles southwest of Long Island, Maine, to operate on 157.83 MHz communicating with station KCC262, Rockland, Maine.

1904–C1–P–69—General Telephone Company of the Southwest; (KKA93); C.P. to delete frequency 157.89 MHz and add frequencies 157.86 and 157.98 MHz, also replace the transmitter for same. Subscriber: Pascal Allison. Location: 6.8 miles northwest of Paint Rock, Tex.

1906–C1–P–69—South Central Bell Telephone Co.; (KLS39); C.P. to replace transmitter operating on 157.83 MHz at fixed station located approximately 3.8 miles west-northwest of Hackberry, La. Subscriber: Pan American Petroleum, Inc., communicating with station KKI448, Lake Charles, La.

1910–C1–P/ML–69—Morgan City Mobilphone; (KVU82); C.P. and modification of license to add (25 units) to operate in any temporary fixed location within the territory of the licensee on frequency 158.58 MHz communicating with station KFJ896, Morgan City, La.

2017–C1–P/L–69—Delta Valley Radiotelephone Co., Inc.; (New); C.P. and license for a new temporary fixed station to operate with (15 units) in any temporary fixed location within the territory of the grantee on frequency 158.67 MHz communicating with station KMA743, Sacramento, Calif.

2018–C1–P/L–69—Tracy Mobilphone; (New); C.P. and license for a new temporary fixed station to operate with (15 units) in any temporary location within the territory of the grantee on frequency 158.64 MHz communicating with station KMM630, Livermore, Calif.

2019–C1–P/L–69—Stockton Mobilphone, Inc.; (New); C.P. and license for a new temporary fixed station to operate with (15 units) in any temporary location within the territory of the grantee on frequency 158.61 MHz communicating with station KMA616, Stockton, Calif.

2020–C1–P–69—South Central Bell Telephone Co.; (KLU59); C.P. to replace the transmitter operating on frequency 157.83 MHz at station located approximately 7.4 miles southwest of Port Sulphur, La., communicating with station KKC266, Port Sulphur, La.

2021–C1–P/L–69—South Central Bell Telephone Co.; (New); C.P. and license for a new rural subscriber fixed station to be located approximately 17 miles southwest of Houma, La., to operate on frequency 157.95 MHz communicating with station KKI454, Houma, La.

2023–C1–ML–69—Bell Telephone Company of Nevada; (KPV75); Modification of license to change the class of station from central office—fixed to interoffice—fixed. All other terms of the existing license to remain the same.

2023–C1–ML–69—Bell Telephone Company of Nevada; (KPV75) Modification of license to change the class of station from rural subscriber fixed to interoffice fixed. All other terms of the existing license to remain the same.

2024–C1–P–69—Pacific Northwest Bell Telephone Co.; (KTG55); C.P. to change the point of communication to station KZS55, Cave Junction, Oreg., on frequency 157.92 MHz at station located at Oregon Caves 13.5 miles east-southeast of Cave Junction, Oreg.

2025–C1–P–69—Pacific Northwest Bell Telephone Co.; (KZS55); C.P. to add frequency 152.66 MHz communicating with station KTG55, Oregon Caves, Oreg., at station located at Cave Junction, Oreg.

RURAL RADIO SERVICE

Renewals of Licenses expiring November 1, 1968. Term: November 1, 1968, to November 1, 197"

Licensee	Call sign
Bair Communications	KPP51
Bell Telephone Company of Nevada.	KOB97
Do	KOB98
Do	KOR58
Do	KOR59
Do	KOV66
Do	KPH65
Do	KPH66
Do	KPH67
Do	KPL31
Do	KPM83
Do	KPM84
Do	KPX39
Do	KTF23
E. B. and Donna W. Brownell	KZS43
California Interstate Telephone Co.	KGC58
Do	KGC73
Do	KNB48
Do	KNB50
Do	KNM47
Do	KNM48
Do	KPW23
Do	KPX80
Do	KZS90
Cameron Telephone Co	KLD64
Do	KLO86
Do	KLR59
Do	KZS69
Central Mutual Telephone Co., Inc.	KJK70
First Colony Telephone Co	KIT50
General Telephone Co. of Alaska	KXR30
General Telephone Co. of California.	KMO96
Do	KMO97
California Water & Telephone Co.	KVH64
General Telephone Co. of Michigan.	KQN50
Do	KQN51
General Telephone Company of the Southwest.	KKA94
Do	KKA95
Do	KLH27
Do	KLT81
Do	KYS98
General Tel. Co. of Upstate New York, Inc.	KEH90
Do	KEH91
Glacier State Telephone Co	KWW96
Do	KWW97
Do	KWY80
Do	KXP24
Do	KXP25
Golden State Telephone Co	KNL47
Golden West Telephone Co	KNL54
Do	KNZ38
Do	KTF56
Do	KTF57
Gopher State Telephone Co	KAL53
Do	KAM26
Do	KAM28
Do	KAN20
Do	KAR58
Do	KBC89
Do	KBH69
Do	KBH70
Do	KBI95
Do	KBI96
Do	KTF63
Grand River Mutual Telephone Corp.	KAW26
Hawaiian Telephone Co	KUQ95
Do	KUQ96
Do	KUR86
Do	KUR91
Do	KUR92
Do	KUR95
Do	KUV89
Do	KYO31
Do	KYO32
Do	KZI58
Idaho Telephone Co	KKU66
Illinois Bell Telephone Co	KSH92
Do	KSN44
Lone Star State Telephone Co	KLJ71
Maine State Telephone Co	KTQ92
L. C. McCall	KIY58

Licensee	Call sign
The Midland Telehone Co	KCG51
Do	KCG56
Do	KCG57
Do	KPQ62
Do	KSQ53
Do	KSV69
Do	KSV72
Do	KSV74
Do	KSV75
Do	KSV78
Do	KSV79
Do	KTQ58
Do	KTQ59
Do	KVD67
Do	KZA90
Do	KZA91
The Mountain States Telephone and Telegraph Co.	KKU65
New England Telephone and Telegraph Co.	KCB75
Do	KCD71
Do	KCE77
Do	KCJ81
Do	KCJ82
Do	KCL97
Nucla-Naturita Telephone Co	KAA93
Pacific Northwest Bell Telephone Co.	KOU52
Do	KPE22
Do	KPE23
Do	KPR68
Do	KPR69
Do	KPR70
Do	KPV67
Do	KPV77
Do	KPX54
Do	KPX56
Do	KPY38
Do	KPY40
Do	KPZ43
Do	KSP96
Do	KSQ44
Do	KSQ46
Do	KSQ49
Do	KSV67
Do	KTF50
Do	KTG54
Do	KTG55
Do	KTQ54
Do	KVU47
Do	KZA73
Do	KZA95
Do	KZS55
Do	KZS75
Do	KZS76
Do	KZS91
The Pacific Telephone and Telegraph Co.	KMJ38
Do	KMJ39
Do	KMO35

Licensee	Call sign
The Pacific Telephone and Telegraph Co.	KMO36
Do	KMO38
Radiofone	KEG48
St. Joseph Telephone and Telegraph Co.	KJJ77
Souris River Telephone Mutual Aid Corp.	KAX56
South Central Bell Telephone Co.	KIK85
Do	KIK86
Do	KIK87
Do	KKB32
Do	KKK46
Do	KKX75
Do	KKZ83
Do	KLD93
Do	KLF21
Do	KLM89
Do	KLP85
Do	KLP86
Do	KLP98
Do	KLR53
Do	KLR54
Do	KLR58
Do	KLR74
Do	KLS39
Do	KLT70
Do	KLT82
Do	KLT83
Do	KLU35
Do	KLU59
Do	KLU84
Southern Bell Telephone and Telegraph Co.	KLU85
Do	KPP66
Do	KPP67
Do	KPP68
Do	KPP69
Do	KPP70
Do	KPP71
Do	KPP72
Do	KPP73
Do	KPP74
Do	KPP75
Do	KRW82
Do	KRW83
Do	KSV48
Do	KTQ71
Do	KVD93
Do	KVI23
Do	KYO90
Do	KZA54
Do	KZS78
Southwestern Bell Telephone Co.	KLT61
Spohn Ranch	KVU62
Charles W. Stockton	WWY45
Tri-State Communications	KRR64
United Telephone Company of Florida.	KJC34
West Texas Telephone Co	KLU37
Do	KYC40
Westcol Radio Dispatch	KBD30

POINT-TO-POINT MICROWAVE RADIO SERVICE (TELEPHONE CARRIER)

1885-C1-P-69—Pacific Northwest Bell Telephone Co.; (New); C.P. for a new fixed station to be located at 108 C Street SW., Ephrata, Wash. to operate on frequencies 11445 and 11685 MHz toward Moses Lake, Wash.

1886-C1-P-69—Pacific Northwest Bell Telephone Co.; (KOP48); C.P. to add frequencies 11405 and 11645 MHz toward Moses Lake, Wash., and make antenna changes at station located at 7.5 miles south of Othello, Wash.

1887-C1-P-69—Pacific Northwest Bell Telephone Co.; (KPE29); C.P. to add frequencies 10755 and 10995 MHz toward Ephrata, Wash., and 10715 and 10955 MHz toward Othello, Wash., at station located at 2.7 miles southeast of Moses Lake, Wash.

1905-C1-P/L-69—Illinois Bell Telephone Co.; (KKU56); C.P. and license for a new fixed station to be located at 3944 North Sawyer Avenue, Chicago, Ill., to operate on frequency 6415.0 MHz toward Chicago, Ill.

1923-C1-P-69—Pioneer Telephone Coop.; (KGC82); C.P. to add frequency 2176.8 MHz toward Alsea, Oreg., via passive reflector, at station located at West Mary's Peak, 10.5 miles west-southwest of Philomath, Oreg.

1924-C1-P-69—Pioneer Telephone Coop.; (New); C.P. for a new fixed station to be located at Second Street, north of Main Street, Alsea, Oreg., to operate on frequency 2126.8 MHz toward West Mary's Peak, Oreg., via passive reflector.

1926-C1-P/L-69—Michigan Bell Telephone Co.; (New); C.P. and license for a new (Developmental) fixed station to be located in any temporary fixed location in the state of Michigan. Frequency bands: 2110-2130, 2160-2180, 3700-4200, 5925-6425, and 10700-11700 MHz.

POINT-TO-POINT MICROWAVE RADIO SERVICE (TELEPHONE CARRIER)—continued

743–C1–R–69—American Telephone and Telegraph Co.; (KEF72); Renewal for Developmental license expiring Nov. 1, 1968. Term: Nov. 1, 1968 to Nov. 1, 1969.

4049–C1–R–69—The Pacific Telephone and Telegraph Co.; (KMB68); Renewal of Developmental license expiring Oct. 28, 1968. Term: Oct. 28, 1968 to Oct. 28, 1969.

6445–C1–R–69—The Pacific Telephone and Telegraph Co.; (KNZ36); Renewal of Developmental license expiring Oct. 28, 1968. Term: Oct. 28, 1968 to Oct. 28, 1969.

2026–C1–P–69—The Mountain States Telephone & Telegraph Co.; (KKL83); C.P. to change the frequencies to 6241.7 and 6360.3 MHz toward Tano, N. Mex., and relocate the station to 1907 Trinity Drive, Los Alamos, N. Mex.

2027–C1–P–69—The Mountain States Telephone & Telegraph Co.; (KKK22); C.P. to change the frequencies to 6019.3 and 6137.9 MHz toward Los Alamos, N. Mex.; replace transmitters operating on same; change the antenna system and relocate the station to 3 miles north-northwest of Santa Fe, N. Mex. at latitude 35°43′20″ N.–longitude 105°57′36″ W.

2028–C1–P–69—The Mountain States Telephone & Telegraph Co.; (KXQ87); C.P. to add frequencies 6271.4 and 6390.0 MHz toward Cheyenne Junction, Wyo., and change the antenna system located at 1919 Capitol Avenue, Cheyenne, Wyo.

2029–C1–P–69—The Mountain States Telephone & Telegraph Co.; (New); C.P. for a new fixed station to be located 7 miles southwest of Cheyenne, Wyo., to operate on frequencies 6019.3 and 6137.9 MHz toward Cheyenne, Wyo., and 6004.5 and 6123.1 MHz toward Horse Creek, Wyo.

2030–C1–P–69—The Mountain States Telephone & Telegraph Co.; (New); C.P. for a new fixed station to be located 16 miles north of Cheyenne, Wyo., to operate on frequencies 6256.5 and 6375.2 MHz toward Cheyenne Junction, Wyo., and 6256.5 and 6375.2 MHz toward Chugwater, Wyo.

2031–C1–P–69—The Mountain States Telephone & Telegraph Co.; (New); C.P. for a new fixed station to be located at 0.5 mile north of Chugwater, Wyo., to operate on frequencies 6004.5 and 6123.1 MHz toward Horse Creek, Wyo., and Wendover, Wyo.

2032–C1–P–69—The Mountain States Telephone & Telegraph Co.; (New); C.P. for a new fixed station to be located at 8 miles west-northwest of Wendover, Wyo., to operate on frequencies 6256.5 and 6375.2 MHz toward Chugwater, Wyo., and 6271.4 and 6390.0 MHz toward Wheatland, Wyo.

2033–C1–P–69—The Mountain States Telephone & Telegraph Co.; (New); C.P. for a new fixed station to be located at 706 11th Street, Wheatland, Wyo., to operate on frequencies 6019.3 and 6137.9 MHz toward Wendover, Wyo.

CORRECTION

1420–C1–MP–69—General Telephone Company of Ohio; (KVI48); Correct entry to read: Modification C.P. to change frequencies from 6004.5 and 6123.1 MHz to 6256.5 and 6375.2 MHz. All other particulars remain the same as reported on public notice dated Sept. 16, 1968, Report No. 405.

LOCAL TELEVISION TRANSMISSION SERVICE

1893–C1–P–69—The Ohio Bell Telephone Co.; (KVI28); C.P. to change frequency to 11385 MHz toward Toledo, Ohio; replace transmitter operating on same and make antenna changes at station located at Elm and Manhattan Streets, Toledo, Ohio.

POINT-TO-POINT MICROWAVE RADIO SERVICE (NONTELEPHONE)

1888–C1–P–69—New York Penn Microwave Corporation; (KZA85); C.P. to add a new point of communication, via power split, toward Reynoldsville, Pa., on frequencies 5989.7 and 6049.0 MHz azimuth 221°20′, station located approximately 5 miles east of Brockport, Boone Mountain, Pa. (Informative: Applicant proposes to provide the TV signals of stations WPIX–TV and WOR–TV of New York City, N.Y. to Jefferson TV Cable Co., Inc., in Reynoldsville, Pa.)

1889–C1–TC–69—Western TV Relay, Inc.; (KLF85); Consent to transfer of control from: Nola M. Potter, Assignor, to: Kenneth Schuelein, Transferee.

1890–C1–TC–69—Western TV Relay, Inc.; (KLT80); Consent to transfer of control from: Nola M. Potter, Assignor, to: Kenneth Schuelein, Transferee.

1925–C1–TC–(10)–69—Southwest Texas Transmission Co.; Consent to transfer of control from: Jack R. Crosby, Transferor, to: New England Microwave Corp., Transferee. Stations: KJK31 Smarr, Ga. KKK27 Beeler Farm, Tex. KKY45 Uvalde, Tex. KKY46 Bracketville, Tex. KLP99 Carta Valley, Tex. KLR36 Rocksprings, Tex. KLR37 Sonora, Tex. KLR38 D'Hanis, Tex. KSP97 Vandalia, Ill. KSP98 Effingham, Ill.

POINT-TO-POINT MICROWAVE RADIO SERVICE (NONTELEPHONE)—continued

2034–C1–P–69—Brentwood Co.; (New); C.P. for a new CATV station to be located at Porterville, Calif., latitude 36°03′32″ N.–longitude 119°02′07″ W., to operate on frequencies 10795, 10875, 11035, and 11115 MHz toward Stokes Mountain, Calif., on azimuth of 342°30′.

2035–C1–P–69—Brentwood Co.; (New); C.P. for a new CATV station to be located at Stokes Mountain, 4.5 miles east of Cutler, Calif., latitude 36°30′56″ N.–longitude 119°12′37″ W., to operate on frequencies 11325, 11485, 11565, and 11645 MHz toward Owens Mountain, Calif., on azimuth of 320°00′.

2036–C1–P–69—Brentwood Co.; (New); C.P. for a new CATV station to be located at Owens Mountain, 8 miles northeast of Clovis, Calif., latitude 36°55′48″ N.–longitude 119°38′26″ W., to operate on frequencies 10715, 10755, 10955, and 10995 MHz toward Trabuco Mountain, Calif., on azimuth of 346°30′.

2037–C1–P–69—Brentwood Co.; (New); C.P. for a new CATV station to be located at Trabuco Mountain, 2.25 miles west-southwest of Coarsegold, Calif., latitude 37°14′48″ N.–longitude 119°4′12″ W., to operate on frequencies 11245, 11285, 11485, and 11525 MHz toward Bullion Mountain, Calif., on azimuth of 320°50′.

2038–C1–P–69—Brentwood Co.; (New); C.P. for a new CATV station to be located at Bullion Mountain, 2 miles north-northeast of Mount Bullion, Calif., latitude 37°32′04″ N.–longitude 120°01′43″ W., to operate on frequencies 10795, 10835, 11035, and 11075 MHz toward Elizabeth Peak, Calif., on azimuth of 341°57′.

2039–C1–P–69—Brentwood Co.; (New); C.P. for a new CATV station to be located at Elizabeth Peak, 1.8 miles north-northwest of Twain Harte, Calif., latitude 38°03′47″ N.–longitude 120°14′47″ W., to operate on frequencies 11245, 11325, 11405, and 11485 MHz toward Ebbetts Pass, Calif., on azimuth of 37°00′.

2040–C1–P–69—Brentwood Co.; (New); C.P. for a new CATV station to be located at Ebbetts Pass, 11 miles south of Markleeville, Calif., latitude 38°22′04″ N.–longitude 119°47′44″ W., to operate on frequencies 10715, 10795, 10875, and 10955 MHz toward Freel Peak, Calif., on azimuth of 345°52′.

2041–C1–P–69—Brentwood Co.; (New); C.P. for a new CATV station to be located at Freel Peak, 7 miles southeast of Al Tahoe, Calif., latitude 38°51′27″ N.–longitude 119°53′57″ W., to operate on frequencies 11285, 11365, 11445, and 11525 MHz toward Slide Mountain, Nev., on azimuth of 01°33′.

2042–C1–P–69—Brentwood Co.; (New); C.P. for a new CATV station to be located at Slide Mountain, 3.5 miles west of Washoe City, Nev., latitude 39°18′49″ N.–longitude 119°53′00″ W., to operate on frequencies 10755, 10835, 10915, and 10995 MHz toward Reno, Nev., on azimuth of 15°52′. (Informative: Applicant proposes to provide the TV signals of stations KTLA–TV, KHJ–TV, KTTV–TV, and KCOP–TV all of Los Angeles, Calif., to H & B Communications Corp. in Reno, Nev.)

[F.R. Doc. 68–12351; Filed, Oct. 9, 1968; 8:49 a.m.]

FEDERAL POWER COMMISSION

[Docket No. CP69–84]

COLORADO INTERSTATE GAS CO.

Notice of Application

OCTOBER 2, 1968.

Take notice that on September 25, 1968, Colorado Interstate Gas Co., a division of Colorado Interstate Corp. (Applicant), Post Office Box 1087, Colorado Springs, Colo. 80901, filed in Docket No. CP69–84 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the transportation and sale of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to construct and operate the following new facilities:

(1) A 10-inch lateral pipeline extending a distance of approximately 23 miles from Applicant's Lakin Compressor Station to Garden City, Kans.

(2) A meter and regulator station at the end of the 10-inch lateral for delivery of gas to Peoples Natural Gas Division of Northern Natural Gas Co.

The purpose of these facilities is to permit Applicant to sell gas for resale to Peoples for ultimate consumption in Garden City, Kans. Applicant seeks, further, authorization to initiate service to Peoples under Rate Schedules G–1 and IS–2 of Applicant's FPC Gas Tariff, First

Revised Volume No. 1. Applicant states that Peoples has requested a contract demand volume of 7,400 Mcf per day. The estimated third year sales to Peoples for the Garden City service are 5,460,000 Mcf.

The total estimated cost of the proposed facilities is $629,816 which will be financed from funds on hand, funds from operations, or short-term bank loans.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before October 31, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 68-12297; Filed, Oct. 9, 1968; 8:45 a.m.]

[Docket Nos. CS69-6, CS69-8]

FREEPORT OIL CO. AND FORT WORTH NATIONAL BANK, TRUSTEE, TRUST 1979

Notice of Applications for "Small Producer" Certificates [1]

OCTOBER 2, 1968.

Take notice that on September 6, 1968, Freeport Oil Co. (Division of Freeport Sulphur Co.), Post Office Box 52349, New Orleans, La. 70150, and on September 13, 1968, Fort Worth National Bank, Trustee, Trust 1979, c/o John R. McGuire, Assistant Trust Officer, Post Office Box 2050, Fort Worth, Tex. 76101, filed in Docket Nos. CS69-6 and CS69-8, respectively, applications pursuant to section 7(c) of the Natural Gas Act and section 157.40 of the regulations thereunder for "small producer" certificates of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce from the Permian Basin area of Texas and New Mexico, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before October 25, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on all applications in which no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a protest or petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 68-12298; Filed Oct. 9, 1968; 8:45 a.m.]

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket No. E-7442]

IDAHO POWER CO.

Notice of Application

OCTOBER 1, 1968.

Take notice that on September 16, 1968, Idaho Power Co. (Applicant), filed an application seeking an order pursuant to section 204 of the Federal Power Act authorizing the issuance of $30 million in short-term unsecured promissory notes.

Applicant is incorporated under the laws of the State of Maine with its principal business office at Boise, Idaho, and is engaged in the electric utility business in the States of Idaho, Oregon, and Nevada.

The notes are to be issued from time to time to commercial banks or similar institutions and will mature within 1 year from their dates of issuance and in any event not later than December 31, 1970. The loans will be at the current rate applicable in New York for commercial bank loans, which interest rate at the present time is 6½ percent.

The purpose for which the proposed short-term bank borrowings will be made, and promissory notes issued, is to obtain temporary, interim capital (including renewal of short-term notes now issued and outstanding or to be issued and outstanding pursuant to the authorization requested, prior to Dec. 31, 1969) for the construction, extension and improvement of operating facilities.

The expenditures for this program through December 31, 1969 are estimated at about $17,617,000. Major items are $3,492,000 for transmission lines; $8,412,000 for distribution lines and substations and $1,662,000 for minor additions and improvements to generating stations.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 18, 1968, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 68-12299; Filed, Oct. 9, 1968; 8:45 a.m.]

[Docket No. E-7446]

IOWA ELECTRIC LIGHT AND POWER CO.

Notice of Application

OCTOBER 2, 1968.

Take notice that on September 23, 1968, Iowa Electric Light and Power Co. (Applicant), filed an application with the Federal Power Commission seeking an order pursuant to section 204 of the Federal Power Act authorizing the issuance of short-term promissory notes in the aggregate principal amount of not over $15 million. Applicant is incorporated under the laws of the State of Iowa and is authorized to do business in that State with its principal place of business office at Des Moines, Iowa, and is engaged in the electric and gas utility business in central and southwestern Iowa.

According to the application the notes are to be issued from time to time to commercial banking institutions in principal amounts not exceeding $15 million in the aggregate. These notes will have a maturity not in excess of 1 year and will bear an interest rate of 6½ percent, or the prime rate in effect at the time of the borrowing.

Applicant represents that the purpose for which said securities are to be issued is to finance in part its construction program for 1968-69 which is estimated to total approximately $15 million. Included in the principal items in Applicant's construction program are $912,000 for preliminary engineering and licensing fees for a 550,000 kw nuclear generating station to be located at Palo, Iowa, $714,745 for construction work on electric transmission facilities, $149,000 for construction work on Applicant's Osceola and Triboji substations, $3,042,000 for gas distribution facilities and $6,274,255 for additions and improvements to electric distribution facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 25, 1968, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR

1.8 or 1.10). The application is on file and available for public inspection.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 68-12300; Filed, Oct. 9, 1968; 8:45 a.m.]

[Docket Nos. E-7443, E-7444]

KANSAS GAS AND ELECTRIC CO. AND KANSAS POWER AND LIGHT CO.

Notice of Application

OCTOBER 2, 1968.

Take notice that on September 18, 1968, Kansas Gas and Electric Co. (Kansas Gas), and Kansas Power and Light Co. (Kansas Power), filed applications seeking an order pursuant to section 203 of the Federal Power Act authorizing the exchange of certain electric facilities.

Kansas Gas is incorporated under the laws of West Virginia with its principal business office at Wichita, Kans., and is engaged in the electric and gas utility business in southeastern Kansas.

Kansas Power is incorporated under the laws of the State of Kansas with its principal business office at Topeka, Kans., and is engaged in the electric utility business in the State of Kansas.

Under an agreement entered into on August 8, 1968, Kansas Gas agreed to sell and convey to Kansas Power that portion of the Midian-Tecumseh 161 kv line extending southwesterly 23.77 miles from Tecumseh toward Midian and Kansas Power agreed to sell to Kansas Gas a 115 kv transmission line extending from the Kansas Gas Company's Halstead substation near Halstead, Kans., north approximately 11 miles to the Kansas Power's Moundridge substation in Harvey County, Kans. As part of a transaction Kansas Gas shall pay to Kansas Power the difference between the net depreciated values of the properties described above in the sum of $50,529. According to the application the net depreciated value of the 115 kv line is $185,573 and the net depreciated value of the portion of the 161 kv line is $135,044.

Any person desiring to be heard or make any protest with reference to this application should on or before October 23, 1968, file with the Federal Power Commission, Washington, D.C. 20426 petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 68-12301; Filed, Oct. 9, 1968; 8:45 a.m.]

[Docket No. E-7447]

KENTUCKY UTILITIES CO.

Notice of Application

OCTOBER 2, 1968.

Take notice that on September 25, 1968, Kentucky Utilities Co. (Applicant) filed an application seeking an order pursuant to section 204 of the Federal Power Act authorizing the issuance of $19 million in short-term unsecured promissory notes.

Applicant is incorporated under the laws of the State of Kentucky with its principal business office at Lexington, Ky., and is engaged in the electric utility business in the States of Kentucky and Tennessee.

The notes are to be issued from time to time to six commercial banks and will mature within 1 year from their dates of issuance and in any event not later than June 30, 1970. The loans bear interest from the date thereof to maturity at the prime rate of interest in effect at the First National Bank of Chicago on the date each borrowing is made.

The purpose for which the proposed short-term bank borrowings will be made, and promissory notes issued, is primarily to finance a part of the cost of its 1968-69 construction program.

The expenditures for this program through July 31, 1969, are estimated at $29,395,000. Major items are $10,542,000 for generation; $10,378,000 for transmission facilities; $7,160,000 for distribution facilities and $1,315,000 for minor additions and improvements.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 25, 1968, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 68-12302; Filed, Oct. 9, 1968; 8:45 a.m.]

[Docket No. CP69-83]

NORTHERN NATURAL GAS CO.

Notice of Application

OCTOBER 1, 1968.

Take notice that on September 25, 1968, Northern Natural Gas Co. (Applicant), 2223 Dodge Street, Omaha, Nebr. 68102, filed in Docket No. CP69-83 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and sale of natural gas in interstate commerce to existing customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The Applicant proposes to provide additional contract demand to North Central Public Service Corp. (50 Mcf); Minnesota Natural Gas Co. (2,000 Mcf); and Peoples Natural Gas Division (3,650 Mcf) to satisfy growth requirements of presently served communities and to revise firm service to certain industrial customers.

In total, Applicant proposes to provide 5,700 Mcf of additional contract demand per day to existing customers for the 1968-69 heating season.

In addition, Peoples Division proposes to increase firm service from 950 Mcf to 1,350 Mcf per day to Minnesota Malting Co. by utilizing its existing contract demand. Also, Northern States Power Co. has requested initial firm service of 408 Mcf per day for Franklin Manufacturing Co., Division of White Consolidated Industries in St. Cloud, Minn. Northern States proposes to utilize its existing contract demand for St. Cloud, Minn., to provide the firm service to Franklin Manufacturing Co.

The Applicant proposes to utilize the remaining 1,728 Mcf per day unallocated capacity authorized in Docket No. CP68-57 and 3,972 Mcf per day of unallocated capacity authorized in Docket No. CP68-193 to supply the total increase of 5,700 Mcf per day proposed herein.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before October 30, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 68-12303; Filed, Oct. 9, 1968; 8:45 a.m.]

[Docket No. G-15371, etc.]

PLACID OIL CO. ET AL.

Order Severing and Terminating Proceeding

OCTOBER 3, 1968.

On August 14, 1968, Placid Oil Co. (Placid) filed a motion requesting the Commission to sever and terminate the above docketed proceeding. This proceeding concerns a proposed increased rate for a sale of natural gas which formerly was made to H. L. Hunt in the Lucky Field Bienville Parish, La., under Placid's FPC Gas Rate Schedule No. 14 (superseded by FPC Gas Rate Schedule No. 26). The increased rate was filed by Placid on June 2, 1958, suspended by

order of the Commission issued July 1, 1958, in Docket No. G-15371, and placed in effect subject to refund on December 19, 1958.

By order issued February 18, 1967, in the Area Rate Proceeding (Other Southwest Area) Docket No. AR67-1, et al., 37 FPC 400, the Commission consolidated this proceeding therein.

On April 11, 1968, the Commission approved a rate settlement proposal made by Placid in Docket No. G-13531, et al. Although the instant proceeding was not included in Placid's proposal, the approval of the same made effective a rate in excess of the rate suspended in this proceeding for the same sale of gas for a later period. Consequently the motion of Placid should be granted.

The Commission finds: It is necessary and proper in carrying out the provisions of the Natural Gas Act, and the Regulations thereunder, that the proceeding in Docket No. G-15371 be terminated, that Placid should be relieved of its refund obligation in said proceeding, and that it be severed from the Area Rate Proceeding, Docket No. AR67-1.

The Commission orders: The proceeding in Docket No. G-15371 is terminated, Placid is relieved of its refund obligation in said proceeding, and said proceeding is severed from the Area Rate Proceeding, Docket No. AR67-1.

By the Commission.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 68-12304; Filed, Oct. 9, 1968; 8:45 a.m.]

[Docket No. CP67-168]

SOUTHERN NATURAL GAS CO.

Notice of Petition To Amend

OCTOBER 2, 1968.

Take notice that on September 24, 1968, Southern Natural Gas Co. (Petitioner), Post Office Box 2563, Birmingham, Ala. 35202, filed in Docket No. CP67-168 a petition to amend the order issued in said docket on August 31, 1967 by authorizing the increase in sales and deliveries to three of its existing customers for the period November 1, 1968 to October 31, 1969, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By the aforementioned order issued August 31, 1967, Petitioner was authorized to sell and deliver to its customers certain contract demands and maximum delivery obligations.

By the petition field August 1, 1968, Petitioner requested that it be authorized, during the period November 1, 1968, to October 31, 1969, to deliver increased contract demands and maximum delivery obligations to certain of its customers. Two of such customers, Atlanta Gas Light Co. (Atlanta) and Chattanooga Gas Co. (Chattanooga), have requested further increases in their contract demands to 601,283 Mcf and 45,000 Mcf per day, respectively, under Petitioner's Rate Schedule OCD-3, to be effective during the period November 1, 1968, to October 31, 1969. Additionally, the town of Calera, Ala. (Calera), has requested an increase in its contract demand, under Rate Schedule OCD-2, to 1,500 Mcf per day.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before October 28, 1968.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 68-12305; Filed, Oct. 9, 1968; 8:45 a.m.]

[Docket No. CP69-82]

TEXAS EASTERN TRANSMISSION CORP.

Notice of Application

OCTOBER 2, 1968.

Take notice that on September 23, 1968, Texas Eastern Transmission Corp. (Applicant), Post Office Box 2521, Houston, Tex. 77001, filed in Docket No. CP69-82 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas transmission facilities and the sale of natural gas in interstate commerce for resale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks authorization to construct and operate, together with appurtenant facilities, the following items:

(1) About 300 miles of 36-inch pipeline loops.

(2) Additional compressor units consisting of four 18,500 horsepower gas turbine compressor units and six 19,800 horsepower gas turbine compressor units.

(3) Equipment to increase an existing gas turbine compressor unit from 5,000 to 5,500 horsepower at various locations along Applicant's pipeline system between St. Francisville, La., and Linden, N.J.

Further, Applicant seeks authorization to sell and deliver 42,278 Mcf of maximum daily quantities of natural gas to sole supplier customers pursuant to its annual firm Gas Rate Schedules. Pursuant to its winter service Rate Schedule, Applicant seeks authorization to sell and deliver 18,744 Mcf of maximum daily quantities of natural gas.

The total estimated cost of the proposed facilities is $177,295,000, which is to be financed through the issuance of first mortgage pipeline bonds.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before October 30, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 68-12306; Filed, Oct. 9, 1968; 8:45 a.m.]

[Docket No. CP69-85]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Application

OCTOBER 2, 1968.

Take notice that on September 26, 1968, Transcontinental Gas Pipe Line Corp. (Applicant), Post Office Box 1396, Houston, Tex. 77001, filed in Docket No. CP69-85 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing increased natural gas transportation service to Tennessee Gas Pipeline Co., a division of Tenneco Inc. (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to increase by 15,000 Mcf per day (10,000 Mcf of firm pipeline gas and 5,000 Mcf of storage gas), to a new total of 70,000 Mcf per day, the volumes of firm pipeline and storage gas which it is authorized to transport for Tennessee under the firm transportation agreement between the two companies dated November 25, 1955, designated as Rate Schedule X-15 to Applicant's presently effective FPC Gas Tariff, Original Volume No. 2. Under this rate schedule, Applicant receives transportation volumes from Tennessee at Rivervale, N.J., and makes deliveries at various delivery points to Public Service Electric and Gas Co., primarily at Emerson and Paramus, N.J.

The Applicant states that no new facilities are proposed.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before October 30, 1968.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 68-12307; Filed, Oct. 9, 1968; 8:45 a.m.]

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN THE REPUBLIC OF KOREA

Levels of Restraint

OCTOBER 4, 1968.

On January 11, 1968, there was published in the FEDERAL REGISTER (33 F.R. 430) a letter dated December 27, 1967, from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs, establishing levels of restraint applicable to certain specified categories of cotton textiles and cotton textile products, produced or manufactured in the Republic of Korea and exported to the United States during the 12-month period beginning January 1, 1968. As set forth in that letter, the levels of restraint are subject to adjustment pursuant to that provision of the bilateral cotton textile agreement of December 11, 1967, between the Governments of the United States and the Republic of Korea, which provides that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than five (5) percent. The aforementioned letter also provided that any such adjustment in the levels of restraint would be made to the Commissioner of Customs by letter from the Chairman of the Interagency Textile Administrative Committee.

Accordingly, there is published below a letter of October 4, 1968, from the Chairman of the Interagency Textile Administrative Committee to the Commissioner of Customs increasing the level of restraint applicable to cotton textile products in Category 49, at the request of the Government of the Republic of Korea and pursuant to the provisions of the bilateral agreement referred to above, for the 12-month period which began on January 1, 1968.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

ASSISTANT SECRETARY OF COMMERCE

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

OCTOBER 4, 1968.

DEAR MR. COMMISSIONER: On December 27, 1967, the Chairman of the President's Cabinet Textile Advisory Committee, directed you to prohibit entry of cotton textiles and cotton textile products in certain specified categories, produced or manufactured in the Republic of Korea, and exported to the United States on or after January 1, 1968, in excess of the designated levels of restraint. The Chairman further advised you that in the event that there were any adjustments[1] in the levels of restraint you would be so informed by letter from the Chairman of the Interagency Textile Administrative Committee.

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to paragraph seven (7) of the bilateral cotton textile agreement of December 11, 1967, between the Governments of the United States and the Republic of Korea, in accordance with the procedures outlined in Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, and under the terms of the aforementioned directive of December 27, 1967, the level of restraint provided in that directive for cotton textile products in Category 49, produced or manufactured in the Republic of Korea and exported to the United States during the period beginning January 1, 1968, and extending through December 31, 1968, is hereby amended, to be effective as soon as possible, as follows:

Category	Amended 12-month	Level of restraint
49	dozen	27,563

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton textiles and cotton textile products from the Republic of Korea have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553 (Supp. II, 1965-66). This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

[F.R. Doc. 68-12334; Filed, Oct. 9, 1968; 8:48 a.m.]

[1] The term "adjustments" refers to those provisions of the bilateral cotton textile agreement of Dec. 11, 1967, between the Governments of the United States and the Republic of Korea which provide in part that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than five (5) percent; for the limited carryover of short falls in certain categories to the next agreement year; and for administrative arrangements.

OFFICE OF ECONOMIC OPPORTUNITY

SECRETARY OF LABOR

Delegation of Authorities

1. The Delegation of Authorities dated March 10, 1967, and approved by the President March 14, 1967 (32 F.R. 4588) is hereby rescinded.

2. Pursuant to section 602(d) of the Economic Opportunity Act, the powers of the Director under Title I, Part B (Work and Training for Youth and Adults) of the Economic Opportunity Act are hereby delegated to the Secretary of Labor except for reservations specified in this delegation. The powers of the Director under sections 602, 603, 604, and 611 of the Economic Opportunity Act are also delegated to the Secretary of Labor to the extent he deems necessary or appropriate for carrying out his functions in exercising his powers under Title I, Part B. All powers hereby delegated shall be exercised in accordance with the following paragraphs.

3. The Director will retain and exercise the following authority under Title I-B:

(a) Concurrent authority under section 123 as needed for the purpose of assisting projects of the type known as Foster Grandparents Programs;

(b) Concurrent authority under section 127 as needed for the purpose of assisting pilot projects;

(c) Sole authority to establish, in consultation with the Commissioner for Social Security, the criteria for low income under section 125; and

(d) Such other authority as is needed to carry out his responsibilities under the act, including authority to conduct overall planning, programing and budgeting operations and controls and to evaluate overall program effectiveness and to assess program impact and to perform program monitoring functions as needed.

4. The delegated powers shall be administered by a single staff within the Department of Labor. They may be redelegated by the Secretary with or without authority for further redelegation.

5. In communities served by community action agencies, the community action agency shall be the prime sponsor for all work-training projects. Exceptions to this policy may be made for compelling program reasons after consultation between the staffs of the Office of

Economic Opportunity and the Department of Labor. Disagreements shall be resolved jointly by the Director and the Secretary.

6. In communities served by community action agencies, project participants shall be selected by the community action agency or its delegate agencies, or pursuant to cooperative arrangements between the community action agency and the U.S. Employment Service.

7. In addition, the delegated powers shall be exercised pursuant to such memoranda of agreement as have been or shall be agreed to between the agencies. Agreements shall be concluded defining the nature and objectives of the programs, criteria for program evaluation, and other policy matters of fundamental importance. Where OEO reserves powers of concurrence in the development of more detailed policies or in the application of policies in specific cases under such agreements, arrangements will be made for promptly resolving any questions that may arise before any final action is taken by the Secretary.

8. All operating information, evaluation reports, and other data concerning the programs administered under the delegated powers shall be freely exchanged between the Director and the Secretary pursuant to section 602(d) of the Act.

BERTRAND M. HARDING,
Acting Director,
Office of Economic Opportunity.

AUGUST 2, 1968.

Approved: October 2, 1968.

LYNDON B. JOHNSON,
President of the United States.

[F.R. Doc. 68-12317; Filed, Oct. 9, 1968; 8:46 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-3909]

BSF CO.

Order Suspending Trading

OCTOBER 4, 1968.

The capital stock (66⅔ cents par value) and the 5¾ percent convertible subordinated debentures due 1969 of BSF Co. being listed and registered on the American Stock Exchange, and such capital stock being listed and registered on the Philadelphia-Baltimore-Washington Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934; and all other securities of BSF Co. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to sections 15 (c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in the said capital stock on such exchanges and in the debentures on the American Stock Exchange, and trading otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period October 7, 1968, through October 16, 1968, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 68-12327; Filed, Oct. 9, 1968; 8:47 a.m.]

[File No. 1-3468]

MOUNTAIN STATES DEVELOPMENT CO.

Order Suspending Trading

OCTOBER 4, 1968.

The common stock, 1-cent par value, of Mountain States Development Co. being listed and registered on the Salt Lake Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Mountain States Development Co. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such Exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to sections 15 (c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the Salt Lake Stock Exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period October 7, 1968, through October 16, 1968, both dates inclusive.

By the Commission.

[SEAL] ORVILLE L. DUBOIS,
Secretary.

[F.R. Doc. 68-12328; Filed, Oct. 9, 1968; 8:47 a.m.]

[81-26]

PANAMA POWER & LIGHT CO.

Notice of Application and Opportunity for Hearing

OCTOBER 3, 1968.

Notice is hereby given that Panama Power & Light Co., c/o Ebasco International Corp., 2 Rector Street, New York, N.Y. 10006, a Florida corporation has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended ("Act"), for an order of the Commission exempting the company from the requirements of section 12(g) of the Act.

Section 12(h) of the Act authorizes the Commission upon application, by order, after notice and opportunity for hearing, to exempt in whole or in part any issuer or class of issuers from the registration, periodic reporting and proxy solicitation provisions and to grant exemptions from the insider reporting and trading provisions of the Act upon such terms and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors.

The applicant is a corporation organized under the laws of Florida in 1927. Its business is that of providing electric, gas and telephone service in Panama. Its operations are conducted exclusively in Panama though it has an arrangement for electric power interchanges, during peak periods, with the Panama Canal Zone.

The application states that as of May 1968 there were 1,370 preferred shareholders and 675 common shareholders of applicant. Of these shareholders, 155 preferred shareholders owning an aggregate of 12,757 shares, and 52 common shareholders, holding 2,943 shares, resided in the United States and the Canal Zone. Eighty-nine percent of the applicant's 472,209 outstanding shares, of common stock are owned by Ebasco Industries, Inc. (formerly Electric Bond and Share Company and American and Foreign Power Company) a New York corporation. The transfer records of Panama Power & Light indicate that, for the year ended December 31, 1967 there were 133 transfers involving 2,539 preferred shares, 27 of which transfers involved United States or Canal Zone parties, and 113 transfers involving 3,168 common shares, 5 of which transfers involved United States or Canal Zone parties.

Certain information regarding the operation and properties of applicant appears in reports and filings made with the Commission by Ebasco Industries Inc. its parent, and financial information pertaining to Panama is included in the consolidated financial statements of the parent.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C.

Notice is further given that any interested person may, not later than October 25, 1968, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission,

Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the applications, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest of investors, unless a hearing is ordered by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 68-12329; Filed, Oct. 9, 1968; 8:47 a.m.]

PARAMOUNT GENERAL CORP.

Order Suspending Trading

OCTOBER 4, 1968.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Paramount General Corp., Los Angeles, Calif., and all other securities of Paramount General Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15 (c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period October 5, 1968, through October 14, 1968, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 68-12330; Filed, Oct. 9, 1968; 8:47 a.m.]

STANWOOD OIL CORP.

Order Suspending Trading

OCTOBER 4, 1968.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Stanwood Oil Corp., Warren, Pa., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15 (c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period October 6, 1968, through October 15, 1968, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 68-12331; Filed, Oct. 9, 1968; 8:47 a.m.]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority 30 (New York), Amdt. 1]

BRANCH MANAGER, BUFFALO, N.Y.

Delegation of Authority To Conduct Program Activities in New York Area

Pursuant to the authority delegated to the area administrators by Delegation of Authority No. 30 (Revision 12), 32 F.R. 179, Amendment 1, 32 F.R. 8113, and Amendment 2, 33 F.R. 8793, Delegation of Authority No. 30, New York Area, 33 F.R. 10673, is hereby amended by revising Item III to read as follows:

III. *Branch Manager—Buffalo, N.Y.* 1. To approve or decline business and disaster direct loans not in excess of $50,000 and participation loans not in excess of $50,000 (SBA share).

2. To approve or decline economic opportunity loans not in excess of $25,000 (SBA share).

3. To close and disburse approved business, economic opportunity and disaster loans.

4. To enter into business, economic opportunity and disaster loan participation agreements with banks.

5. To execute loan authorization for Central Office, area, and regional approved loans and loans approved under delegated authority, said execution to read as follows:

(*Name*), *Administrator*,

By ______________________
(Name)
(*Title of person signing*)

6. To cancel, reinstate, modify, and amend authorizations for business, economic opportunity and disaster loans.

7. To extend the disbursement period on all loan authorizations or undisbursed portions of loans.

8. To approve, when requested, in advance of disbursement, conformed copies of notes and other closing documents; and certify to the participating bank that such documents are in compliance with the participation authorization.

9. To approve service charges by participating banks not to exceed 2 percent per annum on the outstanding balance on construction loans and loans involving accounts receivable and inventory financing.

10. To take all necessary actions in connection with the administration, servicing, and collection, other than those accounts classified as "in liquidation"; and to do and to perform and to assent to the doing and performance of, all and every act and thing requisite and proper to effectuate the granted powers, including without limiting the generality of the foregoing:

a. The assignment, endorsement, transfer and delivery (but in all cases without representation, recourse, or warranty) of notes, claims, bonds, debentures, mortgages, deeds of trust, contracts, patents, and applications therefor, licenses, certificates of stock and of deposit, and any other liens, powers, rights, charges on and interest in or to property of any kind, legal and equitable, now or hereafter held by the Small Business Administration or its Administrator.

b. The execution and delivery of contracts of sale or of lease or sublease, quitclaim, bargain and sale of special warranty deeds, bills of sale, leases, subleases, assignments, subordinations, releases (in whole or in part) of liens, satisfaction pieces, affidavits, proofs of claim in bankruptcy or other estates and such other instruments in writing as may be appropriate and necessary to effectuate the foregoing.

c. The approval of bank applications for use of liquidity privileges under the loan guaranty plan.

d. Except: (1) To compromise or sell any primary obligation or other evidence of indebtedness owed to the Agency for a sum less than the total amount due thereon; and (2) to deny liability of the Small Business Administration under the terms of a participation or guaranty agreement or the assertion of a claim for recovery from a participating bank under any alleged violation of a participation or guaranty agreement.

11. *Size determinations for financial assistance only.* To make initial size determinations in all cases within the meaning of the Small Business Size Standards Regulations, as amended, except sections 501 and 502 loans, and further, to make product classification decisions for financial assistance purposes only. Product classification decisions for procurement purposes are made by contracting officers.

12. *Eligibility determinations for financial assistance only.* To determine eligibility of applicants for assistance under any program of the Agency, except sections 501 and 502 loans, in accordance with Small Business Administration standards and policies. No authority is hereby delegated to declare the nonapplicability of eligibility limitation to a community emergency as set forth in § 120.2 (e) of SBA Loan Policy Regulations.

Effective date: August 1, 1968.

ANDREW J. SEMON,
Acting Area Administrator, New York Area.

[F.R. Doc. 68-12336; Filed, Oct. 9, 1968; 8:48 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 1226]

MOTOR CARRIER, BROKER, WATER CARRIER, AND FREIGHT FORWARDER APPLICATIONS

OCTOBER 4, 1968.

The following applications are governed by special rule 1.247 [1] of the Com-

[1] Copies of special rule 1.247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

mission's general rules of practice (49 CFR, as amended), published in the FEDERAL REGISTER issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after date of notice of filing of the application is published in the FEDERAL REGISTER. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with §1.247 (d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules maye be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of § 1.247(d)(4) of the special rules, and shall include the certification required therein.

Section 1.247(f) of the Commission's rules of practice further provides that each applicant shall, if protests to its application have been filed, and within 60 days of the date of this publication, notify the Commission in writing (1) that it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further processing steps (whether modified procedure, oral hearing, or other procedures) will be determined generally in accordance with the Commission's General Policy Statement Concerning Motor Carrier Licensing Procedures, published in the FEDERAL REGISTER issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record.

The publications hereinafter set forth reflect the scope of the applications as filed by applicants, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

No. MC 263 (Sub-No. 186), filed September 16, 1968. Applicant: GARRETT FREIGHTLINES, INC., 2055 Garrett Way, Pocatello, Idaho 83201. Applicant's representative: Maurice H. Greene, 334 First Security Bank Building, Boise, Idaho 83701. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except household goods as defined by the Commission, commodities of unusual value, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), serving that portion of Weber County, Utah, lying north of the Weber River and west of Utah Highway 84 as off-route points in connection with applicant's authorized regular route authority between Brigham City and Salt Lake City, Utah, over U.S. Highway 91. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah.

No. MC 263 (Sub-No. 187), filed September 16, 1968. Applicant: GARRETT FREIGHTLINES, INC., 2055 Garrett Way, Pocatello, Idaho 83201. Applicant's representative: Maurice H. Greene, Post Office Box 1554, Boise, Idaho 83701. Authority sought to operate as a *common carrier*, by motor vehicle, over regular and irregular routes, transporting: (1) *General commodities* (except livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment). Regular routes: serving the Fort Saint Vrain Nuclear Generating Station Site, near Platteville, Colo., as an off-route point in connection with carrier's otherwise authorized regular route operations, and (2) *source, special nuclear, and byproduct materials, radioactive materials, related reactor equipment, component parts, associated materials and radioactive material containers.* Irregular routes: Between the Fort Saint Vrain, Colo., Nuclear Generating Station Site on the one hand, and, on the other, the National Reactor Testing Station near Idaho Falls, Idaho, and San Diego, Calif. NOTE: If a hearing is deemed necessary, applicant requests it be held at Denver, Colo., or Los Angeles, Calif.

No. MC 2229 (Sub-No. 146) (Correction), filed August 19, 1968, published in the FEDERAL REGISTER issue of September 6, 1968, corrected September 24, 1968, and republished as corrected this issue. Applicant: RED BALL MOTOR FREIGHT, INC., 3177 Irving Boulevard, Post Office Box 47407, Dallas, Tex. 75247. Applicant's representative: Jerry Prestridge, Post Office Box 1148, Austin, Tex. 78767. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and commodities requiring special equipment), between Fort Smith, Ark., and Shreveport, La., as an alternate route for operating convenience only, from Fort Smith, Ark., over U.S. Highway 71 to Shreveport, La., and return over the same route, serving no intermediate points, but serving Texarkana, Tex., for purpose of joinder only in connection with carrier's authorized regular route operations. Restriction: The alternate route sought herein to be restricted against use in transporting shipments between Fort Smith, Ark., and Dallas and Fort Worth, Tex. NOTE: The purpose of this republication is to include the line "(except classes A and B explosives, commodities", in the commodity description, which was erroneously omitted in previous publication. If a hearing is deemed necessary, applicant requests it be held at Dallas or Fort Worth, Tex.

No. MC 2392 (Sub-No. 68), filed September 17, 1968. Applicant: WHEELER TRANSPORT SERVICE, INC., Post Office Box 14248, West Omaha Station, Omaha, Nebr. 68114. Applicant's representative: L. W. Richling (same address as above) and J. William Cain, Jr., Madison Building 1155 15th Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicles; *fertilizer and fertilizer materials*, liquid or dry, in bags or in bulk, from the plantsite of Sinclair Petrochemicals, Inc., at or near Fort Madison, Iowa, to points in Arkansas, Illinois, Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Wisconsin. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 2860 (Sub-No. 39), filed September 19, 1968. Applicant: NATIONAL FREIGHT, INC., 57 West Park Avenue, Vineland, N.J. 08360. Applicant's representative: Alvin Altman, 1776 Broadway, New York, N.Y. 10019. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products*, except commodities in bulk, and *advertising materials*, from points in Venango County, Pa., to points in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. NOTE: If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., Washington, D.C., or Philadelphia, Pa.

No. MC 2860 (Sub-No. 40), filed September 19, 1968. Applicant: NATIONAL FREIGHT, INC., 57 West Park Avenue, Vineland, N.J. 08360. Applicant's representative: Alvin Altman, 1776 Broadway, New York, N.Y. 10019. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing, insulating and building materials*, except commodities in bulk, *wallboards, and equipment, supplies and materials*, except commodities in bulk, used in the installation of the foregoing commodities, between Carteret and Edgewater, N.J., and Philadelphia, Pa., on the one hand, and on the other, points in Alabama, Florida, Georgia, and South Carolina. NOTE: If a hearing is deemed necessary, applicant requests it be held at

New York, N.Y., Philadelphia, Pa., or Washington, D.C.

No. MC 13893 (Sub-No. 12), filed September 19, 1968. Applicant: J. W. WARD TRANSFER, INC., Highway 13 East, Murphysboro, Ill. 62966. Applicant's representative: R. W. Burgess, 8514 Midland Boulevard, St. Louis, Mo. 63114. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) *Paper and pulp making machinery* requiring the use of special equipment, and (2) *parts and related articles* when moving on the same vehicle with paper and pulp making machinery in the same shipment, between the facilities of the West Virginia Pulp & Paper Co. at or near Wickliffe, Ky., on the one hand, and, on the other, points in New York, New Jersey, Maryland, Pennsylvania, Massachusetts, Ohio, Connecticut, and Wisconsin. NOTE: If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., or Springfield, Ill.

No. MC 16513 (Sub-No. 3), filed September 18, 1968. Applicant: REISCH TRUCKING & TRANSPORTATION CO., INC., 819 Union Avenue, Pennsauken, N.J. 08110. Applicant's representative: Francis W. McInerny, 1000 16th Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glass containers, closures, caps, paper boxes or partitions*, and (2) *refused, rejected or returned shipments on return*, between Salem, N.J., and Wilmington, Del. NOTE: Applicant states it intends to join at Wilmington, Del., on traffic moving to or from Binghamton and Horseheads, N.Y. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 23441 (Sub-No. 6), filed September 26, 1968. Applicant: LAY TRUCKING COMPANY, INC., 1312 Lake Street, La Porte, Ind. 46350. Applicant's representative: Donald W. Smith, 900 Circle Tower, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tractors*, (2) *power mowers and hand mowers*, and (3) *parts, attachments and accessories* for the commodities named in (1) and (2), from South Bend, Ind., to points in Colorado, Connecticut, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Texas, Tennessee, Virginia, South Carolina, West Virginia, Wisconsin, and Washington, D.C. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C., or Indianapolis, Ind.

No. MC 30844 (Sub-No. 261), filed September 26, 1968. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 2125 Commercial, Waterloo, Iowa 50704. Applicant's representative: Truman A. Stockton, Jr., The 1650 Grant Street Building, Denver, Colo. 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, other than frozen, from Aspers, Pa., to points in Arkansas, Kansas, Louisiana, Oklahoma, and Texas. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Waterloo, Iowa.

No. MC 36889 (Sub-No. 3), filed September 24, 1968. Applicant: C. RICKARD & SONS, INC., 20 Atlantic Street, Bridgeport, Conn. 06604. Applicant's representative: William D. Traub, 10 East 40th Street, New York, N.Y. 10016. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products*, except commodities in bulk, and *advertising materials, from* points in Venango County, Pa., to points in Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. NOTE: If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Washington, D.C.

No. MC 41116 (Sub-No. 37), filed September 16, 1968. Applicant: FOGLEMAN TRUCK LINE, INC., Post Office Box 1504, Crowley, La. 70526. Applicant's representative: Austin L. Hatchell, 1102 Perry Brooks Building, Austin, Tex. 78701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pulpboard*, in rolls, from Pineville, La., to Lake Charles, La., for subsequent movement in foreign commerce, under contract with Pineville Kraft Corp. NOTE: Applicant holds common carrier authority under Docket No. MC 123993 and subs, therefore, dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at New Orleans or Baton Rouge, La.

No. MC 42487 (Sub-No. 701), filed September 22, 1968. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, Calif. 94025. Applicant's representative: A. John Warren, Post Office Box 3062, Portland, Oreg. 97208. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Urea and dry fertilizer*, in bulk and in sacks, from Portland, Oreg., to points in Washington west of U.S. Highway 97. NOTE: If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg., or Seattle, Wash.

No. MC 42487 (Sub-No. 702), filed September 23, 1968. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, Calif. 94025. Applicant's representative: V. R. Oldenburg, Post Office Box 5138, Chicago, Ill. 60680. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those requiring armored vehicles or armed guards, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the plant and warehouse sites of Essex Wire Corp. located in Indiana, on U.S. Highway 30, approximately 9 miles west of the interchange of Interstate Highway 69 and U.S. Highway 30, as an intermediate point in connection with applicant's presently authorized regular-route operations over U.S. Highway 30. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 50069 (Sub-No. 408), filed September 12, 1968. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood, Oregon, Ohio 43616. Applicant's representative: Robert H. Levy, 29 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid adhesives*, in bulk, in tank vehicles, from Palatine, Ill., to points in Colorado, Illinois, Indiana, Iowa, Michigan, Minnesota, Kentucky, Ohio, Missouri, Pennsylvania, and Wisconsin. NOTE: Common control and dual operation may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 50069 (Sub-No. 409), filed September 20, 1968. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood, Oregon, Ohio 43616. Applicant's representative: Robert H. Levy, 29 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lubricating oils and greases*, in bulk, in tank vehicles, from Woodhaven, Mich., to Ashland, Ky., and points in Pennsylvania. NOTE: Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 51146 (Sub-No. 107), filed September 23, 1968. Applicant: SCHNEIDER TRANSPORT & STORAGE, INC., 817 McDonald Street, Green Bay, Wis. 54303. Applicant's representatives: Donald F. Martin (same address as applicant) and Charles Singer, 33 North Dearborn Street, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Furniture, furniture parts and accessories, and such products as are manufactured or distributed by manufacturers of furniture*, from Menominee, Mich., Newport, Tenn., and Gardner, Mass., to points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia, and (2) *returned and rejected shipments and equipment, materials, and supplies* used in the manufacture and distribution of the commodities described in (1) above from the destination points named in (1) above to Menominee, Mich., Newport, Tenn., and Gardner, Mass. NOTE: Applicant states that no duplicating authority is sought.

If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 52709 (Sub-No. 305), filed September 16, 1968. Applicant: RINGSBY TRUCK LINES, INC., 3201 Ringsby Court, Denver, Colo. 80216. Applicant's representative: Eugene Hamilton (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses*, as described in sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Sioux Falls, S. Dak., to points in Wyoming on U.S. Highway 30 and/or Interstate Highway 80, and Salt Lake City, Utah. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Sioux Falls, S. Dak.

No. MC 55778 (Sub-No. 13), filed September 20, 1968. Applicant: MOTOR DISPATCH, INC., 2700 Sheffield Avenue, Hammond, Ind. Applicant's representative: William J. Boyd, 29 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Telephone directories, telephone directory pages (signatures)*, from the plantsite of R. R. Donnelley & Sons Co., at or near Dwight, Ill., to points in Ohio, Michigan, Indiana, and St. Louis, Mo. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 57435 (Sub-No. 12), filed September 19, 1968. Applicant: LOUISIANA, ARKANSAS & TEXAS TRANSPORTATION COMPANY, a corporation, 4601 Blanchard Road, Shreveport, La. 71107. Applicant's representative: Phillip S. Brown, 114 West 11th Street, Kansas City, Mo. 64105. Authority sought to operate as a *common carrier*, by motor vehicle over regular routes, transporting: *Classes A and B explosives*, in service auxiliary to and supplemental of the rail service of Louisiana & Arkansas Railway Co., from Shreveport, La., over Interstate Highway 20 to junction with U.S. Highway 79–80, thence to junction unnumbered highway near Louisiana Army Ammunition Plant near Doyline, La. (old U.S. Highway 79–80), thence to junction U.S. Highway 79–80, thence over U.S. Highway No. 79–80 to junction Interstate Highway 20, thence over Interstate Highway 20 to junction Louisiana Highway 7, thence over Louisiana Highway 7 to Minden, La., and return over the same route, serving all intermediate points, including, but not limited to, the Louisiana Army Ammunition Plant near Doyline, La., and including all points within all commercial zones of all points served. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo., or New Orleans, La.

No. MC 59135 (Sub-No. 23), filed September 16, 1968. Applicant: RED STAR EXPRESS LINES OF AUBURN, INCORPORATED, doing business as RED STAR EXPRESS LINES, 24–50 Wright Avenue, Auburn, N.Y. Applicant's representative: Leonard A. Jaskiewicz, 1155 15th Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Silver bullion*, anodes or strip, from Baltimore, Md., and Newark, N.J., to Niagara Falls, N.Y. NOTE: If a hearing is deemed necessary, applicant requests it be held at Syracuse, N.Y.

No. MC 59457 (Sub-No. 15), filed September 22, 1968. Applicant: SORENSEN TRANSPORTATION COMPANY, INC., Old Amity Road, Bethany, Conn. Applicant's representative: Thomas W. Murrett, 410 Asylum Street, Hartford, Conn. 06103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Fall River, Mass., and Baltimore, Md., to points in Connecticut. NOTE: If a hearing is deemed necessary, applicant requests it be held at Boston, Mass., or New York, N.Y.

No. MC 59680 (Sub-No. 164), filed September 16, 1968. Applicant: STRICKLAND TRANSPORTATION CO., INC., 3011 Gulden Lane, Post Office Box 5689, Dallas, Tex. 75222. Applicant's representative: Leroy Hallman, 4555 First National Bank Building, Dallas, Tex. 75202. 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 those requiring special equipment), between Harrisburg and Philadelphia, Pa.; from Harrisburg, Pa., over U.S. Highway 230 to junction U.S. Highway 30 near Lancaster, Pa., thence over U.S. Highway 30 to Philadelphia, serving no intermediate points, and serving Harrisburg as a point of joinder only, in connection with applicant's otherwise authorized operations. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Dallas, Tex.

No. MC 59680 (Sub-No. 165), filed September 18, 1968. Applicant: STRICKLAND TRANSPORTATION CO., INC., 3011 Gulden Lane, Post Office Box 5689, Dallas, Tex. 75222. Applicant's representative: Leroy Hallman, 4555 First National Bank Building, Dallas, Tex. 75202. 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 those requiring special equipment), (1) serving Carthage, Tex., as a point of joinder only, in connection with carrier's alternate routes between Memphis, Tenn., and Round Rock, Tex., and between Little Rock, Ark., and Round Rock, Tex., in its MC 59680 Sub 131, and its route for operating convenience only between Texarkana, Ark.-Tex., and Houston, Tex., in MC–59680, and (2) between Hamburg, Ark., and Bastrop, La., from Hamburg, Ark., over U.S. Highway 81 to the Arkansas-Louisiana State line, thence over Louisiana Highway 139 to Bastrop, La., as an alternate route for operationg convenience only in connection with carrier's authorized regular route operations, serving no intermediate points. NOTE: If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 61231 (Sub-No. 38), filed September 16, 1968. Applicant: ACE-ALKIRE FREIGHT LINES, INC., 4143 East 43d Street, Des Moines, Iowa 50305. Applicant's representative: William A. Landau, 1451 East Grand Avenue, Des Moines, Iowa 50306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials and gypsum products*, from Fort Dodge, Iowa, to points in Wisconsin. NOTE: If a hearing is deemed necessary, applicant requests it be held at Des Moines, Iowa.

No. MC 61396 (Sub-No. 207), filed September 16, 1968. Applicant: HERMAN BROS. INC., 2501 North 11th Street, Omaha, Nebr. 68103. Applicant's representatives: Dale Herman, Post Office Box 189, Omaha, Nebr., and Don L. Stern, 630 City National Bank Building, Omaha, Nebr. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia, and fertilizer and fertilizer materials*, liquid or dry, in bags and in bulk, from plantsite of Sinclair Petrochemicals, Inc., near Fort Madison, Iowa, to points in Arkansas, Illinois, Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Wisconsin. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or St. Louis, Mo.

No. MC 61592 (Sub-No. 125), filed September 23, 1968. Applicant: JENKINS TRUCK LINE, INC., 3708 Elm Street, Bettendorf, Iowa 52722. Applicant's representative: R. Connor Wiggins, Jr., 909 100 North Main Building, Memphis, Tenn. 38103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Boats and boat parts, supplies and equipment*, from points in California to points in the United States. NOTE: If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 64932 (Sub-No. 457), filed September 23, 1968. Applicant: ROGERS CARTAGE CO., a corporation, 1439 West 103rd Street, Chicago, Ill. 60643. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, Ill. 60603.

Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicles, from the facilities of the Mid-America Pipeline Co., located at or near Early, Garner, and Whiting, Iowa, to points in Illinois, Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 64932 (Sub-No. 458), filed September 23, 1968. Applicant: ROGERS CARTAGE CO., a corporation, 1439 West 103d Street, Chicago, Ill. 60643. Applicant's representative: Carl L. Steiner, 39

South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Anhydrous ammonia*, in bulk, in tank vehicles, from the plantsite of Sinclair Petrochemicals, Inc., at or near Fort Madison, Iowa, to points in Arkansas and Tennessee, and (2) *fertilizer and fertilizer materials*, liquid or dry, in bulk, from the plantsite of Sinclair Petrochemicals, Inc., at or near Fort Madison, Iowa, to points in Illinois, Arkansas, Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Wisconsin. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 65697 (Sub-No. 40), filed September 26, 1968. Applicant: THEATRES SERVICE COMPANY, a corporation, Post Office Box 1695, Atlanta, Ga. 30301. Applicant's representative: George M. Catlett, 703-706 McClure Building, Frankfort, Ky. 40601. 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 those requiring special equipment), serving the Ford Motor Co. plantsite at the intersection of Westport Road and Murphy Lane, Jefferson County, near Louisville, Ky., as an off-route point in connection with applicant's present regular route authority to and from Louisville, Ky. NOTE: If a hearing is deemed necessary, applicant requests it be held at Louisville, Ky., or Washington, D.C.

No. MC 80428 (Sub-No. 68), filed September 23, 1968. Applicant: McBRIDE TRANSPORTATION, INC., Goshen, N.Y. Applicant's representative: Robert V. Gianniny, 900 Midtown Tower, Rochester, N.Y. 14604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Feed and feed ingredients*, from Maybrook, N.Y., to points in Pennsylvania, New Jersey, Massachusetts, and Connecticut, and (2) *fire clay*, from Latrobe, Pa., to Niagara Falls, N.Y. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 93151 (Sub-No. 7), filed September 19, 1968. Applicant: ROWE CAMBRIDGE, Rural Delivery No. 3, Tyrone, Pa. 16686. Applicant's representative: V. Baker Smith, 123 South Broad Street, Philadelphia, Pa. 19109. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products, wood pulp, and waste paper*, from the plantsite of West Virginia Pulp and Paper Co., at or near Wickliffe, Ky., to points in New York, and (2) *materials and supplies* used in the manufacture and distribution of paper and paper products (except commodities in bulk), from points in New York to the plantsite of West Virginia Pulp and Paper Co., at or near Wickliffe, Ky., under contract with West Virginia Pulp and Paper Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 95876 (Sub-No. 86), filed September 25, 1968. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, St. Cloud, Minn. 56301. Applicant's representative: Grant J. Merritt, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing, siding, and insulating materials, floor coverings, and supplies and accessories* incidental to the installation thereof, from points in Illinois on and north of Illinois Highway 17 to points in Iowa, Minnesota, and Nebraska. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 95876 (Sub-No. 87), filed September 26, 1968. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, St. Cloud, Minn. 56301. Applicant's representative: Grant J. Merritt, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood fencing, set up or knocked down, wood sections, wood posts, wood pickets, wood rails, and accessories* used in the installation thereof, from Tulsa, Okla., to points in the United States (except Alaska, Hawaii, California, Oregon, Washington, Idaho, Montana, Wyoming, Nevada, Utah, Arizona, and New Mexico). NOTE: If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Tulsa, Okla., or Little Rock, Ark.

No. MC 97009 (Sub-No. 14), filed September 24, 1968. Applicant: VINCENT J. HERZOG, 200 Delaware Street, Honesdale, Pa. 18431. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Kingsley and Carbondale, Pa., for joinder only with carrier's present operating authority. NOTE: If a hearing is deemed necessary, applicant requests it be held at Scranton or Wilkes-Barre, Pa.

No. MC 103993 (Sub-No. 338), filed September 18, 1968. Applicant: MORGAN DRIVE-AWAY, INC., 2800 West Lexington Avenue, Elkhart, Ind. 46514. Applicant's representative: Robert G. Tessar (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers* designed to be drawn by passenger automobiles, in initial movements, from points in Natchitoches Parish, La., to points in the United States (excluding Alaska and Hawaii), and (2) *synthetic flooring, trim, and corrosion proof components*, from the plantsite of the Ceilcote Co., Inc., in Berea, Ohio, to points in the United States (excluding Alaska and Hawaii). NOTE: If a hearing is deemed necessary, applicant requests it be held at New Orleans or Baton Route, La.

No. MC 103993 (Sub-No. 340), filed September 27, 1968. Applicant: MORGAN DRIVE-AWAY, INC., 2800 West Lexington Avenue, Elkhart, Ind. 46514. Applicant's representative: Robert G. Tessar (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles, campers, and camp coaches designed to be installed on pick up trucks, from points in Trumbull County, Ohio, to points in the United States (excluding Alaska and Hawaii). NOTE: If a hearing is deemed necessary, applicant requests it be held at Cleveland, Ohio.

No. MC 106398 (Sub-No. 370), filed September 20, 1968. Applicant: NATIONAL TRAILER CONVOY, INC., 1925 National Plaza, Tulsa, Okla. 74151. Applicant's representative: Irvin Tull (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Undercarriages and frames designed to be equipped with hitchball or pintle hook connectors and component parts thereof*, (1) from Elkhart, Ind., to points in the United States (except Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington), (2) from Bossier City, La., to points in Texas, (3) from Ironwood, Mich., to points in Minnesota, (4) from Newton, Kans., to points in Colorado, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wyoming, and (5) from Elkton, Md. to points in Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. NOTE: Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 107002 (Sub-No. 352), filed September 18, 1968. Applicant: MILLER TRANSPORTERS, INC., Post Office Box 1123, U.S. Highway 80 West, Jackson, Miss. 39205. Applicant's representatives: John J. Borth (same address as applicant) and H. D. Miller, Jr., Post Office Box 22567, Jackson, Miss. 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products*, in bulk, in tank vehicles, from Memphis, Tenn., to points in Kentucky west of U.S. Highway 231. NOTE: Applicant states it intends to tack the sought authority with portions of its presently held authority to provide service from points in Mississippi via Memphis, Tenn. Applicant also states no duplicating authority is being sought. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn., or Jackson, Miss.

No. MC 107002 (Sub-No. 354), filed September 19, 1968. Applicant: MILLER TRANSPORTERS, INC., Post Office Box 1123, U.S. Highway 80 West, Jackson, Miss. 39205. Applicant's representatives: John J. Borth, Post Office Box 1123, Jackson, Miss. 39205 and H. D. Miller, Jr., Post Office Box 22567, Jackson, Miss.

39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from Memphis, Tenn., to points in Texas. NOTE: Applicant states it proposes to tack the authority sought herein at Memphis, Tenn., with its presently held authority in MC 107002 at Item 203 wherein it provides service in the transportation of chemicals, in bulk, from Barfield, Ark., to points in Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, Oklahoma, Wisconsin, and portions of Tennessee and Texas. NOTE: If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn., or Jackson, Miss.

No. MC 107002 (Sub-No. 355), filed September 19, 1968. Applicant: MILLER TRANSPORTERS, INC., Post Office Box 1123, U.S. Highway 80 West, Jackson, Miss. 39205. Applicant's representatives: John J. Borth, Post Office Box 1123, Jackson, Miss. 39205 and H. D. Miller, Jr., Post Office Box 22567, Jackson, Miss. 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Formaldehyde*, in bulk, in tank vehicles, from Vicksburg, Miss., to points in Texas. NOTE: Applicant states it proposes to tack the authority sought herein at Vicksburg, Miss., with its presently held authority in MC 107002 at Items 1, 3, 8, 39, and 40, to provide through service from Cordova, Tuscaloosa, Fox, Moscow, and Moundsville, Ala., to the destination territory sought herein. No duplicating authority is sought. If a hearing is deemed necessary, applicant requests it be held at Jackson, Miss.

No. MC 107295 (Sub-No. 133), filed September 20, 1968. Applicant: PRE-FAB TRANSIT CO., a corporation, 100 South Main Street, Farmer City, Ill. 61842. Applicant's representatives: Dale L. Cox, Post Office Box 146, Farmer City, Ill. 61842 and Mack Stephenson, 301 Building, 301 North Second Street, Springfield, Ill. 62702. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crates* with wood cleats packaged flat, in sections, from Henderson, Tex., to points in the United States, except Washington, Oregon, California, Idaho, Nevada, Utah, Arizona, Alaska, and Hawaii. NOTE: If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 107403 (Sub-No. 756), filed September 16, 1968. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sulphur acid and phosphatic fertilizer solutions*, in bulk, in tank vehicles, from the plantsite of Freeport Chemical Co., at or near Uncle Sam, La., to points in Alabama, Arkansas, Florida, Georgia, those points in Illinois on and south of U.S. Highway 50 including East St. Louis, Ill., Kentucky, Louisiana, Mississippi, those points in Missouri on and south of the Missouri River, Oklahoma, Tennessee, and Texas. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or New Orleans, La.

No. MC 107403 (Sub-No. 758), filed September 23, 1968. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fluorinated hydrocarbons*, in bulk, in tank vehicles, from Baton Rouge, La., to Cornhusker Army Ammunition Plant at or near Grand Island, Nebr. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 107403 (Sub-No. 759), filed September 23, 1968. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flour*, in bulk, in tank vehicles, from Camp Hill, Pa., to points in New Jersey. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Harrisburg, Pa.

No. MC 107403 (Sub-No. 761), filed September 26, 1968. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Dry chemicals*, in bulk, from El Dorado, Ark., to points in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee, and Texas. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 107496 (Sub-No. 684), filed September 9, 1968. Applicant: RUAN TRANSPORT CORPORATION, Keosauqua Way at Third, Post Office Box 855, Des Moines, Iowa 50304. Applicant's representative: H. L. Fabritz (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry chemicals*, in bulk, from El Dorado, Ark., to points in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee, and Texas. NOTE: If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., or Des Moines, Iowa.

No. MC 108207 (Sub-No. 250), filed September 19, 1968. Applicant: FROZEN FOOD EXPRESS, INC., 318 Cadiz Street, Post Office Box 5888, Dallas, Tex. 75222. Applicant's representative: J. B. Ham (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fresh fruits and vegetables*, when moving in the same vehicle and at the same time with shipments of bananas, from Gulfport, Miss., to points in Arizona, Arkansas, Illinois, California, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnestoa, Mississippi, Missouri, Nebraska, New Mexico, Ohio, Oklahoma, Texas, Tennessee, and Wisconsin, restricted to points and areas from and to which applicant is presently authorized to transport bananas. NOTE: If a hearing is deemed necessary, applicant requests it be held at New Orleans, La., or Dallas, Tex.

No. MC 110878 (Sub-No. 32), filed September 19, 1968. Applicant: ARGO TRUCKING COMPANY, INC., Lower Heard Street, Elberton, Ga. 30635. Applicant's representative: Guy H. Postell and Archie B. Culberth, 1273 West Peachtree Street NE., Atlanta, Ga. 30309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Granite and marble*, between points in Rowan County, N.C., and points in Alabama, Florida, Mississippi, Louisiana, Arkansas, North Carolina, South Carolina, Texas, Missouri, Tennessee, Arizona, California, Colorado, Nevada, New Mexico, Utah, Georgia, Kansas, and Oklahoma. NOTE: If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 111401 (Sub-No. 264) (Amendment), filed August 26, 1968, published in the FEDERAL REGISTER issue of September 19, 1968, amended September 18, 1968, and republished as amended this issue. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Boulevard, Post Office Box 632, Enid, Okla. 73701. Applicant's representative: Alvin L. Hamilton (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feeds, animal feed supplements and ingredients*, between Liberal, Kans., on the one hand, and points in Alabama, Arizona, Arkansas, Colorado, Georgia, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming on the other. NOTE: The purpose of this republication is to redescribe the authority sought. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo., or Kansas City, Mo.

No. MC 111812 (Sub-No. 371), filed September 18, 1968. Applicant: MIDWEST COAST TRANSPORT, INC., 405½ East Eighth Street, Post Office Box 1233, Sioux Falls, S. Dak. 57101. Applicant's representative: Donald L. Stern, 630 City National Bank Building, Omaha, Nebr. 68102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from points in Oregon to points in Washington restricted to traffic moving to said points for storage in transit. NOTE: If a hearing is deemed necessary, applicant requests it be held at Boise, Idaho, or Portland, Oreg.

No. MC 111812 (Sub-No. 372), filed September 18, 1968. Applicant: MIDWEST COAST TRANSPORT, INC., 405½ East Eighth Street, Post Office Box 1233, Sioux Falls, S. Dak. 57101. Applicant's representative: Donald L. Stern, 630 City National Bank Building, Omaha, Nebr. 68102. Authority sought to operate

as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Duluth, Minn., to points in Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, West Virginia, Wisconsin, Kansas, and the District of Columbia. NOTE: If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn., or Chicago, Ill.

No. MC 112713 (Sub-No. 105), filed September 19, 1968. Applicant: YELLOW TRANSIT FREIGHT LINES, INC., Post Office Box 8462, 92d at State Line, Kansas City, Mo. 64114. Applicant's representative: John M. Records (same address as applicant). 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, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, serving the facilities of Essex Wire Corp., located near Fort Wayne, Ind., on U.S. Highway 30, approximately 9 miles west of the Interstate Highway 69 interchange, as an off-route point in connection with carrier's regular route operations to and from Fort Wayne, Ind. NOTE: If a hearing is deemed necessary, applicant requests it be held at Fort Wayne or Indianapolis, Ind., or Chicago, Ill.

No. MC 113434 (Sub-No. 32), filed September 25, 1968. Applicant: GRA-BELL TRUCK LINE, INC., 679 Lincoln Avenue, Holland, Mich. 49423. Applicant's representative: Wilhelmina Boersma, 1600 First Federal Building, Detroit, Mich. 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Processed foodstuffs*, from Croswell and Edmore, Mich., to points in Pennsylvania and West Virginia. NOTE: If a hearing is deemed necessary, applicant requests it be held at Detroit or Lansing, Mich.

No. MC 113678 (Sub-No. 327), filed September 23, 1968. Applicant: CURTIS, INC., 770 East 51st Avenue, Denver, Colo. 80216. Applicant's representatives: Duane W. Acklie and Richard Peterson, Post Office Box 806, Lincoln, Nebr. 68505. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (non-frozen), from Port Clinton, Ohio, to points in New York and Pennsylvania. NOTE: If a hearing is deemed necessary, applicant requests it be held at Toledo or Cleveland, Ohio.

No. MC 113855 (Sub-No. 185), filed September 20, 1968. Applicant: INTERNATIONAL TRANSPORT, INC., South Highway 52, Rochester, Minn. 55901. Applicant's representative: Alan Foss, 502 First National Bank Building, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Conduit or pipe*, with or without accessories, *attachments or fittings*, other than cement asbestos, concrete or metal, from the plant or warehouse sites of United Technology Center at or near Riverside or Sunnyvale, Calif., to points in the United States (except California). NOTE: If a hearing is deemed necessary, applicant requests it be held at San Francisco, Calif., Washington, D.C., or Chicago, Ill.

No. MC 114091 (Sub-No. 80), filed October 3, 1968. Applicant: HUFF TRANSPORT CO., INC., Post Office Box 13116, 2114 South 41st Street, Louisville, Ky. 40213. Applicant's representative: Louis Reznek, 5009 Keokuk Street, Washington, D.C. 20016. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, from points in Robertson County, Tenn., to points in Alabama, Georgia, South Carolina, North Carolina, Kentucky, Virginia, Indiana, Illinois, Missouri, Arkansas, Michigan, Mississippi, and Ohio, restricted against the transportation of dry chemicals to the St. Louis, Mo., East St. Louis, Ill., commercial zone. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Nashville, Tenn.

No. MC 114533 (Sub-No. 173), filed September 27, 1968. Applicant: BANKERS DISPATCH CORPORATION, 4970 South Archer Avenue, Chicago, Ill. 60632. Applicant's representative: Warren W. Wallin, 330 South Jefferson Street, Chicago, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Small parts, electronic components and supplies*, limited to 75 pounds per shipment, between Cleveland, Ohio, on the one hand, and, on the other, Erie and Pittsburgh, Pa., and Detroit, Mich. NOTE: Applicant has a pending contract application under MC 128616, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Washington, D.C.

No. MC 114848 (Sub-No. 42), filed September 19, 1968. Applicant: WHARTON TRANSPORT CORPORATION, 1498 Channel Avenue, Memphis, Tenn. 38106. Applicant's representative: James N. Clay III, 2700 Sterick Building, Memphis, Tenn. 38103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry chemicals*, in bulk, from El Dorado, Ark., to points in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee, and Texas. NOTE: If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn.

No. MC 115331 (Sub-No. 260), filed September 24, 1968. Applicant: TRUCK TRANSPORT, INCORPORATED, 1931 North Geyer Road, St. Louis, Mo. 63111. Applicant's representative: Thomas F. Kilroy, Suite 913, Colorado Building, 1341 G Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry chemicals*, in bulk, from El Dorado, Ark., to points in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee, and Texas. NOTE: Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., or Washington, D.C.

No. MC 116073 (Sub-No. 84), filed September 23, 1968. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., 1825 Main Avenue, Post Office Box 601, Moorhead, Minn. 56560. Applicant's representative: Donald E. Cross, 1329 E Street NW., 917 Munsey Building, Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles and buildings complete or in sections in initial movements, from Berthoud, Colo., and points within 4 miles thereof, to points in the United States (including Alaska but excluding Hawaii). NOTE: If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.

No. MC 116273 (Sub-No. 110), filed September 16, 1968. Applicant: D & L TRANSPORT, INC., 3800 South Laramie Avenue, Cicero, Ill. 60650. Applicant's representative: Robert G. Paluch (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry plastics*, in bulk, in hopper type vehicles, from Lake Zurich, Ill., to points in Indiana, Ohio, Kentucky, Michigan, Wisconsin, Minnesota, Iowa, and Missouri. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 116884 (Sub-No. 3), filed September 18, 1968. Applicant: ARNOLD KING, doing business as KING TRUCK LINE, 120 Second Street SE., Minneapolis, Minn. 55414. Applicant's representative: A. R. Fowler, 2288 University Avenue, St. Paul, Minn. 55114. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Ice cream, ice cream mixes, ice cream novelties, and ice cream cones*, from Minneapolis, Minn., to Cedar Rapids, Des Moines, Fort Dodge, Hawarden, and Mason City, Iowa, under contract with Foremost Ice Cream Division, Northland Milk and Ice Cream Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

No. MC 117574 (Sub-No. 176), filed September 26, 1968. Applicant: DAILY EXPRESS, INC., Post Office Box 39, Carlisle, Pa. 17013. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular route, transporting: *Paper, paper products and articles, equipment, materials and supplies* used or useful in the manufacture, processing or distribution of paper and paper products, from the plantsite of West Virginia Pulp and Paper Co., Wickliffe, Ky., in Ballard and Carlisle Counties, to points in Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia,

and Wisconsin. NOTE: Applicant indicates tacking possibilities with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 117613 (Sub-No. 1), filed September 23, 1968. Applicant: DONALD M. BOWMAN, JR., 5 North Clifton Drive, Williamsport, Md. 21795. Applicant's representative: Donald E. Freeman, 172 East Green Street, Post Office Box 806, Westminster, Md. 21157. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Concrete blocks and concrete products*, from Hagerstown, Md., to points in Connecticut, Massachusetts, New Jersey, New York, Rhode Island, Ohio, Pennsylvania, West Virginia, Virginia, Delaware, Michigan, Illinois, Indiana, and the District of Columbia, under a continuing contract with Supreme Concrete Block & Products, Inc., of Hagerstown, and (2) *brick* (except refractory brick), from Williamsport and Hagerstown, Md., to points in Connecticut, Massachusetts, New Jersey, New York, Rhode Island, Ohio, Pennsylvania, West Virginia, Virginia, Michigan, Illinois, and Indiana (except points within 165 miles of Williamsport and Hagerstown, Md.), under a continuing contract with Victor Cushwa & Sons, Inc., of Williamsport, Md. NOTE: Applicant states it presently holds authority on brick in Permit MC 117613 to transport brick to points in Pennsylvania, West Virginia, Virginia, and Delaware within 165 miles of Williamsport and Hagerstown, Md. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 117686 (Sub-No. 90), filed September 25, 1968. Applicant: HIRSCHBACH MOTOR LINES, INC., 3324 U.S. Highway 75 North, Post Office Box 417, Sioux City, Iowa 51102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery goods*, from Sioux City, Iowa, to points in Louisiana, Mississippi, Arkansas, Texas, Georgia, Alabama, Oklahoma, Kansas, Missouri, and Tennessee. NOTE: If a hearing is deemed necessary, applicant requests it be held at Sioux City, Iowa.

No. MC 117883 (Sub-No. 114), filed September 23, 1968. Applicant: SUBLER TRANSFER, INC., East Main Street, Versailles, Ohio 45380. Applicant's representative: Kenneth Subler, Post Office Box 62, Versailles, Ohio 45380. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods and food products and materials and supplies* used or useful in the preparation, serving or consumption of foods and food products, including *premiums and advertising materials and special containers and racks* used in the transportation of these commodities, from the plantsite and warehouse facilities of American Sugar Co. located in Mantua Township at or near Pitman, N.J., to points in Indiana, Illinois, Kentucky, Iowa, Michigan, Minnesota, Missouri, those points in Pennsylvania on and west of U.S. Highway 219, Ohio, West Virginia, and Wisconsin. NOTE: If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Washington, D.C.

No. MC 118745 (Sub-No. 8), filed September 23, 1968. Applicant: JOHN PFROMMER, INC., Post Office Box 307, Douglassville, Pa. 19518. Applicant's representative: Theodore Polydoroff, Suite 930, 1120 Connecticut Avenue NW., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fly ash*, in bulk, (a) from Philadelphia, Phoenixville, and Eddystone, Pa., to points in Delaware and New Jersey; (b) from Eddystone, Del., to Plymouth Meeting, Pa., and to points in New Jersey, and (c) from Duck Island (Trenton) N.J., to Plymouth Meeting, Pa., and (2) *Cement*, in bulk, from Plymouth Meeting, Pa., to points in New Jersey under contract with G. & W. H. Corson, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa., or Washington, D.C.

No. MC 119441 (Sub-No. 16) filed September 9, 1968. Applicant: BAKER HI-WAY EXPRESS, INC., Box 484, Dover, Ohio 44622. Applicant's representative: Richard H. Brandon, 79 East State Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clay products*, from Wadsworth, Ohio, and points in Wadsworth Township (Medina County), Ohio, to points in Illinois, Indiana, Michigan, Kentucky, Ohio, Pennsylvania, New York, New Jersey, Delaware, Maryland, the District of Columbia, Virginia, Connecticut, Massachusetts, Wisconsin, Rhode Island, Maine, New Hampshire, Vermont, and West Virginia. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 119531 (Sub-No. 95), filed September 16, 1968. Applicant: DIECKBRADER EXPRESS, INC., 5391 Wooster Road, Cincinnati, Ohio 45226. Applicant's representative: Charles W. Singer, 33 North Dearborn Street, Suite 1625, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, between Circleville, Ohio, and points in Washington, Greene, Fayette, Allegheny, Beaver, Butler, and Erie Counties, Pa. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 123048 (Sub-No. 126) (Amendment), filed March 13, 1968, published in FEDERAL REGISTER issue of March 28, 1968, amended September 25, 1968, and republished as amended this issue. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 1919 Hamilton Avenue, Post Office Box A, Racine, Wis. 53401. Applicant's representative: Paul Gartzke, 121 West Doty Street, Madison, Wis. 53701 and C. Ernest Carter (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mountable spreaders*, from points in Warren County, Iowa, to points in Idaho, Montana, Oregon, Utah, Washington, and Wyoming. NOTE: The purpose of this republication is to redescribe the origin point. If a hearing is deemed necessary, applicant requests it be held at Des Moines, Iowa, or Chicago, Ill.

No. MC 123245 (Sub-No. 8), filed September 18, 1968. Applicant: LEESER & STAUFFER TRUCK SERVICE, INC., Taylor, Mo. 63471. Applicant's representative: Robert L. Hawkins, Jr., 312 East Capitol Avenue, Jefferson City, Mo. 65101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk in tank vehicles; *fertilizer and fertilizer materials*, liquid and dry, in bags and in bulk, from the plantsite of Sinclair Petrochemicals, Inc., at or near Fort Madison, Iowa, to points in Arkansas, Illinois, Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Wisconsin. NOTE: Applicant holds contract carrier authority under Docket No. MC 113865 and Subs, therefore, dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at St. Louis or Jefferson City, Mo.

No. MC 123322 (Sub-No. 19), filed September 23, 1968. Applicant: BEATTY MOTOR EXPRESS, INC., Jefferson Avenue Extension, Washington, Pa. 15301. Applicant's representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods and food products, and materials and supplies used or useful in the preparation, serving or consumption of foods and food products, including premiums and advertising materials and special containers or racks used in the transportation or these commodities*, from the plantsite and warehouse facilities of American Sugar Co., Mantua Township (at or near Pitman), N.J., to points in Pennsylvania on and west of U.S. Highway 219. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Washington, D.C.

No. MC 123407 (Sub-No. 40), filed September 19, 1968. Applicant: SAWYER TRANSPORT, INC., 2424 Minnehaha Avenue, Minneapolis, Minn. 55404. Applicant's representative: Alan Foss, 502 First National Bank Building, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Boxes and wrappers, interior packing forms, partitions and fillers* for boxes; and (2) *pulpboard and fiberboard*, from New Orleans, La., to points in Arkansas, Mississippi, Alabama, Florida, and Louisiana. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 123613 (Sub-No. 4), filed September 25, 1968. Applicant: CLAREMONT MOTOR LINES, INC., Post Office Box 296, Claremont, N.C. 28610. Applicant's representative: Bill R. Davis, 1600 First Federal Building, Atlanta,

Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Products used in the agricultural, water treatment food processing, wholesale grocery and institutional supply industries*, when shipped in mixed loads with salt and salt products, from Akron and Rittman, Ohio, and Marysville and St. Clair, Mich., to points in Alabama, Florida, Georgia, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia. NOTE: If a hearing is deemed necessary, applicant requests it be held at Charlotte or Greensboro, N.C.

No. MC 124111 (Sub-No. 17), filed September 26, 1968. Applicant: OHIO EASTERN EXPRESS, INC., Post Office Box 2297, 300 West Perkins Avenue, Sandusky, Ohio 44870. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts* as described in section A of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Greenfield, Ohio, to points in Illinois and Indiana, restricted to shipments originating at the facilities of the Collins Packing Co., at Greenfield, Ohio. NOTE: If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio, or Washington, D.C.

No. MC 124154 (Sub-No. 23), filed September 18, 1968. Applicant: WINGATE TRUCKING COMPANY, INC., Post Office Box 1372, Albany, Ga. 31702. Applicant's representative: W. Guy McKenzie, Jr., Post Office Box 1200, Tallahassee, Fla. 32302. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from Lindale, Tex., to points in Alabama, Tennessee, Kentucky, Virginia, South Carolina, North Carolina, Georgia, and Florida. NOTE: Applicant holds contract carrier authority under MC 117504 Sub 1, therefore, dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 124251 (Sub-No. 24), filed September 25, 1968. Applicant: JACK JORDAN, INC., Post Office Box 688, Dalton, Ga. 30720. Applicant's representative: Ariel V. Conlin, 626 Fulton National Bank Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Feldspar*, in bags, from points in Jasper County, Ga., to points in Polk County, Fla. NOTE: If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga., or Chattanooga, Tenn.

No. MC 125010 (Sub-No. 7), filed September 22, 1968. Applicant: GIBCO MOTOR EXPRESS, INC., Post Office Box 312, Terre Haute, Ind. Applicant's representative: Warren C. Moberly, 1212 Fletcher Trust Building, Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coke, scrap iron or steel*, for remelting purposes only, from the plant of Central Foundries, Division of General Motors, at Danville, Ill., to the production plant of Airco Alloys and Carbide, Division of Air Reduction, Inc., at Calvert City, Ky., under contract with Airco Alloys and Carbide, Division of Air Reduction Company, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Chicago, Ill.

No. MC 125182 (Sub-No. 3), filed September 25, 1968. Applicant: W. A. WELCH, Mabel, Minn. 55954. Applicant's representative: Val M. Higgins, 100 First National Bank Building, Minneapolis, Minn. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers and *supplies, signs and materials used therewith*, from Milwaukee, Wis., to Spring Grove, Rushford, and Rochester, Minn., under contract with Spring Grove Bottling Works, Rushford Bottling Works and Rollies Distributing Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

No. MC 126463 (Sub-No. 7), filed September 27, 1968. Applicant: GREER BRO. TRUCKING CO., a corporation, Post Office Box 187, London, Ky. 40741. Applicant's representative: George M. Catlett, 703-706 McClure Building, Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, in bulk, in dump trucks, from Corbin, Ky., to points in West Virginia, Virginia, North Carolina, South Carolina, Tennessee, and Kentucky. NOTE: If a hearing is deemed necessary, applicant requests it be held at Louisville, Ky., or Nashville, Tenn.

No. MC 126555 (Sub-No. 8), filed September 13, 1968. Applicant: UNIVERSAL TRANSPORT, INC., Post Office Box 268, Rapid City, S. Dak. Applicant's representative: Truman A. Stockton, Jr., The 1650 Grant Street Building, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ground limestone and limestone products* (except cement), from points in Colorado to points in Arizona, Colorado, Kansas, Nebraska, New Mexico, Oklahoma, Texas, Utah, and Wyoming. NOTE: If a hearing is deemed necessary, applicant requests it be held at Denver, Colo., and Cheyenne, Wyo.

No. MC 126844 (Sub-No. 5), filed September 17, 1968. Applicant: R. D. S. TRUCKING CO., INC., 931 North Main Road, Vineland, N.J. 08360. Applicant's representative: Blanton P. Bergen, 137 East 36th Street, New York, N.Y. 10016. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Hammonton, N.J., to points in Florida. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 127093 (Sub-No. 9), filed September 13, 1968. Applicant: BASIL J. SMEESTER AND JOSEPH G. SMEESTER, a partnership, doing business as SMEESTER BROTHERS TRUCKING, 1330 South Jackson Street, Iron Mountain, Mich. 49801. Applicant's representative: Daniel B. Johnson, 716 Perpetual Building, Washington, D.C. 20004. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum building materials* (except in bulk) and *materials and accessories* used in the installation thereof, from Port Clinton, Ohio, to points in Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee, Kentucky, and Indiana, under contract with the Celotex Corp., Tampa, Fla. NOTE: Applicant has pending in MC 129645 and Sub 1 thereunder, applications for common carrier authority, therefore dual operations may be involved. Applicant states that no duplicating authority is being sought. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Chicago, Ill.

No. MC 127689 (Sub-No. 22), filed September 22, 1968. Applicant: PASCAGOULA DRAYAGE COMPANY, INC., 705 East Pine Street, Hattiesburg, Miss. 39401. Applicant's representative: W. N. Innis (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Refrigeration equipment, walk-in-type refrigeration units, and parts, accessories and assemblies for walk-in-type refrigeration units*, from Laurel, Miss., to points in Illinois, Indiana, Michigan, and Ohio. NOTE: If a hearing is deemed necessary, applicant requests it be held at Jackson, Miss.

No. MC 128052 (Sub-No. 8), filed September 16, 1968. Applicant: OLIVERIA TRUCKING COMPANY, INCORPORATED, 252 Elm Street, Blackstone, Mass. 01504. Applicant's representative: Russell B. Curnett, 36 Circuit Drive, Edgewood Station, Providence, R.I. 02905. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bags on pallets, on vehicles equipped with mechanical loading and unloading devices, from Woonsocket, R.I., and Blackstone, Mass., to points in Connecticut, Massachusetts, and Rhode Island. NOTE: If a hearing is deemed necessary, applicant requests it be held at Providence, R.I., or Boston, Mass.

No. MC 128273 (Sub-No. 40) filed September 20, 1968. Applicant: MIDWESTERN EXPRESS, INC., Post Office Box 189, Fort Scott, Kans. 66701. Applicant's representative: Harry Ross, 848 Warner Building, Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products; products produced or distributed by manufacturers and converters of paper and paper products* (except commodities in bulk), from points in Talladega County, Ala., to points in Arkansas, Kansas, Louisiana, Missouri, Nebraska, Oklahoma, and Texas, and (2) *materials and supplies* used in the manufacture and distribution of the above-described commodities (except commodities in bulk), and *returned and rejected shipments*, from the destination points in No. (1) above, to points in Talladega County, Ala. NOTE: Applicant states that no duplicating authority is

being sought. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 128316 (Sub-No. 2), filed September 23, 1968. Applicant: WM. O'DONELL, INC., Box 367, Elkhorn, Wis. 53121. Applicant's representative: William C. Dineen, 710 North Plankinton Avenue, Milwaukee, Wis. 53203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vegetable oils, including lecithin*, in bulk in tank vehicles, from Mankato, Minn., to Cincinnati, Ohio. NOTE: If a hearing is deemed necessary, applicant requests it be held at Madison or Milwaukee, Wis.

No. MC 128375 (Sub-No. 24), filed September 19, 1968. Applicant: CRETE CARRIER CORPORATION, Post Office Box 249, Crete, Nebr. 68333. Applicant's representative: Richard A. Peterson, 521 South 14th Street, Post Office Box 806, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed and animal feed ingredients* (except in bulk), (1) between points in Pennsylvania, and Princess Anne, Md., on the one hand, and, on the other, points in Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York (except between Allentown, Pa., and Buffalo, N.Y.), New Jersey, Delaware, Alabama, Georgia, Missouri, Iowa, Texas, Oklahoma, Kansas, South Dakota, North Dakota, New Mexico, and the District of Columbia, (2) from points in Pennsylvania and Princess Anne, Md., to points in Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, West Virginia, Kentucky, Tennessee, and Arkansas, (3) from points in Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, West Virginia, Kentucky, Tennessee, and Arkansas, to points in Pennsylvania (except Allentown, Pa.), and Princess Anne, Md., (4) between points in Pennsylvania (except Allentown, Pa.) and Princess Anne, Md., on the one hand, and, on the other, points in Maryland, Virginia, North Carolina, South Carolina, Florida, Louisiana, and Mississippi, (5) between Princess Anne, Md., and points in Nebraska, and (6) between points in Pennsylvania, and points in Nebraska (except Crete, Nebr.), under contract with Allen Products Co., Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Lincoln, Nebr.

No. MC 128650 (Sub-No. 1), filed September 23, 1968. Applicant: JOHN B. JOY, INC., Rural Free Delivery No. 1, Taneytown, Md. 21787. Applicant's representative: Donald E. Freeman, 172 East Green Street, Post Office Box 806, Westminster, Md. 21157. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick and clay products*, (1) from Rocky Ridge, Md., to points in Connecticut, Massachusetts, New York, New Jersey, and Rhode Island, and (2) from Rossville, Md., to points in Maryland, West Virginia, Virginia, Delaware, Connecticut, Massachusetts, New York, New Jersey, Rhode Island, and the District of Columbia. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Baltimore, Md.

No. MC 128922 (Sub-No. 1) (Amendment), filed August 28, 1968, published in FEDERAL REGISTER issue of September 19, 1968, amended September 18, 1968, and republished as amended this issue. Applicant: CHESTER FRY AND MARIE E. FRY, a partnership, doing business as FRY TRUCKING, Wilton Junction, Iowa 52778. Applicant's representative: Kenneth F. Dudley, 901 South Madison Avenue, Post Office Box 279, Ottumwa, Iowa 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Animal and poultry feed concentrates, animal and poultry feed ingredients, mineral feed supplements, mixtures of trace minerals, livestock insecticides, livestock medicines, and disinfectants*, from Cedar Rapids and Davenport, Iowa; Quincy, Ill., and Milwaukee, Wis., to poinis in Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Virgina, West Virginia, Wisconsin, and Colorado; (2) *animal and poultry feed ingredients, and new empty containers*, from points in Alabama, Arkansas, Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Virginia, West Virginia, and Wisconsin, to Cedar Rapids, Davenport, and Marion, Iowa; Quincy, Ill., and Milwaukee, Wis., (3) *binder and baler twine*, from Milwaukee, Wis., to Davenport, Iowa; and (4) *livestock and poultry feeds*, between Kansas City, Mo., Geneseo, Ill., and Norfolk, Nebr. NOTE: The purpose of this republication is to add "Colorado" as a destination State in (1) above, and as an origin State in (2) above. Applicant is authorized to operate as a contract carrier under MC 125871 and MC 125871 Sub 1, therefore, dual operations may be involved. Applicant further states that all authority contained therein is included in that sought here, except for a grant of disk harrows, from Hutchinson, Kans., to Wheatland, Iowa. Upon a grant here, applicant requests that the permits be cancelled. If a hearing is deemed necessary, applicant requests it be held at Des Moines, or Chicago, Ill.

No. MC 129697 (Sub-No. 2), filed September 13, 1968. Applicant: RAUL TOMAYO A. AND JOSE ALFONSO GRIJALVA, a partnership, Avenue Juarez 544, Ensenada, Baja California, Mexico. Applicant's representative: Milton W. Flack, 1813 Wilshire Boulevard, Los Angeles, Calif. 90057. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tin plate and fibre containers*, from points in Los Angeles, Riverside, Orange, and San Bernardino, Counties, Calif., to the port of entry on the international boundary line between the United States and Mexico, at or near San Ysidro, Calif., under contract with Fabricas Monterrey, S.A. NOTE: If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 129843 filed April 15, 1968. Applicant: QUADRA CARTAGE, INC., 1474 West Broadway, Vancouver, British Columbia, Canada. Applicant's representative: M. Mahar (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Theatrical equipment, including scenery, wardrobes, properties and electrical supplies* used for theatrical products; and *musical instruments*, between ports of entry on the international boundary line between the United States and Canada located in Washington, and points in Washington and Oregon. NOTE: If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 133017 (Sub-No. 1), filed September 18, 1968. Applicant: AMBROSE DISTRIBUTING CO., a corporation, Post Office Box 3346, Butte, Mont. 59701. Applicant's representative: Harry D. Pugsley, 400 El Paso Gas Building, Salt Lake City, Utah 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Frozen potato products and frozen fish*, from Twin Falls, Idaho, to points in Nevada, California, and Utah, under contract with Idaho Frozen Foods. NOTE: If a hearing is deemed necessary, applicant requests it be held at Boise, Idaho.

No. MC 133045 (Sub-No. 2), filed September 20, 1968. Applicant: E. N. CURTIS AND C. C. CURTIS, a partnership, doing business as CURTIS BROTHERS TRUCKING COMPANY, Route 6, Box 221E, Falmouth, Va. 22401. Applicant's representative: Daniel B. Johnson, 716 Perpetual Building, Washington, D.C. 20004. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wooden box spring frames*, from Massaponax, Va., to points in New York, Pennsylvania, Maryland, Delaware, New Jersey, Virginia, West Virginia, North Carolina, South Carolina, and the District of Columbia, under contract with Clayborne Beck and Son. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 133060 (Sub-No. 1), filed September 16, 1968. Applicant: WILLARD F. BALZHISER AND HAROLD L. BALZHISER, a partnership, doing business as BALZHISER BROS., 3301 Colerain Avenue, Cincinnati, Ohio 45225. Applicant's representative: Bruce Lester, 8 East 5th Street, Newport, Ky. 41071. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Women's dresses and sportswear on hangers and racks*, from Cynthiana, Ky., to Cincinnati, Ohio, and (2) *hangers and racks* on the return, under contract with Wolfson Manufacturing Co., Cynthiana, Ky., and Fashion Frocks, Inc., Cincinnati, Ohio. NOTE: If a hearing is deemed necessary, applicant requests it be held at Newport or Covington, Ky., or Cincinnati, Ohio.

No. MC 133066 filed August 2, 1968. Applicant: THURMAN LEE HESTER, doing business as T. L. HESTER TRUCK SERVICE, 904 South Howard, Moore, Okla. 73060. Applicant's representative: David Pomeroy, 300 Investors Capital Building, 217 North Harvey, Oklahoma City, Okla. 73102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Raw paper*, from Bastrop, La., to the site of Marco Paper Products Co., in San Rafael, Calif., and (2) *paper products* (finished), from the site of Marco Paper Products Co. in San Rafael, Calif., to points in Alabama, Arizona, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and Louisiana; under contract with Marco Paper Products Co., in San Rafael, Calif. NOTE: If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Okla.

No. MC 133072 (Sub-No. 2), filed September 24, 1968. Applicant: VITO PALUMBO, doing business as WILLIAM PALUMBO TRUCKING, 67 Greenwich Street, New York, N.Y. 10006. Applicant's representative: William D. Traub, 10 East 40th Street, New York, N.Y. 10016. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Business forms*, from the site of warehouse of Uarco, Inc., at Carlstadt, N.J., to shipper's customers located in New York, N.Y., under contract with Uarco, Inc., Carlstadt, N.J. NOTE: If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Newark, N.J.

No. MC 133074 (Sub-No. 1), filed September 23, 1968. Applicant: A. N. WEBBER, Chebanse, Ill. 60922. Applicant's representative: Paul J. Maguire, 111 West Washington Street, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles* as described in Appendix V Group III in *Motor Carrier Certificate 61 M.C.C. 209*, from the plantsites of Jones & McKnight, Inc., at Bradley, Ill., and Indian Oaks, Ill., to road or building construction sites to points in Indiana. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Kankakee, Ill.

No. MC 133111 (Sub-No. 1) (Correction), filed August 21, 1968, published in the FEDERAL REGISTER issue of September 12, 1968, and republished as corrected this issue. Applicant: J O T TRANSPORT, INC., 7990 National Highway, Pennsauken, N.J. 08110. Applicant's representative: Charles E. Creager, 5507 Sarril Road, Baltimore, Md. 21206. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except classes A and B explosives, household goods, as defined by the Commission, and commodities in bulk, between Pennsauken, N.J., on the one hand, and, on the other, points in New York, New Jersey, Pennsylvania, Delaware, Maryland, District of Columbia, and Virginia under contract with Malloy Warehouse & Distribution Corp. NOTE: The purpose of this republication is to correctly set forth the applicant as a contract carrier in lieu of Common. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 133152 (Sub-No. 1), filed September 18, 1968. Applicant: MID-FLORIDA VAN LINES, INC., Post Office Box 338, U.S. Highway 1, North of Cideo Park, Cocoa, Fla. 32922. Applicant's representative: Alan F. Wohlstetter, 1 Farragut Square South, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in Brevard, Volusia, Indian River, Okeechobee, Martin, and St. Lucie Counties, Fla., restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond said points, and further restricted to the performance of pickup and delivery service in connection with packing, crating and containerization or unpacking, uncrating, and decontainerization of said traffic. NOTE: If a hearing is deemed necessary, applicant requests it be held at Orlando, Fla., or Washington, D.C.

No. MC 133170, filed September 13, 1968. Applicant: THERON B. PORTER, doing business as PORTER DISTRIBUTING COMPANY, 1920 North Main, Pocatello, Idaho 83201. Applicant's representative: John B. Kugler, Spaulding Building, Post Office Box 1392; Pocatello, Idaho 83201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Beer, ale, and malt liquors*, from Portland, Oreg., to Twin Falls, Pocatello, and Idaho Falls, Idaho, and *empty barrels, bottles, and pallets*, on return, under contract with Eagle Rock Distributing Co., Inc., and Del's Distributing Co., Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Pocatello or Boise, Idaho.

No. MC 133174, filed September 16, 1968. Applicant: LEWIS TRANSFER AND STORAGE CO., INC., 218 Southwest Second Street, Grand Prairie, Tex. Applicant's representative: W. Scott Clark, Fort Worth Club Building, Fort Worth, Tex. 76102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods* as defined by the Commission, between points within the Dallas-Fort Worth commercial zones. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Fort Worth or Dallas, Tex.

No. MC 133175, filed September 16, 1968. Applicant: METALS TRANSPORT CO., a corporation, 1140 Poland Avenue, Youngstown, Ohio 44502. Applicant's representative: Richard H. Brandon, 79 East State Street, Columbus, Ohio 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Steel buildings* and (2) *building sections, panels, materials, parts and accessories*, from Niles and Youngstown, Ohio, to St. Louis, Mo., and points in Connecticut, Delaware, District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin. NOTE: If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 133176, filed September 16, 1968. Applicant: E. P. I. TRANSPORT CO., a corporation, 1844 Ardmore Boulevard, Pittsburgh, Pa. 15221. Applicant's representative: Gerald S. Lesher, 1018 Frick Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Metal roof deck, windows, doors, curtain walls* and *materials used in the production of metal roof deck, windows, curtain walls* (except commodities in bulk in tank cars), between the plant of Epic Metals Corp. in Braddock, Pa., and points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Rhode Island, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia, under contract with Engineered Products, Inc., Forest Hills, Pa. NOTE: If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa., or Washington, D.C.

No. MC 133178, filed September 19, 1968. Applicant: PAPER CARGO CORPORATION, 3260 Chicago Drive, Grandville, Mich. 49418. Applicant's representative: Rex Eames, 900 Guardian Building, Detroit, Mich. 48226. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper, paper products and waste paper*, from Grand Rapids, Mich., to points in Ohio, Indiana, and Illinois, and (2) *materials, equipment and supplies* used in the manufacturing or processing of paper, paper products, or waste paper, from points in Ohio, Indiana, and Illinois, to Grand Rapids, Mich., under contract with Bell Fibre Products Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Detroit or Lansing, Mich.

No. MC 133179, filed September 18, 1968. Applicant: LAWRENCE C. ROGERS, Box 895, White River Junction, Vt. 05001. Applicant's representative: William A. Baker, 24 Hanover Street, Lebanon, N.H. 03766. Authority sought to operate as a *contract carrier* by motor vehicle, over irregular routes, transporting: *Snowmobiles and related commodities including accessories and part* for such vehicles, from Randolph, Vt., to points in Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine, and Vermont, and to ports of entry on the international boundary line between the United States and Canada, located at points in Maine, New Hampshire, Vermont, and New York, under contract with Rodco, Inc., Randolph, Vt. NOTE: If a hearing is deemed necessary, applicant requests it be held at Concord, N.H.

No. MC 133180, filed September 12, 1968. Applicant: ALL TRUCKING

CORP., 3515 West 51st Street, Chicago, Ill. Applicant's representative: Robert H. Levy, 29 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New Furniture*, in cartons, from Chicago, Ill., to points in Illinois, Indiana, Wisconsin, and Michigan. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 133181, filed September 18, 1968. Applicant: CARLOS M. HOPE ELECTRIC CO., INC., 2352 Northeast 18 Terrace, Gainesville, Fla. 32601. Applicant's representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, Fla. 32207. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Telephone equipment, materials and supplies*, between Gainesville, Fla., and points in Alachua, Union, Columbia, Gilchrist, Levy, Lafayette, Dixie, Suwannee, Taylor, Madison, Putnam, Bradford, Marion, Hamilton, Clay, and Jefferson Counties, Fla., under contract with Western Electric Co., Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Jacksonville, Fla., Winston-Salem, or Charlotte, N.C.

No. MC 133190, filed September 23, 1968. Applicant: MORGANTOWN TRUCKING CO., INCORPORATED, Post Office Box 72, Morgantown, Ky: Applicant's representative: James Clarence Evans, Third National Bank Building, Nashville, Tenn. 37219. 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 those requiring special equipment, between Nashville, Tenn., and Morgantown, Ky., serving those intermediate points which are located in Butler County, Ky., (1) from Nashville over U.S. Highway 41 to Springfield, Tenn., thence over U.S. Highway 431 to Russellville, Ky., thence over Kentucky Highway 79 to its junction with U.S. Highway 231, thence over U.S. Highway 231 to Morgantown, and return over the same route, and (2) from Nashville over U.S. Highway 31W to Bowling Green, Ky., thence over U.S. Highway 231 to Morgantown and return over the same route. NOTE: If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn.

No. MC 133193, filed September 25, 1968. Applicant: JAMES ANDREWS, doing business as JAMES ANDREWS TRUCKING CO., 550 Shepherd Avenue, Brooklyn, N.Y. 11208. Applicant's representative: John L. Alfano, 2 West 45th Street, New York, N.Y. 10036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel*, loose and in containers, from Inwood, N.Y., to New York, N.Y., and points in Bergen, Essex, Hudson, Passaic, and Union Counties, N.J., under contract with Gray Togs, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

MOTOR CARRIERS OF PASSENGERS

No. MC 50959 (Sub-No. 22), filed September 13, 1968. Applicant: THE CINCINATI, NEWPORT AND COVINGTON TRANSPORTATION COMPANY, a corporation, 11th and Lowell Streets, Newport, Ky. 41071. Applicant's representative: John J. O'Hara, 203 Scott Street, Covington, Ky. 41011. Authority sought to operate as a *common carrier*, by motor vehicle, over regular and irregular routes, transporting: *Passengers and their baggage and express and newspapers* in the same vehicle with passengers. Regular route: Between Cincinnati, Ohio, and Frontier Worlds, Boone County, Ky., from Cincinnati over Interstate Highway 75 to a point near the intersection of Interstate Highways 75 and 71, thence over local access roads to Frontier Worlds, and return over the same route serving all intermediate points. Irregular route: *Passengers and their baggage and express and newspapers*, in the same vehicle with passengers, in special and charter operations, beginning and ending at authorized points on the regular routes of the applicant as authorized in MC 50959 and Subs thereunder, located in Kenton, Campbell, and Boone Counties, Ky., and at Cincinnati, Ohio, and extending to and including the site of Frontier Worlds near the junction of Interstate Highways 75 and 71 in Boone County, Ky. NOTE: If a hearing is deemed necessary, applicant requests it be held at Covington, Ky., or Cincinnati, Ohio.

No. MC 133171, filed September 9, 1968. Applicant: POTASH MINES TRANSPORTATION COMPANY, INC., 302 South Canyon, Carlsbad, N. Mex. Applicant's representative: Dick A. Blenden 110½ North Canyon, Carlsbad, N. Mex. 88220. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers, and express* not to exceed 100 pounds in the same vehicle with passengers, between Carlsbad, N. Mex., and the Duval Sulphur and Potash Co. minesite in Culberson County, Tex., from Carlsbad over U.S. Highway 285 approximately 45 miles to Orla, Tex., thence over unnumbered roads approximately 18 miles to Duval Sulphur and Potash Co. minesite in Culberson County, Tex., and return over the same route, serving the intermediate points of Loving and Malaga, N. Mex., and Orla, Tex. NOTE: If a hearing is deemed necessary, applicant requests it be held at Albuquerque, N. Mex.

By the Commission.

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

[F.R. Doc. 68-12268; Filed, Oct. 9, 1968; 8:45 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 7, 1968.

Protects to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days fram the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 41461—*Sodium sulphydrate to points in Alabama.* Filed by Traffic Executive Association-Eastern Railroads, agent (E.R. No. 2922), for interested rail carriers. Rates on sodium sulphydrate, in tank carloads, from Niagara Falls and Suspension Bridge, N.Y., and Natrium, W. Va., to Avondale, Birmingham, Demopolis, and Green Tree, Ala.

Grounds for relief—Market competition.

Tariffs—Supplements 53 and 223 to Traffic Executive Association-Eastern Railroads, agent, tariffs ICC C-611 and C-334, respectively.

FSA No. 41462—*Sugar, beet or cane, from Minnesota and North Dakota to southwestern points.* Filed by Southwestern Freight Bureau, agent (No. B-9117), for interested rail carriers. Rates on sugar, beet or cane, in carloads, from Bingham, East Grand Forks, and Wilds, Minn., and Drayton, N. Dak., to Springdale, Ark., Wichita, Kans., Oklahoma City, Okla., Dallas, Fort Worth, and Garland, Tex.

Grounds for relief—Market competition.

Tariffs—Supplement 157 to Southwestern Freight Bureau, agent, tariff ICC 4645, and 3 other schedules named in the application.

By the Commission.

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

[F.R. Doc. 68-12339; Filed, Oct. 9, 1968; 8:48 a.m.]

[Notice 706]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 7, 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 Part CFR 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 2229 (Sub-No. 147 TA), filed October 1, 1968. Applicant: RED BALL MOTOR FREIGHT, INC., 3177 Irving Boulevard, Post Office Box 47407, Dallas, Tex. 75247. Applicant's representative: Jerry Prestridge (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and commodities which because of size or weight require special equipment), serving the plantsite of Pineville Kraft Corp. near Pineville, La., as an off-route point in connection with carrier's otherwise presently authorized regular route operation, for 180 days. NOTE: Applicant intends to tack with existing authority. Supporting shipper: Pineville Kraft Corp., Post Office Box 870, Pineville, La. 71360. Send protests to: E. K. Willis, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 513 Thomas Building, 1314 Wood Street, Dallas, Tex. 75202.

No. MC 18416 (Sub-No. 14 TA), filed October 2, 1968. Applicant: CLAWGES TRANSFER CO., a corporation, Post Office Box 2158, University Avenue, Morgantown, W. Va. 26505. Applicant's representative: J. A. Bibby, Jr., Suite 504 Security Building, Charleston, W. Va. 25301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Packinghouse products*, between Morgantown, Monongalia County, W. Va., on the one hand, and, on the other, points within a radius of 200 miles of Morgantown, for 180 days. Supporting shipper: Hygrade Food Products Corp., Post Office Drawer 1235, Richmond, Va. 23209. Send protests to: Joseph A. Niggemyer, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 531 Hawley Building, Wheeling, W. Va. 26003.

No. MC 51146 (Sub-No. 108 TA), filed October 3, 1968. Applicant: SCHNEIDER TRANSPORT & STORAGE, INC., 817 McDonald Street, Green Bay, Wis. 54303. Applicant's representative: D. J. Schneider (same address as above). Authority sought to operate a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products; products produced or distributed by manufacturers and converters of paper and paper products*, from Adams, Wis., to points in Minnesota, Iowa, Missouri, Illinois, Ohio, Indiana, Wisconsin, and Michigan, for 180 days. Supporting shipper: Lewis Containers, Inc., Adams, Wis. 53910, E. W. Lewis, President. Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 74695 (Sub-No. 10 TA), filed October 3, 1968. Applicant: SOUTHERN TRUCKING COMPANY, 101 Broad Avenue, Fairview, N.J. 07022. Applicant's representative: Robert B. Pepper, 297 Academy Street, Jersey City, N.Y. 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Industrial gases*, in cylinders, from Morrisville, Pa., to plantsite and warehouse of National Cylinder Gas Co., North Bergen, N.J.; *empty gas cylinders*, from North Bergen, N.J., to Morrisville, Pa., for 150 days. Supporting shipper: National Cylinder Gas, 840 North Michigan Avenue, Chicago, Ill. 60611. Send protests to: District Supervisor Joel Morrows, Interstate Commerce Commission, Bureau of Operations, 970 Broad Street, Newark, N.J. 07102.

No. MC 115379 (Sub-No. 34 TA), filed October 3, 1968. Applicant: JOHN D. BOHR, INC., Post Office Box 217, Annville, Pa. 17003. Applicant's representative: Christain V. Graf, 407 N. Front Street, Harrisburg, Pa. 17101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Poultry meal*, in bulk, from points in Dauphin, Lebanon and Lancaster Counties, Pa., to Battle Creek, Mich., for 180 days. Supporting shippers: By-Products, Inc., Post Office Box 1411, Wilmington, Del. 19899; Ralston Purina Co., Checkerboard Square, St. Louis, Mo. 63199. Send protests to: Robert W. Ritenour, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 218 Central Industrial Building, 100 North Cameron Street, Harrisburg, Pa. 17101.

No. MC 123061 (Sub-No. 45 TA) (Republication), filed September 9, 1968, published FEDERAL REGISTER, issue of September 14, 1968, and republished as corrected this issue. Applicant: LEATHAM BROTHERS, INC., 46 Orange Street, Salt Lake City, Utah 84104. Applicant's representative: Harry D. Pugsley, Suite 400, El Paso Gas Building, 315 East Second South Street, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber mill products*, from points in Clearwater, Idaho, Nezperce, Latah, Lewis, and Boundary Counties, Idaho, to points in Colorado, for 180 days. NOTE: The purpose of this republication is to show the origin points as counties located in Idaho. Supporting shipper: Lumber-Jack Wholesale Building Materials Co., Post Office Box 1376, Englewood, Colo. 80110. Send protests to: John T. Vaughan, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 6201 Federal Building, Salt Lake City, Utah 84111.

No. MC 124004 (Sub-No. 11 TA), filed October 3, 1968. Applicant: RICHARD DAHN, INC., West Mountain Road, Post Office Box 228, Rural Delivery No. 1, Sparta, N.J. 07871. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Quarry products*, from points in Lewis County, N.Y., to Washington, D.C., for 150 days. Supporting shipper: Terrazzo & Marble Supply Co., Inc., 7 Mount Prospect Avenue, Post Office Box 1, Clifton, N.J. 07015. Send protests to: District Supervisor Joel Morrows, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, N.J. 07102.

No. MC 127951 (Sub-No. 6 TA), filed October 2, 1968. Applicant: SOUTHEASTERN CARRIERS, INC., 887 Northeast 145th Street, North Miami, Fla. 33161. Applicant's representative: Bernard C. Pestcoe, Suite 708, City National Bank Building, 25 West Flagler Street, Miami, Fla. 33130. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Carpet underlay and adhesives*, from Barrington, R.I., Fall River, Mass.; and Saylesville, R.I., to points in Florida; (2) *carpeting*, from Edgemore, Del., and Hightstown, N.J., to points in Florida, for 180 days. Supporting shipper: Northern Distributors, Inc., 2400 Northwest 75th Street, Miami, Fla. 33147. Send protests to: District Supervisor Joseph B. Teichert, Bureau of Operations, Interstate Commerce Commission, Room 1226, 51 Southwest First Avenue, Miami, Fla. 33130.

No. MC 133163 (Sub-No. 1 TA), filed October 2, 1968. Applicant: TRIANGLE TRUCKING CO., 620 Seventh Street, San Francisco, Calif. 94103. Applicant's representative: Daniel W. Baker, 405 Montgomery Street, San Francisco, Calif. 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture*, crated and uncrated, and *furniture parts*, from San Francisco, Calif., to points in Sonoma, Napa Yolo, Sacramento, San Joaquin, Stanislaus, Merced, San Benito, Monterey, Santa Cruz, Santa Clara, San Mateo, San Francisco, Marin, Solano, Contra Costa, and Alameda Counties, Calif., and return movements of *returned or damaged shipments* of said commodities from the above-specified destination points to San Francisco, for 150 days. Supporting shippers: There are approximately 23 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: District Supervisor Claud W. Reeves, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94102.

No. MC 133199 TA, filed October 2, 1968. Applicant: RAYMOND BARTLESON, doing business as COLORADO CONTRACT CARRIER, 1230 Seventh Street, Denver, Colo. 80204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Pickles, and peppers* in jars, drums, and cans, from Denver and Fort Collins, Colo., to points in Oklahoma, Kansas, Texas, and New Mexico; (2) *salt* for processing pickles and peppers, from Lyons and Hutchinson, Kans., to Fort Collins and Denver, Colo.; (3) *sugar* for processing pickles and peppers, from Hereford and Amarillo, Tex., to Denver and Fort Collins, Colo.; (4) *glass jars* for pickles and peppers, from Ada, Muskogee, San Springs, and Okmulgee, Okla., and Waco, Tev., to Denver and Fort Collins, Colo.; (5) *pickles, and*

peppers, in jars, from Albuquerque, N. Mex., to Denver, Colo., origins in Denver, Fort Collins, Colo., and Albuquerque, N. Mex., and destinations in Denver and Fort Collins, Colo., and Albuquerque, N. Mex., are the plantsites of Dreher Pickle Co. and C & S Packing Co., a wholly owned subsidiary of Dreher Pickle Co., for 180 days. Supporting shipper: Dreher Pickle Co., 860 Navajo Street, Denver, Colo. 80204. Send protests to: District Supervisor Herbert C. Ruoff, Interstate Commerce Commission, Bureau of Operations, 2022 Federal Building, Denver, Colo. 80202.

By the Commission.

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

[F.R. Doc. 68-12340; Filed, Oct. 9, 1968; 8:48 a.m.]

[Notice 224]

MOTOR CARRIER TRANSFER PROCEEDINGS

OCTOBER 7, 1968.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), 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-70755. By order of October 2, 1968, the Transfer Board approved the transfer to New Truck Lines, Inc., Perry, Fla., of that portion of the operating rights in certificate No. MC-109430 issued January 23, 1968, to Equipment Transport, Inc., West Columbia, S.C., authorizing the transportation of heavy machinery which requires special equipment, between points in that part of Florida between the Suwannee and Apalachicola Rivers, on the one hand, and, on the other, points in Alabama, Georgia, and South Carolina. Henry P. Willimon, Post Office Box 1075, Greenville, S.C. 29602; attorney for applicants.

No. MC-FC-70789. By order of September 30, 1968, the Transfer Board approved the transfer to C.A.T., Inc., Taylorsville, Calif., of the operating rights in certificate No. MC-123505 issued October 12, 1962, to Robert N. Cole, doing business as R. N. Cole Trucking, Quincy, Calif., authorizing the transportation of construction, excavating, and logging machinery, and equipment and parts, attachments, and accessories therefor, when moving therewith, between points in Plumas County, Calif., and points in Lassen County, Calif., on and south of an east-west line drawn through Ravendale and Halls Flat, Calif., restricted to shipments having a prior or subsequent movement by rail; and between points in Plumas and Lassen Counties, Calif., on the one hand, and, on the other, Reno, Nev. Handler, Baker and Greene, 405 Montgomery Street, Suite 1401, San Francisco, Calif. 94104; attorney for applicants.

No. MC-FC-70806. By order of September 30, 1968, the Transfer Board approved the transfer to Air Import Delivery, Inc., Boston, Mass., of the certificate of registration in No. MC-99855 (Sub-No. 1) issued January 21, 1964, to Syl's Delivery, Inc., Cambridge, Mass., evidencing a right to engage in transportation in interstate or foreign commerce corresponding in scope to the grant of authority in certificate No. 6104 dated July 30, 1959, issued by the Massachusetts Department of Public Utilities. Francis E. Barrett, Jr., 536 Granite Street, Braintree, Mass. 02184; attorney for applicants.

No. MC-FC-70809. By order of September 30, 1968, the Transfer Board approved the transfer to Cavanagh-Huffman Travel Center, Inc., St. Louis, Mo., of the license in No. MC-12504 issued April 14, 1966, to American Sightseeing of St. Louis, Inc., St. Louis, Mo., authorizing the holder to engage in operations as a broker in connection with the transportation of passengers moving in round-trip all-expense tours, beginning and ending at St. Louis, Mo., or at points within 50 miles thereof, and extending to all points in the United States, except Alaska and Hawaii. B. W. LaTourette, Jr., 611 Olive Street, St. Louis, Mo. 63101; attorney for applicants.

No. MC-FC-70815. By order of September 30, 1968, the Transfer Board approved the transfer to Carl P. Blackford, Des Moines, Iowa, of certificate No. MC-113460 (Sub-No. 1), issued August 21, 1956, to Iowa-Illinois Motor Express, Inc., Des Moines, Iowa, authorizing the transportation of passengers moving in round-(seasonal), from Des Moines, Iowa, to Chicago, Ill.; malt beverages, from St. Paul and Minneapolis, Minn., Chicago, Ill., Milwaukee, Wis., and Omaha, Nebr., to Des Moines, Iowa; from Minneapolis and St. Paul, Minn., to Marshalltown, Iowa; from Kansas City, Mo., to Des Moines, Iowa; carbonated beverages and noncarbonated fruit beverages, from Shakopee, Minn., to Des Moines and Marshalltown, Iowa. Richard A. Miller, 212 Equitable Building, Des Moines, Iowa 50309; attorney for applicants.

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

[F.R. Doc. 68-12341; Filed, Oct. 9, 1968; 8:48 a.m.]

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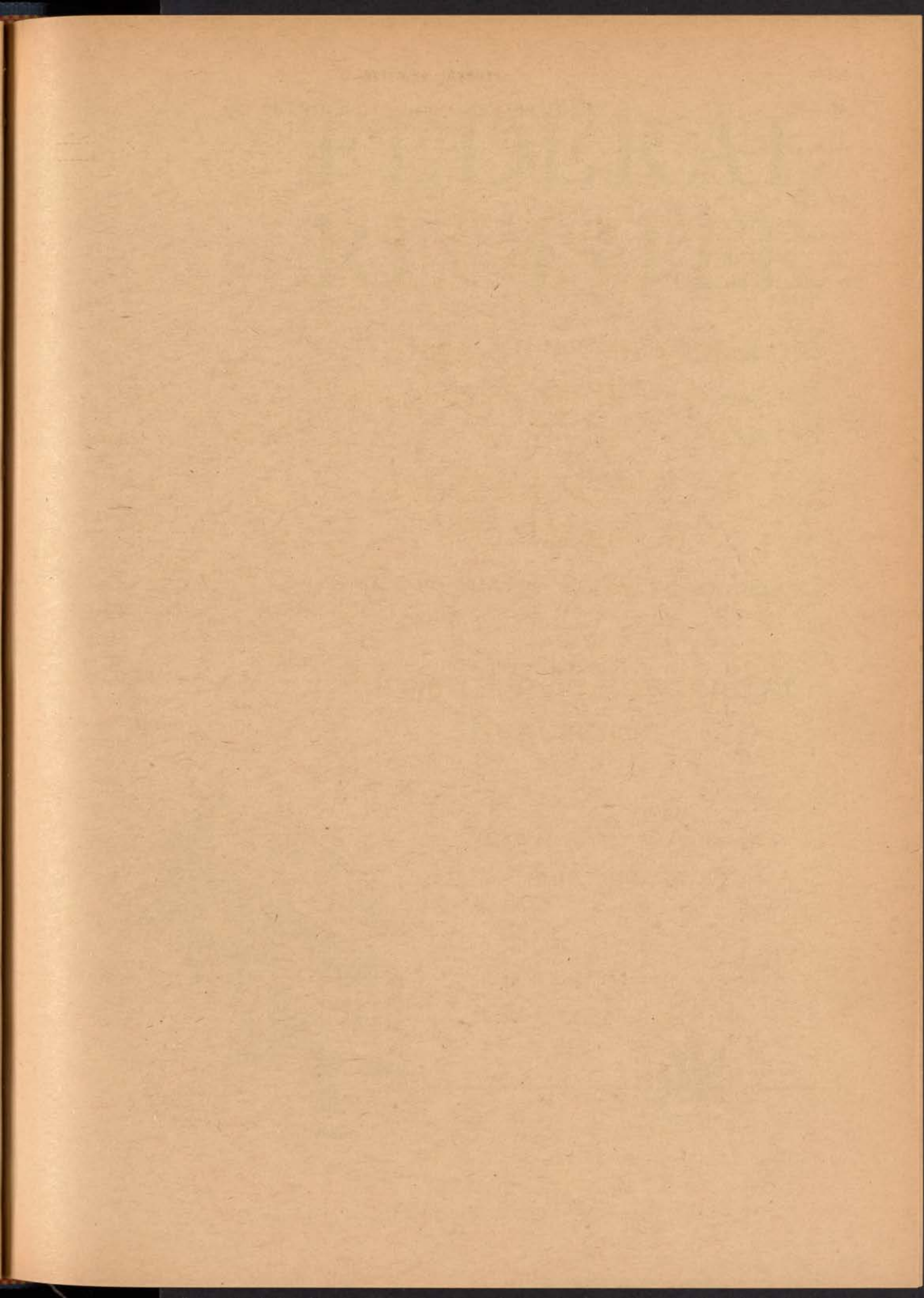

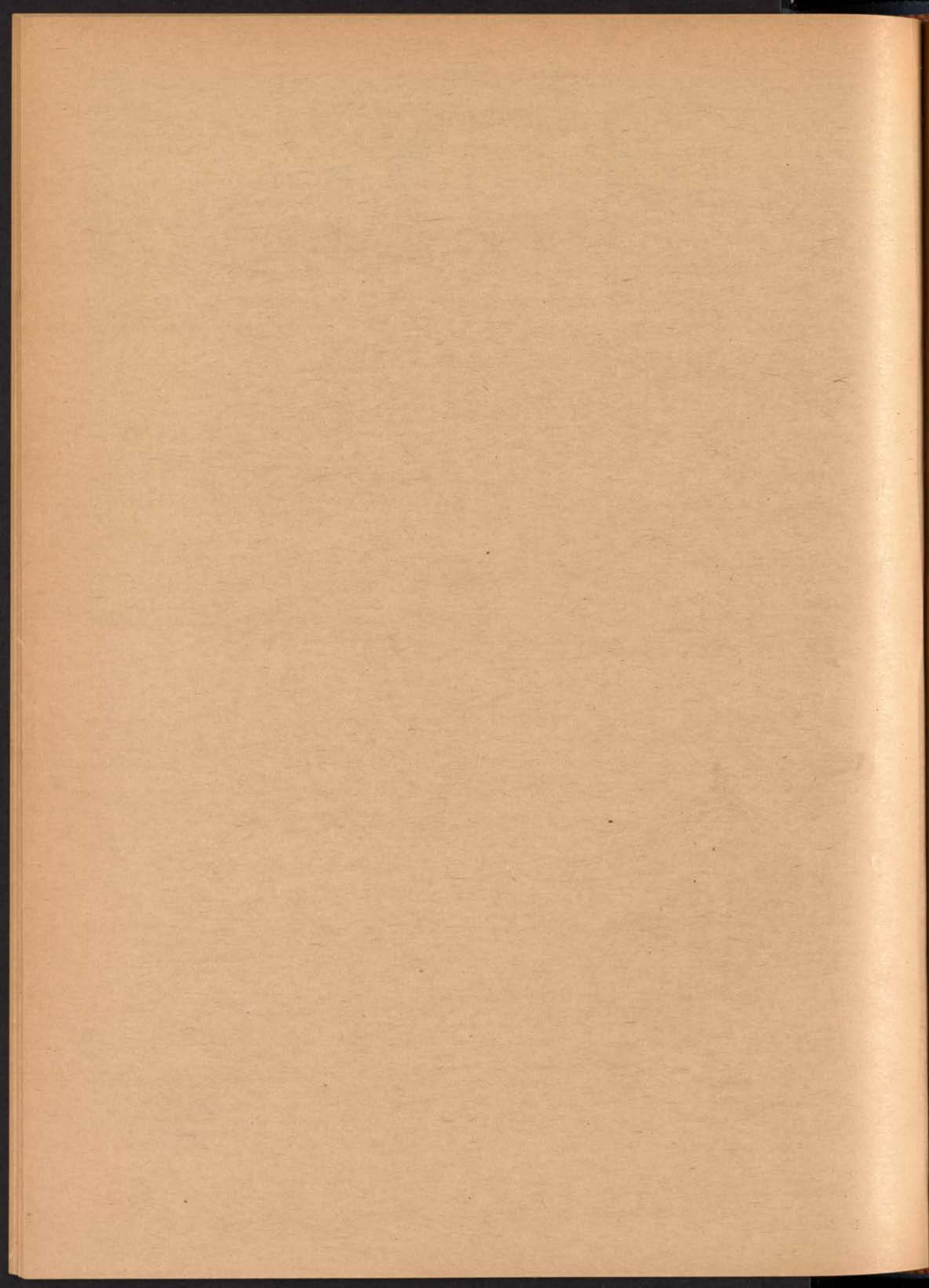

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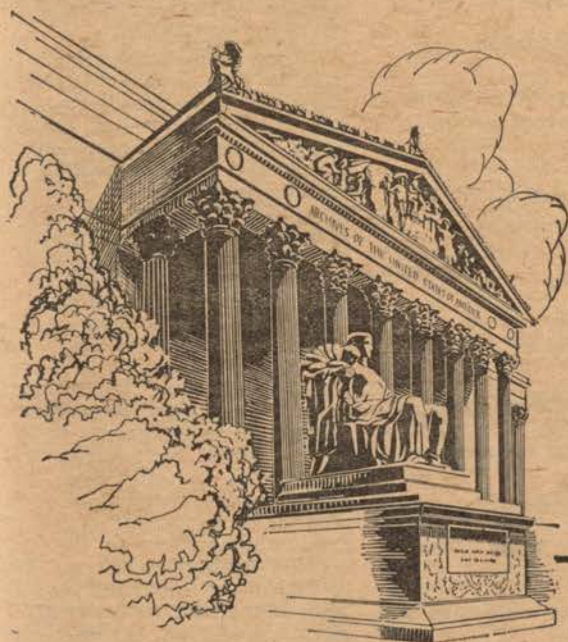
PART II

DEPARTMENT OF COMMERCE

Office of Foreign Direct Investments

Foreign Direct Investment Regulations



Interpretative Analyses and Statements

Title 15—COMMERCE AND FOREIGN TRADE

Chapter X—Office of Foreign Direct Investments, Department of Commerce

[General Bulletin No. 1]

PART 1000—FOREIGN DIRECT INVESTMENT REGULATIONS

Interpretative Analyses and Statements With Respect to the Regulations

The following General Bulletin No. 1 is issued pursuant to the Foreign Direct Investment Regulations.

EDITORIAL NOTE: The Foreign Direct Investment Regulations appear in Title 15, Chapter X, Part 1000 of the Code of Federal Regulations ("CFR"). Thus, all sections of the regulations contained in the CFR are preceded by the designation "1000" (e.g. § 1000.201, etc.). The "1000" designations have, for convenience, been eliminated from the section references contained in this General Bulletin No. 1. The term "part" when used in the regulations means the entire regulations (i.e. Part 1000). References to sections of this Bulletin are preceeded by the designation "B" (e.g., § B201, etc.). The section numbers used in this Bulletin correspond to the section number of the regulations which is discussed in its Bulletin section. References by the Office to matters in this Bulletin will sometimes be abbreviated (e.g.., Gen. Bull. No. 1, § B201).

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Introduction. This General Bulletin No. 1 is issued pursuant to the Foreign Direct Investment Regulations, as amend (the "regulations") (15 CFR Part 1000). It is intended to be the first of a series of general bulletins to be issued by the Office of Foreign Direct Investments ("OFDI" or the "Office") pursuant to the regulations.

During the approximately 9 months that the Foreign Direct Investment Program (the "Program") has been in existence, the Office has promulgated a series of clarifying amendments to the regulations and has issued a number of private interpretative opinions based upon individual requests. The Office has also issued a significant number of specific authorizations for a variety of transactions involving serious hardships or binding commitments entered into prior to January 1, 1968. Some of the specific authorizations (particularly those subject to "mandatory" refinancing conditions) authorized transactions which have subsequently been generally authorized by amendments to the regulations; others have authorized transactions in circumstances such that general authorizations are not a feasible alternative. In view of the extensive clarifying amendments to the regulations, specific authorizations will henceforth be issued less frequently than they have been in the past, and only after the applicant has fully explored alternatives available under the regulations, including foreign borrowings. Should specific authorizations for a particular type of

transaction be issued with a sufficient degree of frequency, the Office will describe the transaction and indicate the conditions on which any such specific authorization will be issued in a general bulletin or other appropriate notice.

General Bulletin No. 1 and subsequent general bulletins to be issued by the Office are designed essentially to provide the public with timely and reliable information as to the Office's current views concerning the interpretation of the regulations. General bulletins shall in many instances elaborate upon or qualify the regulations themselves, the reporting instructions and other publications issued by the Office; in these cases the position stated in the general bulletins, unless subsequently modified or rescinded, may be relied upon by the public. Private interpretative opinions issued by the Office may not be relied upon as a statement of the Office's general position unless the issues raised in a similar factual pattern are published in a general bulletin.

It is contemplated that all general bulletins will be published in the FEDERAL REGISTER. As a general rule, the Office does not deem it practicable or in the public interest to publish general bulletins in proposed form and thus they will ordinarily be published in the first instance in final form. In exceptional situations, however, the Office may publish a bulletin in proposed form to allow public comments, suggestions and objections before publication in final form.

This General Bulletin No. 1 contains a brief explanation of the history, scope and meaning of the regulations as well as a detailed analysis of its major sections (as amended through Aug. 17, 1968): §§ 201 (Prohibitions), 203 (Liquid foreign balances), 304 (Affiliated foreign national), 305 (Direct investor), 306 (Positive and negative direct investment), 312 (Transfers of capital), 313 (Net transfer of capital), 321 (Year; period), 322 (Person within the United States), 323 (International finance subsidiary), 324 (Long-term foreign borrowing), 503 (Positive direct investment not exceeding $200,000), 504 (Authorized positive direct investment in scheduled areas) and 505 (Transfers between affiliated foreign nationals). This Bulletin also describes certain specific transactions with respect to which the Office is prepared to consider favorably applications for a specific authorization, or exemption and the conditions under which authorizations or exemptions will be granted.

General Bulletin No. 2, which will be issued in the near future, will cover Subparts I (Direct and Indirect Interests; Affiliated, Associated and Family Groups; Ownership of Direct Investors; Rules for Reporting), J (Repayment of Borrowings), and K (Direct Investment in Canada), of the regulations.

On January 1, 1968, President Johnson, responding to a growing U.S. balance of payments deficit and severe exchange market pressure on the dollar, announced a series of programs designed to restore confidence in the dollar both here and abroad. While the exchange pressure was touched off by the devaluation of sterling in November 1967, 10 years of continuous U.S. balance of payments deficits averaging almost $2,800,000,000 per year on the liquidity basis and so strained the dollar that its status in recent years as stable world trading investment and reserve currency was already being questioned.

By mid-December 1967, it became clear that existing programs to defend the dollar were inadequate. Further and decisive action was essential: First, to halt the outflow of dollars which during the fourth quarter of 1967 reached the seasonally adjusted annual rate of $7,000,000,000 on the liquidity basis; and second, to achieve a more fundamental and permanent equilibrium in our balance of payments accounts.

In his New Year's Day announcement, the President distinguished between a series of temporary measures designed to produce immediate results and a series of more permanent measures which, while taking time to implement, would gradually correct our balance of payments disequilibrium.

The Foreign Direct Investment Program was designed as one of the temporary measures with a 1968 target to cut back foreign direct investment (net of foreign borrowings) by roughly 30 percent, or $1,000,000,000, from the 1967 level. The Department of Commerce was delegated responsibility to administer the Program. On January 1, the regulations were issued by the Secretary of Commerce (the "Secretary") to implement Executive Order 11387 promulgated by the President. By Department Order 184-A, the Secretary created the Office of Foreign Direct Investments, headed by a Director (the "Director"), to administer the Foreign Direct Investment Program. Other programs announced by the President on January 1 were designed to produce balance of payments savings of $2,000,000,000 in 1968.

Violators of the regulations are subject to criminal penalties and other sanctions, but the effective administration of the Program nevertheless depends to a great extent on the voluntary cooperation of those affected by the regulations.

The regulations basically relate to "direct investment" by a "direct investor" in "affiliated foreign nationals". The Office appreciates that these terms are unfamiliar to the public, and it is therefore one of the principal purposes of General Bulletin No. 1 to furnish guidance as to their scope and meaning.

Generally speaking, an individual or entity described in the regulations as a direct investor (hereinafter referred to as a "DI") is a "person within the United States" who (or which) directly or indirectly owns or acquires a voting interest of 10% or more in a corporation organized under the laws of a foreign country or a profits interest of 10% or more in a partnership organized under the laws of a foreign country or in a "business venture" conducted within a foreign country (see § 305 of the regulations and § B305, infra). A voting or profits interest of less than 10% may, however, be sufficient to constitute a person within the United States a DI if the person is a member of an affiliated, associated or family group and the group as a whole owns or acquires the requisite 10% or greater interest (see Subpart I of the regulations).

The term "person within the United States" includes an individual who resides in the United States or who is a citizen of the United States and has his "center of economic interests" in the United States; it also includes United States corporations, partnerships, trusts, estates and business ventures (see § 322 of the regulations and § B322, infra).

The term "business venture conducted within a foreign country" refers essentially to business operations having a more or less permanent situs in a foreign country such as, for example, overseas sales or manufacturing branches and offices; however, it also includes real estate in a foreign country not purchased principally for personal use and certain transient operations such as overseas construction and mineral exploration or production ventures. Any such foreign corporation, partnership or business venture in which a "person within the United States" owns or acquires a voting or profits interest of 10% or more (or a lesser percentage if the person is a member of an affiliated, associated or family group and the group owns the requisite percentage interest) is referred to in the regulations as an "affiliated foreign national" of such person (hereinafter referred to as an "AFN"). See § 304 of the regulations and § B304, infra. The regulations will not ordinarily affect transactions between a United States person and a foreign national unless the foreign national is (or becomes as a result of any such transaction) an AFN of such United States person. Thus, for example, the regulations do not restrict the purchase of goods (on credit or otherwise) from an unaffiliated foreign supplier or the sale of goods (on credit or otherwise) to an unaffiliated foreign customer.

"Direct investment" is the key term of the regulations. It generally refers to the net change, over the course of a year,[1] in the aggregate debt and equity investment of a DI in all of its AFNs in any of the three "scheduled areas", the direct investment in each scheduled area being calculated separately. These scheduled areas are referred to as Schedules "A," "B," and "C," respectively, and each scheduled area consists of a number of specified countries. The countries in Schedule A include Greece and Finland and the less-developed countries, such as those in Latin America and most nations of Africa. The countries in Schedule B include Japan, the United Kingdom, Australia and the Middle East oil-producing countries. The countries in Schedule C include South Africa, those in continental Western Europe (except Greece and

[1] The term "year" refers to a calendar year, although a DI which has a fiscal year other than a calendar year may apply to the Director to have its compliance with the regulations measured on the basis of the DI's fiscal year (see § 321 of the regulations and § B321, infra).

Finland) and the Communist-bloc countries (see § 319 of the regulations). The Office has published a list of countries assigned to each of the three scheduled areas.[2]

Any net increase over the course of a year[3] in the aggregate debt and equity investment of a DI in all of its AFNs in a particular scheduled area (including any increase resulting from transfers of capital to AFNs and from retained or reinvested earnings of AFNs, but excluding any increase resulting from the investment of long-term foreign borrowing proceedings) is referred to as "positive direct investment" in that scheduled area; conversely, any decrease in such aggregate investment over the course of a year is referred to as "negative direct investment" in that scheduled area (see § 306 of the regulations and § B306(b), infra). Thus the regulations adopt what may be termed an "incremental" investment approach; they do not prohibit any specific transaction or transactions but focus on the net effect of all such transactions during a year on the DI's aggregate debt and equity investments in each scheduled area.

It should be noted that the regulations do not completely prohibit a DI from making positive direct investment in any scheduled area (i.e. from increasing the level of its aggregate debt and equity investment in all of its AFNs in that scheduled area over the course of a year). Rather, they generally permit a DI during any year commencing with 1968 to increase its investment in a scheduled area based on the DI's historical direct investment experience in that scheduled area during the years 1965 and 1966 (commonly referred to as the "base period" years). Thus, the regulations generally authorize a DI, during any year commencing with 1968, to make positive direct investment in Schedule A equal to 110% of the average of positive direct investment, if any, made by the DI in Schedule A during 1965 and 1966. In Schedule B, positive direct investment is generally authorized during any year commencing with 1968 in an amount equal to 65% of the average of positive direct investment, if any, made by the DI in that scheduled area during 1965 and 1966. In other words, if a DI increased its aggregate debt and equity investment in Schedule A over the period extending from January 1, 1965, to December 31, 1966, the DI may, during each year commencing with 1968, increase its aggregate debt and equity investment in Schedule A in an amount computed by multiplying one-half of the aggregate 1965–1966 increase in Schedule A by 110%. The increase in Schedule B is limited to an amount computed by multiplying one-half of the aggregate 1965–1966 increase in Schedule B by 65% (see § 504 (a)(1) and (a)(2) of the regulations and § B504(b), infra).[4]

Although increased investment in Schedule C is also generally authorized during any year commencing with 1968, the annual permitted increase is more limited in nature and amount than the increases permitted in Schedules A and B. Thus, increased investment in Schedule C can ordinarily result only by reinvesting (i.e. retaining) a portion of the DI's share of the earnings of the DI's incorporated Schedule C AFNs (i.e. foreign subsidiaries, as distinguished from unincorporated AFNs such as foreign branches, partnerships and joint ventures) and the amount which can be reinvested annually cannot exceed the lesser of: (1) A percentage of the DI's share of such earnings equal to the percentage of the DI's share in the aggregate earnings of the DI's incorporated Schedule C AFNs during 1964 through 1966 inclusive as was reinvested during those years; or (2) 35% of the average of positive direct investment, if any, made by the DI in Schedule C during 1965 and 1966 (i.e. 35% of (the total increase in the Schedule C investment during 1965 and 1966 divided by 2)) (see § 504(a)(3) of the regulations and § B504(c), infra).

Earnings (losses) of unincorporated AFNs in a scheduled area are treated differently from earnings (losses) of incorporated AFNs in the scheduled area; the former are taken into account in determining the DI's net transfers of capital to the scheduled area, the latter in determining the DI's share in the reinvested earnings of its incorporated AFNs in the scheduled area (see §§ 313(b) and 306(b) of the regulations and §§ B313(c) and B306(c), infra). The different treatment is particularly important with respect to Schedule C where a positive net transfer of capital is generally prohibited and direct investment can ordinarily result only by reinvesting earnings of incorporated AFNs.

The regulations permit the "carry-forward" to 1969 and later years of general authorizations not used in 1968, and the "downstream carryover" in 1968 and any subsequent year of unused general authorizations (i.e. from Schedule C to Schedules A and B and from Schedule B to Schedule A) (see § 504 and § B504, infra).

For DIs with little or no investment experience in 1965–1966, the regulations generally authorize aggregate positive direct investment throughout the world of not more than $200,000, during any year (see § 503 of the regulations and § B503, infra). This authorization is not, however, in addition to the general authorizations provided by § 504 of the regulations; one, but not both, of these sections apply in measuring compliance of a particular DI. Note also that the carry forward to later years applies only to § 504 authorizations and not to the § 503 authorization.

It is important to note that the regulations apply to transfers of capital between a DI and its AFNs and also to transfers between AFNs of a DI which are in different scheduled areas (see § 505 of the regulations and § B505, infra). For example, if an incorporated AFN in France loans $100,000 to an incorporated AFN in the United Kingdom, this is treated under the regulations as a transfer of $100,000 from the French AFN to the DI (an "inflow" from Schedule C) and a transfer of $100,000 from the DI to the United Kingdom AFN (an "outflow" to Schedule B) (see § 505(a)(3) of the regulations and § B505(d), infra). Transfers of capital in 1968 between AFNs may be made either "downstream" (i.e. from AFNs in Schedule C to B or A, or B to A) or "upstream" (from AFNs in Schedule A to B or C, or B to C) to the extent generally authorized by §§ 503 or 504 of the regulations.

It is important to note that the actual situs of funds or property expended in making a transfer of capital is irrelevant under the regulations. For example, a loan by a DI to an incorporated AFN of $100,000 is a transfer of capital even though the loan is made from bank deposits of the DI held in a foreign country and the loan proceeds are deposited by the AFN in a domestic bank account.

Additional general authorizations may from time to time be added to or issued pursuant to the regulations. Specific authorizations to make positive direct investment in a scheduled area in excess of that generally authorized to a DI may also be available in specific instances pursuant to § 801 of the regulations. Instructions pertaining to the preparation of applications for specific authorizations and for private interpretative opinions will be available from the Office upon request.

It should be recognized that, notwithstanding the limitations in §§ 503 and 504 on direct investment in 1968 and subsequent years, the regulations allow a DI to increase its aggregate investment in its AFNs in an unlimited amount during any year commencing with 1968 to the extent that the increase is attributable to investment by the DI in such AFNs of the proceeds of "long-term foreign borrowings." This is the practical effect of the provision which permits a DI to deduct "proceeds of long-term foreign borrowings" invested in or allocated to investments in AFNs in calculating its "net transfer of capital" to the scheduled areas involved under § 313(d)(1) of the regulations (see § 313(d)(1) of the regulations and § B313(e), infra).[5] Long-

[2] See 33 F.R. 6205 (Apr. 3, 1968).

[3] Note, however, that the Director retains the authority, under certain circumstances, to measure compliance with the regulations by any DI on a basis other than an annual basis (see § 201(d) and § B201(d), infra).

[4] Thus, for example if a DI increased its investment in Schedule A by $100,000 in 1965 and $200,000 in 1966, the aggregate increase is $300,000, one-half of that amount is $150,000, and the generally authorized positive direct investment during 1968 is therefore $165,000 (110% of $150,000); if Schedule B were involved, the authorized positive direct investment would be $97,500 (65% of $150,000).

[5] Similarly, investment made during the base period years of 1965–1966 with the proceeds of long-term foreign borrowings are deducted in calculating direct investment during such years. Such deduction of course reduces the amount of positive direct investment authorized under § 504 of the regulations since the authorization is calculated as a percentage of the base period direct investment.

term foreign borrowings are generally borrowings obtained by a DI from foreign nationals (other than AFNs and Canadian persons) which have an original maturity of at least 12 months and which meet certain additional conditions (see §§ 324 and 1106 of the regulations and § B324, infra). Repayment in 1968 or any subsequent year of a long-term foreign borrowing invested in AFNs on or after January 1, 1965, will constitute a transfer of capital under the regulations to the AFNs in which the proceeds of the borrowing are invested at the time of repayment (see § 312(a)(7) of the regulations and § B312(j), infra). The repayment may be generally authorized under the provisions of Subpart J of the regulations (§§ 1001–1003) if the provisions of Subpart J have been complied with by the DI. It should also be noted that, even if a repayment is generally authorized under Subpart J, the amount repaid will reduce the DI's historical (if any) and $200,000 worldwide investment authorizations under §§ 503 and 504 of the regulations in the year of repayment.

In addition to the restrictions on direct investment discussed above, the regulations limit the amount of "liquid foreign balances" (other than "direct investment liquid foreign balances" and "Canadian foreign balances") which a DI may hold as of the end of any month commencing June 30, 1968, to the average end-of-month amounts of the same so held by the DI during 1965 and 1966. Liquid foreign balances generally include deposits in foreign banks and debt instruments of nonaffiliated foreign nationals (wherever such debt instruments are physically located) which have a period of not more than 1 year remaining to maturity when acquired by the DI. Direct investment liquid foreign balances are those liquid foreign balances representing the proceeds of long-term foreign borrowings held by a DI primarily in anticipation of future investment in AFNs. The regulations provide, with certain exceptions, that a DI may not increase its aggregate debt and equity investment in AFNs in any scheduled area during any year pursuant to §§ 503 and 504 (other than by investing proceeds of long-term foreign borrowings and by reinvesting earnings of its incorporated AFNs) if the DI holds direct investment liquid foreign balances at the end of such year (see § 203(d) (1) and (2) of the regulations and § B203 (g) and (h), infra).

The regulations expressly reserve to the Secretary the powers to amend, modify or revoke the regulations without prior notice and to take certain other actions (e.g., §§ 201(d), 404, and 804 of the regulations).

Direct investment experience during 1965 and 1966 (and 1964 for Schedule C) must be reported to the Office on Form FDI-101. Direct investment experience during each calendar quarter of each year commencing with 1968 must be reported to the Office on Form FDI-102 on a cumulative basis and the experience for each full compliance year commencing with 1968 must be reported on Form FDI-102F. These forms, as revised, and the instructions thereto may be obtained upon request from the Office and from the field offices of the U.S. Department of Commerce. The instructions should be consulted with respect to the reporting requirements since they refer to certain exemptions from reporting which may be applicable to certain DIs.

ANALYSIS OF PRINCIPAL SECTIONS

§ B201 Prohibited direct investment in affiliated foreign nationals.

(a) *In general.* Paragraph (a) of § 201 contains the basic prohibitions of the regulations. The prohibitions, however, are not absolute, since positive direct investment prohibited by § 201(a) is, to a limited extent, permitted under general athorizations contained elsewhere in the regulations, such as in §§ 503 or 504, and Subparts J (Repayments of Borrowings) and K (Direct Investment in Canada).

Under subparagraph (1) of § 201(a), a DI is prohibited, during any year commencing with the year 1968, from making positive direct investment in its AFNs in Schedule A or Schedule B. With respect to AFNs of a DI in Schedule C, however, the prohibition of § 201(a) does not relate to positive direct investment, as is the case with Schedule A and Schedule B; rather, the Schedule C prohibition relates separately to the two elements of direct investment (i.e., the net transfer of capital made by a DI during the year to its Schedule C AFNs and DI's share in the reinvested earnings of its incorporated Schedule C AFNs). Thus, under subparagraphs (2) and (3) of paragraph (a), a DI is prohibited, during any year, from making a positive net transfer of capital to its Schedule C AFNs (i.e., from increasing its aggregate debt and equity investment in its Schedule C AFNs other than by investing proceeds of long-term foreign borrowings and by reinvesting (i.e., retaining) earnings of its incorporated Schedule C AFNs) and is also prohibited from reinvesting any portion of its share of the earnings of its incorporated Schedule C AFNs.

It is important to recognize that, since the prohibitions of § 201(a) are framed in terms of positive direct investment or a positive net transfer of capital and reinvested earnings "during any year", they do not prohibit any specific transaction between a DI and an AFN which may be consummated at any point in time during a year even though the transaction may increase the DI's investment in the scheduled area in which such AFN is located. Rather, the provisions of § 201 (a) focus on the net effect of all transactions over the course of an entire year. The term "year" generally refers to a calendar year, although, under certain circumstances, a DI may be permitted to measure its compliance with the regulations on the basis of a fiscal year other than a calendar year (see § B321(b), infra). Note, however, that the regulations require reports on a calendar-quarter basis from all DIs (even where permission to measure compliance on a fiscal year basis has been granted) and that, under § 201(d), the Director has the authority to require a DI to comply with the regulations on a basis other than an annual basis (see § B201(d), infra).

The following examples are illustrative of § 201(a):

Example (1). A U.S. corporation (DI) has a wholly-owned subsidiary in Brazil (AFN). During 1968, DI makes a loan of $300,000 to AFN. The loan does not violate § 201(a)(1) at the time it is made, although the transaction will be taken into account in determining the amount of direct investment made by DI in all of its AFNs in Schedule A over the course of the entire year.

Example (2). During 1968, a U.S. corporation (DI) purchases all of the stock of a United Kingdom corporation (X) from a United Kingdom resident for $1,000,000. As a result of the transaction, X becomes an AFN of DI. The acquisition does not violate § 201 (a)(1) at the time it is made, although it will be taken into account in determining the amount of direct investment made by DI in all of its AFNs in Schedule B over the course of the entire year.

Example (3). Same facts as in Example (2), except that the corporation whose stock is acquired is a French corporation. The acquisition does not violate § 201(a)(2) at the time it is made, although it will be taken into account in determining the amount of the net transfer of capital made by DI to all of its AFNs in Schedule C over the course of the entire year.

Example (4). A U.S. corporation (DI) is authorized under § 504(a)(1) to make positive direct investment of $1,000,000 in its Schedule A AFNs during 1968. Between January 1, 1968 and June 30, 1968, DI makes positive direct investment in its Schedule A AFNs of $1,200,000. Such positive direct investment is not prohibited by § 201(a)(1).

Example (5). Same facts as in Example (4) except that DI's positive direct investment in its Schedule A AFNs from January 1, 1968 through December 31, 1968, is $1,200,000. DI has made positive direct investment prohibited by § 201(a)(1) which is not generally authorized by § 504(a)(1) since, as of December 31, 1968, positive direct investment by the DI exceeds the $1,000,000 authorized for the entire year.

The distinction drawn in § 201(a) between Schedule A and Schedule B countries, on the one hand, and Schedule C countries, on the other, must also be recognized in determining compliance with the regulations during any year. As indicated above, subparagraph (1) of § 201 (a) prohibits positive direct investment in AFNs in Schedule A or B countries during any year, while subparagraphs (2) and (3) of paragraph (a) prohibit a DI from making a positive net transfer of capital to its Schedule C AFNs during any year and also prohibit a DI from reinvesting any portion of its share in the earnings of its incorporated Schedule C AFNs during the year. The practical effect of this distinction (assuming no positive direct investment was authorized to a DI by § 503 or 504 or elsewhere in the regulations) is that § 201(a) does not prohibit the DI from making a positive net transfer of capital to its AFNs in Schedule A or B during any year (i.e., from making transfers of capital to these AFNs exceeding in aggregate value the transfers the DI receives from the AFNs) if the incorporated AFNs in the scheduled area had "negative reinvested earnings" during that year equal to or exceeding the amount of the positive net

transfer of capital (i.e., the sum of the losses incurred and dividends paid by these incorporated AFNs exceeded the earnings of these incorporated AFNs by an amount equal to or greater than the amount of the positive net transfer of capital). Conversely, § 201(a) would not prohibit the DI from reinvesting earnings of its incorporated AFNs in Schedule A or B during any year if the DI made a "negative net transfer of capital" to the scheduled area during that year equal to or exceeding the amount of reinvested earnings (i.e., the transfers of capital to the DI have an aggregate value exceeding the aggregate value of the transfers of capital from the DI by an amount equal to or exceeding the amount of reinvested earnings of incorporated AFNs). See § B306 (d), infra, with respect to the computation of reinvested earnings and § B313, infra, with respect to the computation of net transfers of capital.

In Schedule C countries, however, the offsetting of negative reinvested earnings of incorporated AFNs against a positive net transfer of capital, or the offsetting of a negative net transfer of capital against reinvested earnings of incorporated AFNs, is generally not permitted (see, however, § 504(c)(1) of the regulations relating to the payment of "excess dividends"). Rather, a positive net transfer of capital (which includes, among other things, unremitted branch profits) is prohibited without regard to negative reinvested earnings of incorporated AFNs and the reinvestment of earnings of incorporated AFNs are prohibited without regard to a negative net transfer of capital.

The following examples illustrate the different treatment afforded to Schedule A and B countries, on the one hand, and Schedule C countries on the other:

Example (6). During 1968, a U.S. corporation (DI) makes transfers of capital to its AFNs in Schedule A which aggregate $2,000,000 while such AFNs make transfers of capital to DI which aggregate $1,000,000; thus (assuming long-term foreign borrowing proceeds were not employed by DI to make the transfers to its AFNs), DI has made a positive net transfer of capital of $1,000,000 to its AFNs in Schedule A during 1968 (i.e., $2,000,000 minus $1,000,000). Also during 1968, DI's wholly-owned incorporated AFNs in Schedule A have an aggregate (net) loss of $750,000 but nevertheless pay $250,000 in dividends to DI; thus DI's incorporated Schedule A AFNs have negative reinvested earnings of $1,000,000 during 1968. Direct investment by DI in Schedule A during 1968 is zero. Consequently, there has been no positive direct investment in Schedule A during 1968 which is prohibited by § 201 (a)(1).

Example (7). During 1968, a U.S. partnership (DI) makes transfers of capital to its AFNs in Schedule B (without employing proceeds of long-term foreign borrowings) which aggregate $500,000 while such AFNs make transfers of capital to DI which aggregate $1,500,000; thus, DI has made a negative net transfer of capital of $1,000,000 to its AFNs in Schedule B during 1968. DI's wholly-owned incorporated AFNs in Schedule B earn $1,000,000 during 1968, all of which is reinvested. Direct investment by DI in Schedule B during 1968 is zero. Consequently, there has been no positive direct investment in Schedule B during 1968 which is prohibited by § 201(a)(1).

Example (8). Same facts as in Example (6), except that the AFNs involved are in Schedule C countries. The positive net transfer of capital of $1,000,000 is prohibited by § 201(a)(2), notwithstanding that direct investment is zero during 1968.

Example (9). Same facts as in Example (7), except that the AFNs involved are in Schedule C countries. Unless authorized by § 504(a)(3), the reinvested earnings of $1,000,000 are prohibited by § 201(a)(3), notwithstanding that direct investment is zero during 1968.

(b) *Banks and other financial institutions subject to Federal Reserve Foreign Credit Restraint Programs*. As a general rule, the regulations do not apply to the ordinary business activities of banks or nonbank financial institutions which are covered by the Federal Reserve Board Foreign Credit Restraint Program (see § 201(b)(2) of the regulations). Thus, a loan made by such a bank or nonbank financial institution directly to an AFN of a DI is not affected by the OFDI regulations if the loan is counted against the ceiling of the bank or is a "covered asset" of the institution.

If the loan to an AFN is not counted against the ceiling or is not considered a "covered asset," the making of the loan may nevertheless be inconsistent with the Federal Reserve guidelines and the transaction should therefore be cleared in advance with the Federal Reserve Board and OFDI. Rules applicable to certain loans to an AFN, as well as to domestic corporations serving as financing vehicles for direct investment, are contained in letters sent to Foreign Credit Restraint Officers of each of the Federal Reserve Banks by the Board on June 28, 1968.

U.S. financial institutions may be subject to the OFDI regulations when they acquire a U.S. nonfinancial enterprise that has an AFN, notwithstanding that the other foreign investment activities of the nonbank financial institution remain under the Federal Reserve Program.

The following example is illustrative:

Example (10). A nonbank financial institution (X) subject to the Federal Reserve Foreign Credit Restraint Program acquires in 1968 from a "person within the United States" a U.S. corporation (Y) engaged in manufacturing activities which owns all of the stock of an Australian corporation (Z). (Y) was a DI subject to the regulations on January 1, 1968. The acquisition should be reported to the Federal Reserve Board and OFDI. The Federal Reserve Board and OFDI may determine that Y's foreign direct investment transactions should be reported to OFDI and that transactions between Y and Z are subject to the OFDI regulations.

(c) *Transfers to foreign owners*. The regulations do not restrict transfers of capital or distributions of earnings made by persons within the United States to foreign nationals in respect of such foreign nationals' ownership of such U.S. persons (§ 201(c)), so long as the transfer or distribution does not involve an attempt to evade or avoid the regulations by a DI. The following example is illustrative:

Example (11). A U.S. corporation (X) is 50% owned by an Italian corporation (Y). X has no subsidiaries or branches of its own which would be deemed AFNs. Y is publicly owned by foreign nationals. During 1968, Y purchases $500,000 of goods on credit from X and X pays Y a dividend of $100,000; in 1969, X is liquidated and a liquidating dividend is paid to Y. The transactions are not subject to the regulations.

(d) *Period for measuring compliance*. Although compliance with the regulations is, as noted above, generally measured on an annual basis, § 201(d) of the regulations gives the Director the right, in his discretion, to enforce the regulations with respect to any DI on a basis other than an annual basis. In exercising his discretion, the Director may consider, among other things, whether the direct investment by a DI in any scheduled area during any quarter is, or may reasonably be estimated to be, materially in excess of 25% of the amount thereof generally authorized to the DI during the entire year, and whether the transactions resulting in such material excess were in accordance with the customary business practices of the DI. A DI is required to submit a supplemental statement to the Office accompanying the filing of Form FDI-102, the cumulative Quarterly Report, if the positive direct investment during the reporting period exceeds certain percentages (40% for the first quarter, 65% for the first two quarters, and 85% for the first three quarters) of the annual amount generally authorized. (See the specific instructions to line 16a of FDI-102). A DI may elect to treat dividends paid within 60 days after the end of a compliance year as having been paid during such year (see § 306(b) of the regulations and § B306(e), infra), but such election must then be applied on a consistent basis, including the base period years.

The Office recognizes, however, that it may not be feasible in many instances to spread annual positive direct investment (in Schedules A and B) and the annual positive net transfer of capital and reinvested earnings (in Schedule C) authorized to a DI during any year equally over the four quarters of the year, such as, for example, when the entire amount of positive direct investment results from a single acquisition of a foreign company, or is concentrated in a particular quarter or quarters due to the seasonal nature of a DI's business, or results from unexpectedly high earnings of AFNs which customarily pay dividends or otherwise remit profits only at the end of a year. The Office would not ordinarily invoke the provisions of § 201(d) in these cases or in other cases where concentration of investment in a particular quarter or quarters cannot reasonably be avoided. Section 201(d) is designed to prevent the abuse of the general authorizations contained in or issued pursuant to the regulations where the concentration of investment in a particular quarter or quarters is not justified by legitimate business reasons and to provide a basis for prompt administrative action where large outflows early in a year indicate that a serious violation will occur unless prompt

remedial steps are taken. The section is also designed to provide the Director with discretion to deal with companies which temporarily reduce investments at the very end of a year, thereby producing literal compliance with the regulations for that year, when the reduction is compensated for by a large investment in the beginning of the following year. Except in cases of apparent flagrant disregard of the objectives of the Program, the Office presently intends to notify DIs and, before invoking the provisions of § 201(d), weigh the justifications of a DI for direct investment in any quarter materially in excess of 25% of the amount generally authorized on an annual basis. The Office presently intends to apply the administrative provisions of § 201(d) prospectively (i.e., to direct investment made subsequent to any notice issued by the Office).

The following examples illustrate the provisions of § 201(d):

Example (12). A U.S. corporation (DI) is generally authorized to make positive direct investment of $1,000,000 in Schedule A countries during 1968. A large part of DI's business consists of export sales to its AFNs in Schedule A. Due to the seasonal nature of DI's business, most of the merchandise which it sells to its Schedule A AFNs is shipped during the first quarter of the year. As a result, the open account indebtedness due from such AFNs increases by $750,000 during the first quarter of 1968. The Office does not intend to invoke the provisions of § 201(d) in this situation.

Example (13). A U.S. resident (DI) is generally authorized under § 504(a)(2) to make positive direct investment of $500,000 in Schedule B countries during 1968. From January 1, 1968, through June 30, 1968, DI makes positive direct investment of $450,000 in Schedule B, $350,000 of this resulting from DI's purchase of all of the stock of a United Kingdom corporation from a foreign national. The Office does not intend to invoke the provisions of § 201(d) in this situation.

Example (14). A U.S. corporation (DI) has three wholly-owned subsidiaries in Schedule C countries and is generally authorized to reinvest $1,000,000 of the earnings of these AFNs during 1968. The AFNs customarily pay dividends to the DI in December of each year. The AFNs have unexpectedly large earnings during the first 6 months of 1968, as a result of which DI's reinvested earnings in these AFNs amounts to $1,500,000 for the first 6 months of 1968. The Office does not intend to invoke the provisions of § 201(d) in this situation.

Example (15). A U.S. corporation (DI) has three wholly-owned subsidiaries in Schedule A and is generally authorized to make positive direct investment of $2,000,000 in Schedule A during 1968. During the first three quarters of 1968, DI's positive direct investment in Schedule A amounts to $10,000,000, but the amount is reduced to $2,000,000 by the end of 1968 by virtue of loans made by the AFNs to DI. In January 1969, DI repays the loans from its Schedule A AFNs in an aggregate of $8,000,000. During the first three quarters of 1965, 1966, and 1967, respectively, DI's positive direct investment in Schedule A did not exceed $1,000,000 and there was no change of circumstances during 1968 to justify the excess positive direct investment during the first three quarters of 1968. The Office may invoke the provisions of § 201(d) in this situation.

§ B 203 Liquid foreign balances.

(a) *In general.* Section 203(c) of the regulations requires a DI to limit the amount of "liquid foreign balances" (as defined in § 203(a)(2)), other than "direct investment liquid foreign balances" and "Canadian foreign balances," held by such DI as of the end of any month commencing June 30, 1968, to the average end-of-month amounts of the same so held by the DI during 1965 and 1966. "Direct investment liquid foreign balances" are defined in paragraph (a)(3) of § 203 while "Canadian foreign balances" are defined in § 1105(a). It should be kept in mind, however, that, even if a DI is permitted to retain a certain amount of liquid foreign balances, investments of these funds in AFNs are subject to the same restrictions on positive direct investment as are investments of U.S. funds.

Section 203(d)(1) of the regulations provides that a DI may not make any positive net transfer of capital to its AFNs in any scheduled area during any year if the DI holds direct investment liquid foreign balances at the end of such year.

An exception to the requirements of § 203(c) is provided in paragraph (e)(1) of § 203. Exceptions to the provisions of § 203(d)(1) are provided in paragraphs (d)(2) and (e)(2) of § 203.

(b) *Foreign balances.* The term "foreign balances" is defined in § 203(a)(1) to include:

(1) Money on deposit in a foreign bank (including certificates of deposit and fixed interest deposits of such banks);

(2) Negotiable instruments, nonnegotiable instruments acquired after June 30, 1968 and commercial paper which are issued by nonaffiliated foreign nationals (other than those acquired as a result of exports by the DI of goods and services from the United States); and

(3) Securities issued or guaranteed by a foreign country.

The phrase "money on deposit in a foreign bank" includes all bank deposits, whether interest-bearing or not, maintained with a "foreign bank" as defined in § 317(b) of the regulations.

The term "negotiable instruments," "nonnegotiable instruments," "commercial paper" and "securities," includes notes, bonds, debentures, drafts, bills of exchange or other evidences of indebtedness; the physical location of such securities is immaterial in determining whether the securities are "foreign balances." Foreign balances do not include shares of stock of a corporation or other equity interests.

The term "securities issued or guaranteed by a foreign country" is limited to securities issued or guaranteed by governmental units of a foreign country, i.e., the national government, states, cities, municipalities, counties, cantons, provinces, and the like.

Items such as accounts receivable (not evidenced by any note or security), silver bullion, precious metals, or jewels, commodities futures contracts, and currency futures contracts are not considered foreign balances.

(c) *Liquid foreign balances.* The term "liquid foreign balances" is defined in § 203(a)(2) of the regulations to mean "foreign balances" other than:

(1) Negotiable instruments, nonnegotiable instruments, commercial paper and securities which were acquired on or before June 30, 1968, and which are not redeemable at the option of the DI and are not transferable and readily marketable;

(2) Bank deposits, negotiable instruments, nonnegotiable instruments, foreign government securities and commercial paper which have a period of more than 1 year remaining to maturity when acquired by the DI and which are not redeemable in full at the option of the DI within a period of 1 year after such acquisition;

(3) Foreign balances which are subject to restrictions of the government of a foreign country on liquidation and transfer from such country; and

(4) Foreign balances which have been pledged or hypothecated by the DI to secure a borrowing by it or by its AFN.

The term "liquid foreign balances" includes liquid foreign balances maintained by individuals who are DIs, whether residing in the United States or abroad.

Example (1). An individual (X) who is a "person within the United States" owns a substantial apartment house complex in France. As a result, X is a DI and the apartment house complex in his AFN. X also owns a chalet in France which he purchased principally for his own personal use although he and his family reside there only from June through August during every year; during the remainder of the year, X and his family reside in the United States and the chalet is rented on a month-to-month basis to others. The chalet is not an AFN of X. X maintains two checking accounts with French banks. The funds in one account (account #1), consisting principally of the income earned from the apartment house complex, are needed and utilized to pay the operating expenses of the apartment house complex and for repairs and improvements to this property. The funds in the other account (account #2) are utilized to pay the operating expenses of the chalet and for repairs and improvements to this property; they are also used to pay X's personal expenses when he resides in France. The funds in account #1 are not liquid foreign balances of X as they are not unrelated to the business needs of X's AFN (i.e., the apartment house complex) (see § B203(d), *infra*); the funds in account #2 are liquid foreign balances of X.

A debt instrument is "not transferable and readily marketable" if it cannot reasonably be sold at a price substantially equal to its cost to the DI (adjusted to take into account prevailing interest rates) or if the sale of the instrument would constitute a breach of any obligation of the DI to any party to the instrument.

The following examples illustrate this concept:

Example (2). On April 15, 1968, DI lends $100,000 to a nonaffiliated foreign corporation and receives in exchange a 9-month promissory note of the foreign corporation

bearing interest at the prevailing market rate. As of August 30, 1968, the note is not readily saleable for more than $90,000. The note is not readily marketable and is therefore not a liquid foreign balance as of August 30, 1968.

Example (3). Same facts as in Example (2), except that the note specifically provides that it is nonnegotiable and nontransferable prior to maturity. The note is not transferable nor readily marketable and is therefore not a liquid foreign balance, regardless of the price which DI could realize upon its sale if the restrictions on negotiability and transferability did not exist.

Example (4). Same facts as in Example (3), except that the note is acquired after June 30, 1968. Although the note is neither transferable nor readily marketable, it is nevertheless a liquid foreign balance.

Cash deposited in a foreign bank to "induce" a loan (such as a compensating balance) constitutes a liquid foreign balance. The following examples are illustrative:

Example (5). During 1968, a U.S. corporation (DI) obtains a $200,000, 3-year loan from a foreign bank and immediately invests the proceeds of the loan in an AFN. As a condition to obtaining the loan, DI is required to keep $150,000 on deposit with the foreign bank during the term of the loan, but the deposit is not specifically pledged or hypothecated to secure the loan. The $150,000 is a liquid foreign balance. It should be noted, in addition, that this arrangement may involve a $150,000 transfer of capital to the AFN in addition to the $200,000 transfer of capital resulting from the investment of the loan proceeds (see § 312(a)(9) of the regulations and § B312(1), infra).

Example (6). During 1968, a U.S. corporation (DI) enters into an arrangement with a foreign bank pursuant to which DI deposits $100,000 with the bank in a foreign country and the bank immediately lends $100,000 to an AFN of DI. The $100,000 deposited by DI is a liquid foreign balance. It should be noted, in addition, that this arrangement may involve a $100,000 transfer of capital to AFN (see § 312(a)(9) of the regulations and § B312(1), infra).

Example (7). Same facts as in example (6) except that the $100,000 cash deposit by DI must be maintained until the loan is repaid by AFN; if the loan is not repaid when due, the bank is entitled to satisfy any deficiency by resort to DI's $100,000 cash deposit. The $100,000 cash deposit is considered to have been pledged or hypothecated with the bank and is therefore not a liquid foreign balance. This arrangement, however, may involve a $100,000 transfer of capital to AFN (see § 312(a)(9) of the regulations and § B312(1), infra).

Foreign balances which cannot be withdrawn from a foreign country because of exchange controls or similar restrictions are not liquid foreign balances. The following example illustrates this concept:

Example (8). A U.S. corporation (DI) has $100,000 on deposit in a bank in foreign country, Z. Under the law of country Z, a national of a country other than Z is prohibited from expatriating more than $5,000 in any year. DI has liquid foreign balances in Z of $5,000.

(d) *Foreign balances deemed held by a direct investor.* The provisions of § 203(a)(4) are basically designed to prevent a DI from avoiding compliance with § 203(c) and (d)(1) by permitting another person to hold title to liquid foreign balances of the DI. Subdivision (i) of paragraph (a)(4) applies essentially to the case of liquid foreign balances held in the name of a person who has no real beneficial interest in the balances; subdivision (ii) applies essentially to the case of liquid foreign balances held in the name of a person who has a real beneficial interest in the balances but the balances are not reasonably related to the business needs of such person and the DI is legally entitled to receive the balances (or their cash equivalent) whenever it wishes. Liquid foreign balances are returnable to the DI upon demand without material conditions only if the person holding title to the balances is under a legal obligation (express or implied) to return the balances or their cash equivalent to the DI and such return is not subject to material conditions. Liquid foreign balances are not returnable to the DI upon demand without material conditions merely because the DI controls the person holding title to the balances by virtue of stock ownership; however, liquid foreign balance held by a branch of a DI will generally be deemed returnable to the DI on demand without material conditions.

The following examples illustrate the provisions of § 203(a)(4):

Example (9). A U.S. resident (DI) forms a foreign corporation (X) and transfers all of his liquid foreign balances into the name of X. X does not engage in any business. The liquid foreign balances are deemed to be held by DI under § 203(a)(4)(i).

Example (10). A U.S. resident (DI) enters into an arrangement with a nonaffiliated foreign national (X) pursuant to which X agrees to hold title to DI's liquid foreign balances. X is engaged in a business but is not permitted to use the liquid foreign balances in its business or otherwise. The liquid foreign balances are deemed to be held by DI under § 203(a)(4)(i).

Example (11). A U.S. corporation (DI) has a wholly-owned subsidiary in Italy (AFN) engaged in manufacturing operations. From 1960 through 1967, AFN earned $10,000,000 and, as a result of the earnings, AFN, as of June 30, 1968, has $8,000,000 which is invested in 6-month certificates of deposit of foreign banks. No part of the balances is needed by AFN to meet any of its business requirements. These liquid foreign balances are not deemed to be held by DI, since they are not considered to be returnable to DI upon demand without material conditions.

Example (12). Same facts as in Example (11), except that on June 1, 1968, AFN declared a $500,000 dividend in favor of DI and such dividend became payable on demand on June 15, 1968. $500,000 of the $8,000,000 of liquid foreign balances are deemed to be held by DI as of June 30, 1968. Note also that, since the dividend was not paid when due, it constituted a $500,000 transfer of capital by DI to AFN and that payment of the past due dividend will therefore constitute a transfer of capital from AFN to DI.

Example (13). A U.S. corporation (DI) has a 50% owned subsidiary in France (AFN). In June 1968, DI lends $100,000 to AFN which is repayable on demand. The $100,000 is invested by AFN in a 6-month certificate of deposit of a foreign bank. AFN does not need any part of the $100,000 to meet its business requirements. The certificate of deposit is deemed to be held by DI. Note also that the loan constitutes a transfer of capital from DI to AFN.

Whether liquid foreign balances held by an AFN of a DI are "unrelated to the business needs" of the AFN involves an analysis of all the facts and circumstances of the particular case. In making the factual determination, the nature of the AFN's business and the amounts of liquid foreign balances held by it in the past are relevant factors. As a general rule, liquid foreign balances held by an AFN will not be considered as unrelated to its business needs if they are required by the AFN to pay current operating expenses (including tax, royalty, interest and other bona fide obligations), to pay for reasonably current or planned capital improvements or additions, or as reserves for reasonably anticipated contingencies.

The following examples are illustrative:

Example (14). A U.S. corporation (DI) has a wholly-owned finance subsidiary (OFS) incorporated in Luxemburg. OFS was formed to borrow money abroad and to invest the proceeds in other AFNs of DI. Funds awaiting such investment are invested by OFS on an interim basis in short-term certificates of deposit of foreign banks. Income earned by OFS on its interim and other investments is also invested by OFS on an interim basis in such certificates of deposit. Such liquid foreign balances held by OFS are not unrelated to its business needs and are not treated as liquid foreign balances of DI under § 203(a)(4)(ii). It should be noted, in addition, that the offshore foreign finance subsidiary is not deemed to have been principally formed or availed of to hold title to the balances under § 203(a)(4)(i).

Example (15). A U.S. corporation (DI) has a branch in the United Kingdom (AFN) which is engaged in manufacturing operations. For many years, AFN has maintained working capital of $500,000 in the form of liquid foreign balances. As of June 30, 1968, AFN holds liquid foreign balances of $500,000. Such liquid foreign balances held by AFN are not unrelated to its business needs. Thus, although the $500,000 is deemed returnable to DI upon demand without material conditions because AFN is a branch, the liquid foreign balances are not treated as liquid foreign balances of DI under § 203(a)(4).

Example (16). Same facts as in Example (15) except that, as of June 30, 1968, AFN holds liquid foreign balances of $1,000,000. AFN has recently been expanding its business at a rapid pace and estimates that, for the remainder of 1968 and thereafter, it will have to maintain working capital of at least $1,000,000 to meet its increased commitments. The liquid foreign balances held by AFN are not unrelated to its business needs. They are therefore not treated as liquid foreign balances of DI under § 203(a)(4) without regard to whether they are returnable to DI upon demand without material conditions.

Example (17). A U.S. corporation (DI) has a wholly-owned subsidiary in Mexico (AFN) engaged in manufacturing operations. AFN holds $1,000,000 of liquid foreign balances as of June 30, 1968, of which only $250,000 is required for working capital purposes. However, AFN has bona fide plans to expend the remaining $750,000 in 1968 and 1969 in connection with an addition to its plant. The liquid foreign balances held by AFN are not unrelated to its business needs. They are therefore not treated as liquid foreign balances of DI under § 203(a)(4) without regard to whether they are returnable to DI upon demand without material conditions.

Example (18). A U.S. corporation (DI) has a wholly-owned subsidiary in Germany (AFN) engaged in manufacturing operations. As of June 30, 1968, AFN holds liquid foreign balances of $1,000,000. AFN requires only $250,000 of such $1,000,000 for working capital purposes and has no plans to expend the remaining $750,000 in its business. Rather, AFN intends to lend such $750,000 from time to time to other affiliated foreign nationals of DI on a short term basis. $750,000 of the liquid foreign balances held by AFN are unrelated to its business needs and will be treated as liquid foreign balances of DI under § 203(a)(4)(ii) if they are returnable to DI upon demand without material conditions.

(e) *Valuation of foreign balances.* Negotiable instruments, nonnegotiable instruments, commercial paper and securities constituting foreign balances shall be valued, for purposes of § 203, at fair market value, or, if fair market value is not readily determinable, at the cost of acquisition. In the case of items the prices of which are quoted on a daily basis, the final bid price (or the closing sales price, if available) on the relevant date will be considered the fair market value on such date.

(f) *Reduction of liquid foreign balances (other than Canadian liquid foreign balances and direct investment liquid foreign balances).* Section 203(c) of the regulations requires a DI to limit the amount of liquid foreign balances (other than Canadian foreign balances and direct investment liquid foreign balances) which it holds as of the end of any month commencing June 30, 1968, to the average end-of-month amounts of the same so held by the DI during 1965 and 1966 (i.e., the total of the amounts held on the last day of each month during 1965 and 1966 divided by 24). Canadian foreign balances are defined in § 1105 of the regulations and direct investment liquid foreign balances are defined in § 203(a)(3) of the regulations. Calculations under § 203(c) are to be made on a worldwide, rather than a schedular, basis.

The following examples illustrate the provisions of § 203(c):

Example (19). A U.S. corporation (DI) held liquid foreign balances (other than Canadian foreign balances and direct investment liquid foreign balances) of $200,000 on March 31, 1965, $200,000 on April 30, 1965, $100,000 on May 31, 1965, $400,000 on April 30, 1966, and $300 thousand on May 31, 1966. It held no liquid foreign balances of any kind as of the end of any other month during 1965 or 1966. The amount of liquid foreign balances (other than Canadian liquid foreign balances and direct investment liquid foreign balances) which DI may hold as of the end of any month commencing June 30, 1968, is $50,000 (i.e., $1,200,000 divided by 24). The answer is the same even if DI did not become a direct investor until after 1966.

Example (20). A U.S. resident (DI) did not hold any liquid foreign balances during 1965 or 1966 but, as of June 15, 1968, he has $150,000 on deposit in checking accounts which he maintains with banks in Europe. DI may not (except as provided in § 203(e)(1)) hold any liquid foreign balances (other than Canadian liquid foreign balances and direct investment liquid foreign balances) as of the end of any month commencing June 30, 1968.

Example (21). A U.S. resident (DI) held liquid foreign balances during 1965 and 1966 but all were Canadian foreign balances. DI may not (except as provided in § 203(e)(1)) hold any liquid foreign balances (other than Canadian liquid foreign balances and direct investment liquid foreign balances) as of the end of any month commencing June 30, 1968.

Example (22). Same facts as in Example (20), except that during 1968 DI maintains his bank accounts in Canada. These accounts are not subject to § 203(c) and DI need not reduce them at any time.

A DI may transfer liquid foreign balances from one foreign country to another but the aggregate amount thereof at the end of any month may not exceed the amount permitted under § 203.

(g) *Direct investment liquid foreign balances.* Since direct investment with the proceeds of long-term foreign borrowings does not have an immediate adverse effect on the U.S. balance of payments, the Office expects that DIs which obtain such funds for investment in their AFNs will use the funds for such investment before using other funds or property, even though the use of other funds or property may be generally authorized to the DI under §§ 503 or 504. Accordingly, unless the provisions of § 203(d)(2) or (e)(2) are applicable, neither §§ 503 nor 504 of the regulations authorizes any positive net transfer of capital by a DI to any scheduled area during 1968 and subsequent years if, at the end of any such year, the DI holds any direct investment liquid foreign balances (§ 203(d)(1)). "Direct investment liquid foreign balances" are defined in § 203(a) as liquid foreign balances which represent the proceeds of long-term foreign borrowings by a DI and which are held by the DI primarily in anticipation of making transfers of capital to AFNs of the DI. Income (including capital gains) earned on investments and reinvestments of such proceeds may constitute liquid foreign balances but will not constitute direct investment liquid foreign balances.

The term "long-term foreign borrowing" is defined in § 324 of the regulations (see § B324, infra); the term generally does not include long-term borrowings made from "Canadian persons" (as defined in § 1101(d) of the regulations) (see § 1106 of the regulations). However, proceeds of long-term foreign borrowings made from foreign nationals other than Canadian persons and invested in Canadian foreign balances are considered direct investment liquid balances if such Canadian balances otherwise fall within the definition of direct investment liquid foreign balances set forth in § 203(a)(3).

Example (23). In March 1968, a U.S. corporation (DI), through a wholly-owned Delaware international finance subsidiary, sells $20,000,000 principal amount of guaranteed debentures in Europe, the proceeds of which are to be invested in AFNs of DI. DI's allowable positive direct investment in Schedule A under § 504(a)(1) of the regulations is $3,000,000 and its allowable positive direct investment in Schedule B under § 504(a)(2) of the regulations is $10,000,000. From June 1 through November 30, 1968, DI makes a $2,000,000 positive net transfer of capital to its Schedule A AFNs and an $8,000,000 positive net transfer of capital to its Schedule B AFNs. As of December 31, 1968, $2,000,000 of the proceeds of the 1968 debenture offering is held in short-term time deposits in foreign banks, the remainder being held in bank deposits in the United States. DI does not file a certificate under § 203(d)(2) of the regulations. Neither the $2,000,000 positive net transfer of capital to Schedule A nor the $8,000,000 positive net transfer of capital to Schedule B is authorized under § 504. The result would be the same even if the borrowing was made after the positive net transfers of capital to Schedules A and B.

Example (24). A U.S. corporation (DI) is authorized under § 504(a)(1) to make positive direct investment of $2,000,000 in Schedule A during 1968. In November 1968, DI borrows $3,000,000 from a foreign bank. The loan has a term of 3 years. DI intends to invest the proceeds in a Schedule C AFN in 1969. During 1968, DI makes a positive net transfer of capital of $1,000,000 to its Schedule A AFNs. As of December 31, 1968, all of the proceeds of the $3,000,000 borrowing are invested in short-term foreign government securities which are physically held in the United States. DI does not file a certificate under § 203(d)(2). The $1,000,000 positive net transfer of capital to Schedule A is not authorized under § 504.

Example (25). Between January 1 and September 30, 1968, the branch AFN in Schedule C of a U.S. corporation (DI) increases its net assets by $1,000,000 so that, as of September 30, 1968, DI has made a $1,000,000 positive net transfer of capital to Schedule C. As of September 30, 1968, DI has $2,000,000 proceeds of long-term foreign borrowing available for direct investment and such borrowings are then invested in short-term foreign government securities. During the final quarter of 1968, DI allocates (on the books and records maintained by DI under §§ 203(b) and 601 of the regulations) $1,000,000 of its long-term foreign borrowing proceeds to its positive net transfer of capital to Schedule C so that, as of the end of 1968, DI does not have a positive net transfer of capital to Schedule C. DI is not affected by § 203(d)(1). Note, however, that, as of the end of 1968, the amount of long-term foreign borrowing proceeds available to DI for direct investment has been reduced to $1,000,000 because of the allocation made to the prior transfers to Schedule C. Note also that, of the $2,000,000 in liquid foreign balances held by DI as of the end of 1968, only $1,000,000 constitutes direct investment liquid foreign balances; the remaining $1,000,000, since already allocated to transfers of capital, constitutes liquid foreign balances subject to the reduction provisions of § 203(c).

Section 203(d)(1) does not prohibit positive net transfers of capital made pursuant to general authorizations other than those set forth in §§ 503 and 504 of the regulations.

Example (26). Same facts as in Example (24), except that the only positive net transfer of capital made by DI during 1968 is a positive net transfer of capital of $1,000,000 to its Canadian AFNs. The positive net transfer of capital is authorized by § 1102 of the regulations and is not affected by § 203(d)(1).

Example (27). Same facts as in Example (24), except that the only positive net transfer of capital made by DI during 1968 involved repayment of a $1,000,000 long-term foreign borrowing pursuant to Subpart J of the regulations. The positive net transfer of capital is authorized by § 1002 of the regulations and is not affected by § 203(d)(1).

Under § 203(d)(2) of the regulations, a DI affected by the provisions of § 203(d)(1) during any year may avoid the prohibitions of the latter section by delivering to OFDI a certificate which:

(1) States the amount of direct investment liquid foreign balances held by the DI as of the end of such year;

(2) Certifies that the DI, had it expended such foreign balances or the proceeds thereof in making the positive net transfers of capital (if any) actually made by the DI during such year, or had it liquidated such foreign balances and returned the proceeds thereof to the United States, would have:

(i) Contravened express representations made by the DI to, or restrictions imposed on the DI by, persons from whom the relevant long-term foreign borrowings were obtained; or

(ii) Created a substantial probability of material adverse U.S. or foreign tax consequences to the DI; and

(3) Sets forth in detail all relevant facts in support of the certification made pursuant to (2) above.

Such a certificate must be filed with the Director within 45 days after the end of the year involved. The filing of a certificate which in the opinion of the Office complies with § 203(d)(2), automatically precludes the application of § 203(d)(1) for the year involved. DIs who are uncertain as to whether a certificate will comply with § 203(d)(2) should obtain specific approval of the certificate prior to the end of the year in question.

The term "express representations by the DI," as used in § 203(d)(2), includes representations made in trust indentures, loan agreements, debenture purchase agreements, pledge agreements, deeds of charge, and the like.

(h) *Reallocation of long-term foreign borrowing proceeds.* As a result of § 203(d)(1), a DI which is generally authorized under § 503 or 504 to make positive direct investment in a scheduled area with funds other than long-term foreign borrowing proceeds may be compelled to expend such proceeds in making transfers of capital to AFNs in that scheduled area (or allocate them to such transfers) even though the DI originally intended to extend the proceeds at a later time in a scheduled area in which it was not generally authorized to make positive direct investment. This might altogether preclude the DI from making the investment for which the borrowing was actually intended, even though it would otherwise be permissible for the DI to make such investment with the borrowed funds. This is particularly true if the proceeds of the borrowing were originally earmarked for investment in Schedule C, since a positive net transfer of capital to Schedule C during any year is ordinarily not permitted. Accordingly, if a DI invests long-term foreign borrowing proceeds in a particular scheduled area in 1968 because of the provisions of § 203(d)(1), then § 203(d)(3) of the regulations allows the DI to reallocate the proceeds to transfer of capital which it makes to AFNs in other scheduled areas in 1969 and subsequent years. As a general rule, proceeds of long-term foreign borrowings invested in or allocated to investments in a scheduled area at a time when such investments would be authorized by § 503 or 504 will be deemed to have been expended "because of the provisions of § 203(d)(1)." As with allocations made under § 313(d)(1), reallocations under § 203(d)(3) are made on the books and records maintained by the DI under §§ 203(b) and 601.

The following example illustrates the provisions of § 203(d)(3):

Example (28). During 1968, a U.S. corporation (DI) is generally authorized under § 504 to make positive direct investment of $5,000,000 in Schedule A and positive direct investment of $5,000,000 in Schedule B. On March 1, 1968, DI borrows $10,000,000 from a foreign bank on a long-term basis, the proceeds of which DI intends to invest in Schedule C during 1968 and 1969. Only $3,000,000 of the proceeds are to be invested in Schedule C during 1968 and the remainder of the proceeds are to be invested on an interim basis in short-term certificates of deposit of foreign banks. During 1968, DI makes transfers of capital of $2,000,000 to Schedule A and $2,000,000 to Schedule B. In order to avoid the prohibitions of § 203(d)(1), such transfers are made with the proceeds of the foreign borrowings. As a result, DI holds $3,000,000 of direct investment liquid foreign balances as of December 31, 1968, but has not made a positive net transfer of capital to any scheduled area during that year. In 1969, DI completes its planned $10,000,000 Schedule C investment by using the remaining $3,000,000 of the long-term foreign borrowing proceeds and $4,000,000 from its U.S. funds. DI may, in this case, reallocate the $4,000,000 of long-term foreign borrowing proceeds expended in Schedule A and Schedule B in 1968 to its 1969 investment in Schedule C and may therefore treat the entire $7,000,000 investment in Schedule C during 1969 as having been made with the proceeds of the long-term foreign borrowings. In such event, DI will be deemed to have made a $2,000,000 transfer of capital to Schedule A and a like transfer of capital to Schedule B during 1969; however, because DI did not make any positive net transfer of capital to Schedule A or B during 1968 (due to the use of the long-term foreign borrowing proceeds in making the transfers of capital to Schedule A and B in 1968), the transfers deemed made to Schedules A and B in 1969 would be authorized under the carry-forward provisions of § 504 (b)(1) and (b)(2), assuming no other direct investment was made in those Schedules in 1969. Note also, that, since all of the borrowing proceeds have been invested in or allocated to Schedule C in 1969, repayment of the borrowing will result in a $10,000,000 transfer of capital to Schedule C under § 312 (a)(7).

(i) *Exemptions.* A DI is not subject to the provisions of § 203(c) as of the end of any month if the total foreign balances then held by the DI amounts to $25,000 or less. Similarly, a DI is not subject to the provisions of § 203(d)(1) with respect to any year if the total foreign balances held by the DI at the end of such year amounts to $25,000 or less. DIs should be aware that the exemptions provided by § 203(e)(1) and (e)(2) refer to "foreign balances" and not to "liquid foreign balances." They should also be aware that the exemptions are completely inapplicable if the amount of foreign balances at the relevant time exceeds $25,000.

The following examples illustrate the provisions of § 203(e):

Example (29). On June 30, 1968, a U.S. resident (DI) holds foreign balances of $30,000, only $20,000 of which constitute liquid foreign balances. DI is subject to the provisions of § 203(c) with respect to the entire $20,000 of liquid foreign balances.

Example (30). On December 31, 1968, a U.S. resident holds foreign balances of $100,000, only $25,000 of which constitute liquid foreign balances. Only $20,000 of the liquid foreign balances constitute direct investment liquid foreign balances. DI is subject to the provisions of § 203(d)(1).

§ B304 Affiliated foreign national.

(a) *In general.* The concept of "affiliated foreign national" (AFN) is crucial to the application of the regulations, since the regulations apply only to persons within the United States who are or become "direct investors" (DIs) by virtue of their interests in "AFNs".

As a general rule, any transaction between a person within the United States and any foreign national (as defined in § 302) which does not affect such person's equity or debt investment in an AFN or which does not result in a foreign national becoming an AFN is not subject to the direct investment prohibitions imposed by § 201 of the regulations.

In general, an AFN of a person within the United States is defined in § 304(a)(1) to include the following types of incorporated and unincorporated foreign business operations in which such person owns, directly or indirectly, a 10 percent interest:

(i) A corporation or partnership organized under the laws of a foreign country; such an AFN includes all business ventures conducted by employees or partners of the foreign corporation or partnership on its behalf within the same scheduled area as the country of organization, and also includes business ventures so conducted within different scheduled areas if the business ventures are not themselves regarded as separate AFNs by virtue of the exemptions for certain small or transient operations provided by paragraph (d) of § 304.

(ii) A business venture conducted within a foreign country on behalf of a person within the United States by such person or by employees or partners of such person; and

(iii) A business venture conducted within a foreign country on behalf of a foreign corporation or partnership described in (i), supra, by employees or partners thereof, other than business ventures included as part of such corporation or partnership.

For purposes of applying the foregoing definitions, Canada is deemed to be in a scheduled area other than Schedule B.

(b) *Foreign corporations.* A "foreign corporation" includes any organization or entity incorporated under the laws of a foreign country and any other organization not so incorporated but which is organized under the laws of a foreign country and has all or a substantial part of the legal characteristics commonly attributed to corporations under the laws of the United States (see § 307(b)). Thus, for example, an organization which is not formally incorporated under foreign law but which has transferable interests, which is so organized that the holders of interests in it are not liable for its obligations except to the extent of their contributions or

subscriptions, and which has centralized management and perpetual duration, would be considered a foreign corporation if it were organized pursuant to the laws of a foreign country.

Under § 304(b) of the regulations, a corporation is generally assigned to the scheduled area of the foreign country under whose laws it is organized, regardless of the situs of its operations;[6] however, if the corporation conducts no operations in that scheduled area but merely maintains a required statutory office therein, the Director may, by his own order or upon application of an interested person and based upon all the pertinent facts and circumstances, assign the corporation to a different scheduled area or determine that the corporation is a person within the United States (see § B322(h), infra).

(c) *Foreign partnerships.* A "foreign partnership" generally refers to a formally structured organization which is not considered a corporation but which is organized pursuant to a foreign partnership or similar statute. A "joint venture" will ordinarily be treated as a foreign "business venture," rather than as a partnership, if it is formed to engage in a specific transaction or series of related transactions and is to be liquidated when the transaction or transactions have been completed.[7]

(d) *Foreign business ventures.* The word "business" as used in the term "business venture," encompasses all activities engaged in for profit or which are integrally related to activities engaged in for profit. Thus, for example, the research and development division of a manufacturing corporation is considered to be a "business venture" as are the testing and repair facilities of such corporation.

The term "business venture" generally refers to an operation having a permanent situs in a foreign country or a situs which is to be maintained for an indefinite period. The most common example of a business venture under § 304 (a)(1)(ii) is an overseas sales or manufacturing branch of a DI, whether or not the DI customarily maintains separate books and records reflecting the assets, liabilities, earnings and expenses, etc., attributable or allocable to the branch. The most common example of a foreign business venture under § 304(a)(1)(iii) is a sales or manufacturing branch of an incorporated AFM if the branch is located in a scheduled area other than the scheduled area to which the incorporated AFM is assigned. If the branch were located in the same scheduled area it would not be a separate AFN but would be included as part of the incorporated AFN under § 304(a)(1)(i).

[6] The operations, of course, may be separate AFNs if conducted in different scheduled areas.

[7] Note that a foreign partnership is assigned to the scheduled area of the country under whose laws it is organized whereas a foreign business venture is assigned to the scheduled area where the business is conducted. Note also that the exemptions provided in § 304(d) apply to foreign business ventures but not to foreign partnerships.

In determining whether an overseas operation is a "business venture", and therefore constitutes an AFN under § 304 (a)(1)(ii) and (a)(1)(iii), the concepts embodied in the term "permanent establishment," as used in various conventions for the avoidance of double taxation concluded by the United States and in the Draft Double Taxation Convention on Income and Capital of the Organization for Economic Cooperation and Development ("OECD"), and in § 864(c) of the Internal Revenue Code of 1954, may serve as useful guidelines. In addition, the standards adopted by many courts of the United States in determining whether a corporation is doing business within a particular state for qualification purposes (rather than in determining whether a corporation is subject to service of process within the State) may also serve as useful guidelines.

Thus, for example, a business venture under § 304(a)(1) (ii) and (iii) would include a place of management, a factory, a workshop, an office, a mine, a quarry or other place of extraction of natural resources, and the like.

However, other types of facilities abroad, such as storage areas and display offices, while frequently not considered "permanent establishments" under applicable conventions, may themselves nevertheless be considered "business ventures" for purposes of the regulations.

Ownership of interests in real property abroad (excluding mortgages secured by real property) will also constitute business ventures if held primarily for business purposes (including real property held for appreciation rather than immediate income) rather than for personal, use. Crop or grazing acreage, apartment houses or land held for subdivision, for example, will be considered business ventures for purposes of the regulations; real property abroad, such as a house in the Bahamas purchased by a person within the United States principally for personal use but rented to others for a portion of a year, will be considered as not being held primarily for business purposes.

Contract construction, engineering, oil exploration and similar operations involving a job-site or project office in a foreign country are also business ventures within the meaning of the regulations. Drilling operations on the U.S. continental shelf or geological drilling in the deep ocean over which no nation asserts jurisdiction are deemed to be conducted within the United States. Drilling operations conducted on the continental shelf adjacent to a foreign country are deemed to be conducted in that country.

The term "employee," as used in § 304(a)(1), is not necessarily synonymous with that term as used for Federal income or employment tax purposes, or for social security purposes. An agent working substantially full-time for a person within the United States and having a stock of goods from which orders are filled, or having authority to accept orders or otherwise execute contracts on behalf of his principal within the United States, may be considered an employee for purposes of this section. Further, the lack of authority to conclude contracts may be disregarded if acceptance is merely a ministerial act.

Under § 304(b)(1), an operation which qualifies as a "business venture" under § 304(a)(1) (ii) or (iii) will generally be considered an AFN in the scheduled area in which the business is conducted. A special rule is provided in the case of certain "nonpermanent" or transient business ventures which are conducted sequentially in more than one scheduled area during any year. In that case, the scheduled area in which the business venture is conducted for the greatest period of time during such year shall be deemed the only scheduled area in which such business venture is conducted during such year. Thus, for example, a traveling circus which during 1968 conducts performances for short periods of time in a number of countries in different scheduled areas, but primarily in continental European countries, will be deemed an AFN only in Schedule C during 1968.

(e) *10 percent interest.* The term "10 percent interest", as used in the regulations, refers generally to a 10 percent or greater voting interest in the case of foreign corporation and a 10 percent or greater profits interest in the case of foreign partnerships and business ventures (see §§ 304(b)(2), 901, and 902 of the regulations). However, the Director has the authority, in his discretion, to determine that a person within the United States is a DI in a foreign enterprise if such person does not own or acquire the specific type of interest in the foreign enterprise described in § 304(b)(2) of the regulations but does own or acquire a present or contingent 10 percent or greater interest in the voting securities, capital or earnings of the foreign enterprise. As a general rule, such determination will not be made unless the United States person actually participates in and exercises a controlling influence over the affairs of the foreign enterprise and transfers funds or other property to the foreign enterprise exceeding $200,000 during any year commencing with 1968. Note also, that a person who is merely a creditor of a foreign enterprise (whether secured or otherwise) will not be deemed to have a 10 percent profits interest in a foreign enterprise solely because such person's creditor position results in his receiving all or a substantial portion of the revenues of the foreign enterprise in the form of principal and/or interest payments.

The following examples illustrate the provisions of § 304 (a) and (b):

Example (1). A U.S. corporation (A) owns 10 percent of the outstanding voting stock of a corporation (X) organized under the laws of France. X is an incorporated AFN of A located in Schedule C (see § 304 (a)(1)(i) and (b)(1)). If X were incorporated under the laws of a Schedule A country, X would be an incorporated AFN of A located in Schedule A. If X were incorporated under the laws of a Schedule B country, X would be an incorporated AFN of A located in Schedule B.

Example (2). Same facts as in Example (1) except that X (the French corporation)

has a wholly-owned subsidiary (Y) incorporated under the laws of the United Kingdom and Y has a branch (B) in Canada, the branch constituting a separate AFN. Y and B are each separate AFNs of A located in Schedule B as A has a 10 percent interest in Y and B (i.e., 10 percent multiplied by 100 percent) (see § 304 (a)(1) (i) and (iii), and (b)(1)). Y is an incorporated AFN and B is an unincorporated Canadian AFN. Note that, if B came within the provisions of § 304(d) and was not therefore a separate AFN, it would be considered as part of the incorporated AFN, Y.

Example (3). Same facts as in Example (2) except that X owns only 95 percent of the outstanding voting stock of Y, the remainder being owned by unaffiliated foreign nationals Y and B are not AFNs of A as A's interest in Y and B is only 9.5 percent (i.e., 10 percent multiplied by 95 percent).

Example (4). Same facts as in Example (2) except that X owns only 95 percent of the standing voting stock of X and X owns 80% of the voting stock of Y. Y and B are separate AFNs of A located in Schedule B as A owns a 16 percent interest in Y and B (i.e., 20 percent multiplied by 80 percent) (see § 304 (a)(1) (i) and (iii), and (b)(1)). Y is an incorporated AFN and B is an unincorporated Canadian AFN.

Example (5). Same facts as in Example (3) except that the 5 percent voting stock interest in Y not owned by X is owned directly by A. Y and B are separate AFNs of A located in Schedule B as the aggregate of A's 5 percent and 9.5 percent interests in Y and B is 10 percent or greater (see § 304 (a)(1) (i) and (iii), and (b)(1)). Y is an incorporated Schedule B AFN and B is an unincorporated Canadian AFN.

Example (6). Same facts as in Example (3) except that the 5 percent voting stock interest in Y not owned by X is owned by a wholly-owned subsidiary of A (Z) located in Schedule A. Y and B are separate AFNs of A located in Schedule B as the aggregate of A's 9.5 percent interest in Y and B owned through X and A's 5 percent interest in Y and B owned through Z is 10 percent or greater (see § 304 (a)(1) (i) and (iii), and (b)(1)). Y is an incorporated Schedule B AFN and B is an unincorporated Canadian AFN.

Example (7). Same facts as in Example (1) except that A owns only 9 percent of the outstanding voting stock of X (the French corporation). However, A owns a presently exercisable option to acquire additional voting stock of X which, if actually exercised, would give A ownership of 35% of X's outstanding voting stock. Moreover, a majority of X's directors are designees of A and A has for a number of years actively participated in and exercised a controlling influence over the affairs of X. The Director has the authority to determine that X is an AFN of A but this determination will not be made unless A transfers more than $200,000 in funds or other property to X during any year commencing with the year 1968. (See § 304 (b)(4).)

Example (8). A U.S. corporation (A) owns 10 percent of the outstanding voting stock of a French corporation (X). X has a factory in Argentina, a Latin American sales office in Brazil, a Far Eastern sales office in Japan, a sales office in the United Kingdom and numerous factories and sales offices in continental Europe. The Far Eastern sales office has gross assets of less than $50,000 and therefore comes within the provisions of § 304(d); the other sales offices do not come within the provisions of § 304(d). X is an incorporated AFN of A located in Schedule C and such AFN includes the factories and sales offices in continental Europe and the Far Eastern sales office (see § 304 (a)(1)(i), (b)(1), and (d)(1)). The factory in Argentina and the sales office in Brazil are each separate unincorporated AFNs of A located in Schedule A (see § 304 (a)(1)(iii) and (b)(1)).

Example (9). A French corporation (X) has 200,000 shares of stock outstanding, 100,000 of which are shares of voting stock and 100,000 of which are shares of a nonvoting fixed dividend preferred stock. X has numerous branches in Schedules A and B. For many years, substantially all of the profits of X (including the profits of the branches) have been distributed as dividends to the holders of the preferred stock and no dividends have been paid on the common stock. A United States corporation (A) owns 8,000 shares of X's voting stock and 70,000 shares of its preferred stock; however, A's investment in X has not been accompanied by A's active participation in or control over X's business affairs. X is not an AFN of A. Moreover, although A has for many years received more than 10 percent of the profits of X's Schedule A and B branches, in the form of preferred stock dividends, these branches are also not AFNs of A. As a general rule, therefore, a foreign business venture owned directly by a foreign corporation or partnership is not an AFN of a U.S. person unless the foreign corporation or partnership is an AFN of such U.S. person.

Example (10). An individual (A) who is a person within the United States owns a parcel of 1,000 acres of undeveloped real estate in Brazil all of which is being held by A for investment. Assuming the inapplicability of § 304(d), the real estate is an unincorporated AFN of A located in Schedule A (see § 304 (a)(1)(ii) and (b)(1)).

Example (11). A U.S. manufacturing corporation (A) employs 5 salesmen who travel throughout Europe to solicit orders for A's products. All orders must be accepted by A in the United States. The salesmen operate out of a rented office in France and are all permanent residents of France. The rental and all other expenses of the sales office, including the salaries of the salesmen and other office personnel, are paid by A. Assuming the inapplicability of § 304(d), the sales office operation is an unincorporated AFN of A located in Schedule C (see § 304 (a)(1)(ii) and (b)(1)).

Example (12). A U.S. manufacturing corporation (A) has a factory in Argentina. The factory has its own sales force and the production of the factory is sold throughout Latin America by this sales force. Assuming the inapplicability of § 304(d), the factory and sales operation constitute an unincorporated AFN of A located in Schedule A (see § 304 (a)(1)(ii) and (b)(1)).

Example (13). A U.S. corporation (A) sells its products in continental Europe through independent sales agents in Europe which also sell non-competitive products of many other U.S. corporations. The agents are compensated strictly on a commission basis based on their gross sales of A's products. A also employs salaried salesmen in the United States who periodically travel to Europe to make sales to A's largest European customers. A does not maintain any permanent manufacturing or sales facility in Europe. A does not have an AFN in Schedule C by virtue of the foregoing facts.

Example (14). Same facts as in Example (13) except that, in order to expedite deliveries to its European customers, A rents space in a warehouse in the Netherlands where it maintains a substantial inventory of its products. Orders from A's European customers are filled from the inventory which is periodically replenished by A. The result is the same as in Example (13). Note that the result would be different if A owned the warehouse (assuming the inapplicability of § 304(d)) as in that case the warehouse itself would be an AFN.

Example (15). A U.S. corporation (A) is engaged in rendering management consulting services. Many of its clients are unaffiliated foreign corporations. During the course of a year, A's salaried personnel, all of whom are permanent residents of the United States, travel to A's foreign customers to render consulting services. They typically work at the head offices of the foreign companies for 1 to 2 months at a time. A does not have any AFNs by virtue of the foregoing facts.

Example (16). A U.S. corporation (A) is engaged in the construction business. During the course of a year, A bids on numerous European construction projects and receives contracts on a small fraction thereof. A has a permanent office in France where it employs a variety of personnel whose principal task is to gather information concerning contemplated construction projects and to supervise and coordinate all projects on which A is then working. In January 1968, A receives two contracts to construct factories in Germany and Belgium. Soon thereafter A transfers men and equipment to the project sites. Assuming the inapplicability of § 304(d), each project site is an unincorporated AFN of A as is A's office in France (see § 304 (a)(1)(iii) and (b)(1)). Note that the office in France is an AFN without regard to the opening of the German and Belgian project sites and vice versa.

Example (17). An individual (A) who is a person within the United States is a partner in a partnership (X) organized under the laws of Germany, although he is not actively engaged in X's business. Under the partnership agreement, A is entitled to receive 15 percent of the profits of X. X is an unincorporated AFN of A located in Schedule C (see § 304 (a)(1)(i) and (b)(1)).

Example (18). In 1968, a U.S. corporation (A) obtains a concession from a Middle Eastern Schedule B country to drill for oil within that country. A then enters into a joint venture agreement with two United States and two foreign companies with respect to the exploitation of the concession. Under the agreement, A is to be the principal operator of the concession, and is entitled to receive 25 percent of any ensuing production. The oil exploration venture is an unincorporated AFN of A located in Schedule B (see § 304 (a)(1)(ii) and (b)(1)). Note that the joint venture will also be an unincorporated AFN of the other U.S. corporations and that A and the other U.S. corporations are members of an associated group. (see § 905).

Example (19). A U.S. manufacturing corporation (A) enters into a contract with an individual citizen of Argentina (X) pursuant to which X will be A's exclusive representative in Latin America to solicit orders for A's products. X is not to handle the products of any other company but is to work full-time in soliciting orders for A. X is to be compensated on a commission basis based on the gross sales of A's products attributable to X's efforts. X has no authority to accept orders but must forward them to A for approval. A is to pay the rental for X's office in Buenos Aires, but all of X's other expenses (including the salaries of clerical and other required personnel) are to be paid by X out of his commissions. The Buenos Aires telephone directory is to carry a listing in A's name showing the telephone number of X's office. A also rents space in a warehouse in Buenos Aires, from which it fills orders from its Latin American customers. A does not have any AFN by virtue of the foregoing facts.

Example (20). An individual (A) who is a person within the United States maintains a number of bank accounts with foreign banks and also maintains an account with a German stock brokerage firm. A does not have any AFN by virtue of the foregoing facts.

Example (21). A U.S. corporation (A) periodically sends its employees to foreign countries to maintain, service and repair computer equipment which A leases and sells to unaffiliated foreign customers. A does not have any AFNs by virtue of the foregoing facts. Note that the result would be different (assuming the inapplicability of § 304(d)) if A maintained a permanent office overseas and its employees operated out of such office.

Note that, if in Examples 11, 12, 16, and 18 above, a foreign subsidiary of A (whether of the second or any lower tier), rather than A itself, had been engaged in the business venture referred to, the foreign subsidiary would (if A owned directly or indirectly 10 percent or more of its outstanding voting stock) be an incorporated AFN of A located in the scheduled area of the country under whose laws it was organized (see § 304 (a)(1)(i) and (b)(1)), while the business venture referred to would (if the venture was conducted in a scheduled area other than the scheduled area to which the subsidiary was assigned and § 304(d) was inapplicable to the venture) be a separate unincorporated AFN of A located in the scheduled area in which the venture was conducted (see § 304 (a)(1)(iii) and (b)(1)). If the subsidiary were assigned to the same scheduled area as the scheduled area in which the business venture was conducted, or if the subsidiary and the business venture were assigned to different scheduled areas but the provisions of § 304(d) was applicable to the venture, the business venture would not be a separate AFN but would be considered as part of the subsidiary. Thus, the earnings (or losses) of the business venture would be taken into account in calculating A's share in the reinvested earnings (or losses) of all incorporated AFNs of A in the scheduled area to which the subsidiary was assigned, and would not be taken into account in calculating A's net transfer of capital to all unincorporated AFNs in the scheduled area where the business venture was conducted.

(f) *Charitable organizations*. Section 304(c) states the general rule that foreign corporations, partnerships or business ventures engaged solely in charitable, educational, religious, scientific, literary or other similar activities not engaged in for profit will not be considered AFNs of a person within the United States. This exemption does not apply, however, to nonprofit U.S. organizations which own or acquire interests in foreign business enterprises which are designed as break-even or loss operations, but are adjuncts to profit-making activities.

The following examples illustrate situations to which § 304(c) is inapplicable:

Example (22). Four U.S. news-publishing corporations (A, B, C, and D) establish a membership corporation under New York law (E). A, B, C, and D each contribute 25 percent of the capital required by E and each has 25 percent of the voting power in E. E is to gather news for the respective publications of A, B, C, and D and, in this connection, E is to establish various permanent news-gathering offices throughout the world and is to staff the offices with the requisite personnel. E is designed to operate on a break-even basis. The offices established by E are unincorporated AFNs of A, B, C, D, and E.

Example (23). A membership corporation (A) is organized under New York law, its principal purpose being to provide funds to educational and charitable institutions. A acquires 15 percent of the voting stock of a foreign manufacturing corporation (X) from a foreign national and the dividends received by A from X are all distributed among various educational and charitable institutions as required by A's charter. A is subject to the Federal Reserve Foreign Credit Restraint Program, and the FRB and OFDI may determine that the acquisition and all future transfers from A to X are subject to the OFDI regulations.

(g) *Miscellaneous exemptions*. Section 304(d) sets forth three circumstances under which a business venture, during a particular year, will not be considered an AFN of a person within the United States. It should be noted that the exemption applies only to a "business venture" referred to in section 304(a)(1)(ii) or (iii), and not to a corporation or partnership referred to in § 304(a)(1)(i). The three circumstances are described in § 304(d) as follows:

(i) The business venture does not have or invove, at any time during such year, gross assets of more than $50,000 (valued at the greatest of cost, book value, replacement value or market value); or

(ii) The business venture is commenced during such year and is not reasonably expected to be conducted within one or more foreign countries for more than 12 consecutive months; or

(iii) The business venture is terminated during such year and was not in fact conducted within one or more foreign countries for more than 12 consecutive months.

The test under § 304(d)(i) relates to gross assets determined in accordance with accounting principles generally accepted in the United States. If at any time during the year the business venture has gross assets of more than $50,000, it is deemed an AFN for the entire year commencing at the beginning of such year.

The determination as to whether a business venture is reasonably expected to be conducted, or is in fact conducted, in a foreign country for a period of 12 consecutive months under § 304(d) (ii) and (iii) should be made with reference to the primary activity of the business venture during such period. Continuous physical presence is not required. If, for example, a traveling circus spent substantially all of the requisite 12-month period abroad, but returned to the United States for 2-week appearances, two or three times per year, the business venture would nevertheless be considered to have been conducted within one or more foreign countries for more than 12 consecutive months.

With specific reference to contract construction, engineering, and similar operations conducted by U.S. companies directly, where the opening of a job-site and/or project office in a foreign country (or waters under the jurisdiction of a foreign country) is involved, the following rules will generally be applied under § 304(d) (ii) and (iii):

(1) The date of commencement of the business venture is the date on which the first materials or equipment arrive at the job site, or the date the project office is opened, whichever is earlier; and

(2) The contract must provide that the job is to be paid for in cash, not later than 60 days after completion (except for reasonable required guaranty retentions). The date of termination of the business venture is the date when all transfers of capital and earnings attributable to the relevant contract (except for reasonable required guaranty retentions) are charged off the job's books and repatriated to the United States. Reasonable required retentions should be charged off and repatriated as soon as paid.

Note that, notwithstanding the rules of § 304(d) (ii) and (iii), if a U.S. company has an office in a foreign country which is maintained permanently or indefinitely for the purpose of soliciting and carrying out contract ventures on a general basis rather than for the purpose of carrying out a single contract or series of related contracts, such office may itself be an AFN of the U.S. company.

A determination under § 304(d)(ii) as to whether an overseas business venture is reasonably expected to be conducted for more than 12 consecutive months should be based on the facts and circumstances existing when the venture is commenced. The person making the determination need not anticipate delays or interruptions which are not foreseeable when the venture is commenced, such as delays or interruptions due to unanticipated labor strikes or slowdowns or unusual weather conditions.

The rule with respect to termination during any year under § 304(d)(iii) is not intended to be applied inflexibly. If, due to unforeseeable delays or interruptions, a business venture cannot be terminated within the required 12-month period, but is in fact terminated with reasonable dispatch in view of the unanticipated difficulties, the Director may, upon application, determine that the venture is not an AFN.

Note that, if the provisions of § 304(d) are applicable to a business venture owned directly by a DI (e.g. a branch of the DI), the business venture is not an AFN of the DI. Thus transfers between the DI and the venture have no effect under the regulations, nor do profits (or losses) of the venture. If, however the provisions of § 304(d) are applicable to a business venture owned directly by an AFN of a DI and therefore indirectly by the DI (e.g. a branch of a foreign subsidiary of the DI), the business venture is not a separate AFN but is considered to be part of the subsidiary. Thus transfers between the DI and the venture are treated as transfers between the DI and the subsidiary, and profits (or losses) of the venture are taken into account in calculating the DI's share in the reinvested earnings of the subsidiary; any net change in the net assets of the venture is disregarded in calculating the DI's net transfer of capital to all unincorporated

AFNs in the scheduled area where the venture is conducted.[8]

§ B305 Direct investor.

Section 305 of the regulations defines the term "direct investor" generally as any person within the United States (as defined in § 322) which directly or indirectly owns or acquires a 10 percent interest in a corporation or partnership organized under the laws of a foreign country or in a business venture conducted within a foreign country as described in § 304 of the regulations. The term "10 percent interest" is defined in § 304(b) (2) of the regulations (see the discussion at § B304(e), *supra*).

It should be noted, however, that the term "direct investor" also includes multiple entities or several individuals treated as a single person under §§ 323 (relating to international finance subsidiaries of a direct investor), 903 (relating to affiliated groups) and 904 (relating to family groups). The term also includes a person owning less than a 10 percent interest in a particular foreign corporation, partnership or business venture if (i) such person is a member of an associated group as defined in § 905 and the group as a whole owns or acquires a 10 percent interest in the foreign enterprise, or (ii) such person owns a direct interest in another DI and an election, consented to by such person, is made with respect to such other DI under § 906(b) (1).

A person within the United States first acquiring the requisite interest in a foreign corporation, partnership or business venture will be treated as having been a DI in the foreign enterprise immediately preceding the acquisition. Accordingly, the initial acquisition of the requisite interest may involve a transfer of capital under § 312(a) (1) of the regulations (see the discussion at § B312(c) and § B313(f), infra). Thus, for example, if a U.S. corporation (A), owning no interest in a French corporation (X), acquires 10 percent or more of the outstanding voting stock of X from an unaffiliated foreign national for $1,000,000 in cash, A will be treated as a DI in X immediately prior to the closing of the acquisition and will therefore be treated as having made a $1,000,000 transfer of capital to X.

Although the acquisition or ownership of a 10 percent voting interest in a foreign corporation and a 10 percent profits interest in a foreign partnership or business venture is ordinarily required to constitute the foreign enterprise an AFN of a person within the United States, the Director has the authority, in his discretion, to determine that the foreign enterprise is an AFN even if such U.S. person does not own or acquire the specific type of interest in the foreign enterprise described in § 304(b) (2) of the regulations but does own or acquire a present or contingent 10% or greater interest in the voting securities, capital or earnings of the foreign enterprise. As a general rule, such determination will not be made unless the U.S. person actually participates in and exercises a controlling influence over the affairs of the foreign enterprise and transfers funds or other property to the foreign enterprise exceeding $200,000 during any year commencing with 1968 (see § B304(e), supra).

§ B306 Positive and negative direct investment.

(a) *In general.* Section 306 of the regulations sets forth the rules for calculation of direct investment and reinvested earnings of incorporated AFNs of DIs. These rules apply to the base period years of 1965 and 1966 as well as to 1968 and subsequent years.[9]

(b) *Direct investment.* Paragraph (a) of § 306 defines "direct investment," the key term of the regulations. It is essential to recognize the following points with respect to the definition of direct investment:

(1) The definition does not relate to investment by a DI in any one particular AFN of the DI or to all of the AFNs of the DI in any one particular country; rather, the regulations treat all of the separate AFNs of a DI located in a single scheduled area (A, B, or C) as a group, and relate to investment by the DI in the group as a whole.

(2) The definition does not relate to a particular investment or investments made by the DI in the group at any point in time; rather, it relates to the net increase or decrease, over a specified period of time, in the amount of the DI's aggregate equity and debt investment in the group. The period generally employed in the regulations to measure direct investment by a DI in any schedular group of AFNs is a "year", as defined in § 321.

Accordingly, the term "direct investment", as used in the regulations, generally measures the net change, over the course of an entire year, in the aggregate equity and debt investment of a DI in a particular scheduled area. As a general rule, if the DI's aggregate investment at the end of the year in the scheduled area is greater than at the beginning of the year (disregarding investments attributable to the expenditure or allocation of long-term foreign borrowing proceeds), the DI is deemed to have made "positive direct investment" in the scheduled area during that year; conversely, if the DI's aggregate investment in the scheduled area at the end of the year is less than it was at the beginning of the year (disregarding investments attributable to the expenditure or allocation of long-term foreign borrowing proceeds), the DI is deemed to have made "negative direct investment" in the scheduled area during that year.

The calculation of the amount of direct investment (whether positive or negative) made by a DI during any year in any scheduled area involves the algebraic addition of two factors: First, the "net transfer of capital" (either a positive or negative amount) made by the DI during the year to all of its AFNs in the scheduled area (both incorporated and unincorporated); and second, the DI's share in the reinvested earnings of incorporated AFNs (which also may be either a positive or negative amount) in the scheduled area during that year. The calculation of the "net transfer of capital" made by a DI to all of its AFNs in a scheduled area during any year is set forth in § 313(c) of the regulations,[10] the calculation of a DI's share in the reinvested earnings of incorporated AFNs is set forth in § 306 (b) and (c) of the regulations.

Accordingly, the algebraic sum of a DI's net transfer of capital to a scheduled area during any year and the DI's share in the reinvested earnings of incorporated AFNs in the scheduled area during the year will furnish the amount of direct investment made by the DI in the scheduled area during the year (i.e., the net change in the DI's aggregate equity and debt investment in the scheduled area over the course of the year exclusive of any change attributable to the investment of long-term foreign borrowings proceeds).

The following examples illustrate the provisions of § 306(a):

Example (1). A U.S. corporation (DI) has three wholly-owned subsidiaries in Schedule A. DI makes a positive net transfer of capital of $1,000,000 to its Schedule A incorporated AFNs during 1968. During the same year one AFN (X) has earnings of $100,000, another AFN (Y) has earnings of $300,000, and the third AFN (Z) incurs a loss of $200,000. Y pays a dividend of $100,000 to DI but neither X nor Z pay any dividends. DI's share in the reinvested earnings of its incorporated AFNs is therefore $100,000 (i.e., X's earnings plus Y's earnings plus Z's loss minus dividends paid by Y) and it has made positive direct investment in Schedule A during 1968 of $1,100,000 (i.e., $1,000,000 positive net transfer of capital plus $100,000 reinvested earnings).

Example (2). Same facts as in Example (1) except that DI makes a negative net transfer of capital of $1,000,000, rather than a positive net transfer of capital of $1,000,000, to its incorporated Schedule A AFNs during 1968. DI has made negative direct investment in Schedule A during 1968 of $900,000 (i.e., $1,000,000 negative net transfer of capital plus $100,000 positive reinvested earnings).

Example (3). Same facts as in Example (1) except that Y incurs a loss of $200,000 and pays no dividends. DI's share in the reinvested earnings of its incorporated AFNs is therefore $300,000 (negative) (i.e., X's earnings plus Y's loss plus Z's loss) and it has made positive direct investment in Schedule A during 1968 of $700,000 (i.e., $1,000,000 positive net transfer of capital plus $300,000 negative reinvested earnings).

Example (4). Same facts as in Example (1) except that Y incurs a loss of $1,000,000 and pays no dividends. DI's share in the reinvested earnings of its incorporated AFNs is therefore $1,100,000 (negative) (i.e., X's earnings plus Y's loss plus Z's loss) and it has made negative direct investment in Schedule A during 1968 of $100,000 (i.e.,

[8] Note that this does not depend on § 505 of the regulations which deals with transfers to and from business ventures which are not exempt under § 304(d).

[9] They also apply to 1964 with respect to reinvested earnings in Schedule C.

[10] Note that a DI's net transfer of capital to a scheduled area is calculated by deducting long-term foreign borrowing proceeds expended in or allocated to transfers of capital to that scheduled area (see § 313(d) (1) of the regulations and § B313(e), infra).

$1,000,000 positive net transfer of capital plus $1,100,000 negative reinvested earnings).

Example (5). Same facts as in Example (1) except that, during 1968, Y has received a total of $1,500,000 in dividends (net of foreign withholding taxes) from its wholly-owned subsidiaries in Schedules B and C. DI's share in the reinvested earnings of its incorporated AFNs in Schedule A is therefore $1,600,000 (i.e., X's earnings plus Y's earnings plus Z's loss minus net dividends paid by Y ($100,000 minus $1,500,000)) and it has made positive direct investment in Schedule A during 1968 of $2,600,000 (i.e., $1,000,000 positive net transfer of capital plus $1,600,000 reinvested earnings).

(c) *Calculation of total earnings of incorporated affiliated foreign nationals.* In computing a DI's share in the reinvested earnings of all incorporated AFNs in a scheduled area during any year, it is first necessary to determine the DI's share of the total earnings of such AFNs during the year. To make this determination, the earnings of all incorporated AFNs in the scheduled area which had earnings should be added to the losses of all incorporated AFN in the scheduled area which had losses; the result will be the DI's share of the total (net) earnings or loss of the schedular group as a whole.

The earnings (or loss) of each incorporated AFN should be computed by the DI in accordance with accounting principles (including principles of consolidation) generally accepted in the United States and consistently applied by the DI in the preparation of its financial reports.[11] Any material change by the DI in accounting principles followed should be specifically reported on the forms filed for the year in which the change was made together with an indication of the effects of such change.

The following specific points should be noted:

(1) Dividends received by an incorporated AFN of a DI from another incorporated AFN of the DI, whether in the same or another scheduled area, should not be included in calculating the earnings of the recipient incorporated AFN.

(2) If an incorporated AFN of a DI owns an interest in a partnership or business venture (such as a branch) which is a separate unincorporated AFN of the DI under § 304, the share of the incorporated AFN in the profit (or loss) of the unincorporated AFN should not be included in calculating the earnings of the incorporated AFN, whether or not any profits are actually remitted.

(3) If an incorporated AFN of a DI owns an interest in a corporation, partnership or business venture which is a person within the United States but which would have been a separate AFN of the DI if it were not a person within the United States, neither the dividends received from such corporation nor the share of the incorporated AFN in the profits (or loss) of the partnership or business venture (whether or not any profits are actually remitted) should be included in calculating the earnings of the incorporated AFN.

(4) Earnings should be computed net of foreign taxes on income or net worth. Foreign withholding taxes on the payment of dividends or distribution of branch profits should not, however, be deducted except for withholding taxes on dividends received by an incorporated AFN from AFNs in the same scheduled area.

(5) Extraordinary gains and losses of an incorporated AFN of a DI (including gains or losses resulting from sales by the AFN of interests in other AFNs of the DI), calculated in accordance with generally accepted U.S. accounting principles consistently applied, should be taken into account.[12] It is recognized, however, that the inclusion of extraordinary gain from the sale of a substantial piece of property, such as a factory or major piece of equipment, which the AFN has or intends to replace within a reasonable period, could result in hardship if such gain were fully included in earnings required to be paid as dividends. While it is impractical to set forth a general rule in such situations, the DI may submit an application for specific authorization or exemption pursuant to § 801, so as to be able to reinvest such extraordinary gain.

(6) No deduction for amortization or any like charge against earnings should be made with respect to an intangible owned by an AFN if the transfer of the intangible by the DI to the AFN was made on or after January 1, 1968, and was not considered a transfer of capital because of the provisions of § 312(c)(11).

(7) Earnings which are "blocked" because of exchange controls or other like restrictions imposed by the government of a foreign country should nevertheless be included.

(8) No deductions from earnings should be made because of reserves for reinvestment, asset revaluation or legal requirements, whether or not locally required, if they would not be proper charges to income under generally accepted U.S. accounting principles consistently applied.

(9) The assets, liabilities and earnings of an AFN expressed in foreign currency should be converted into U.S. dollar equivalents in accordance with generally accepted U.S. accounting principles consistently applied. Any exchange gain or loss resulting therefrom should be recognized in determining the earnings of the AFN whose financial statements are being converted.

Any departure from the above guidelines must be authorized pursuant to an application for a specific exemption under § 801.

The following example illustrates the provisions of § 306(c) of the regulations (000 omitted):

Example (6). A U.S. corporation (DI) has three wholly-owned subsidiaries in Schedule C. One subsidiary (D) has a branch (W) in Schedule A and a branch (X) in Schedule C; W is a separate AFN but X is not (see § B304, supra). Another subsidiary (E) has a wholly-owned subsidiary (Y) in Schedule B and another wholly-owned subsidiary (Z) in Schedule C. The third subsidiary (F) has no branches or subsidiaries. The following occurs during 1968: D earns $1700, $200 of which is attributable to profits of W and $500 to earnings of X. Y earns $500 and pays a dividend of $300 to E. Z earns $200 (a portion of which is attributable to its sale of merchandise to D) and pays a dividend of $100 to E. E earns $2,400 (including the dividends from Y and Z). F incurs a loss of $400.

The total earnings of DI's incorporated Schedule C AFNs (D, E, and F) are $3,300, computed as follows:

Earnings of D ($1,700) including earnings of X ($500) but excluding profits of W ($200)	$1,500
Earnings of Z, including portion attributable to sales to D	200
Earnings of E ($2,400) less dividends received from Y ($300) and Z ($100)	2,000
Loss of F	(400)
Total earnings	3,300

A DI's share in the total earnings of its incorporated AFNs in a scheduled area is the percentage of such total earnings attributable to the DI's respective interests in such AFNs.

The following example is illustrative:

Example (7). Same facts as in Example (6) except that DI owns only 50% of the stock of D, 60% of the stock of E and 80% of the stock of F. DI's share in the total earnings of its incorporated Schedule C AFNs is $1,750, computed as follows:

Earnings of D ($1,700) including earnings of X ($500) but excluding profits of W ($200) x 50%	$750
Earnings of Z ($200) x 60%	120
Earnings of E ($2,400) less dividends from Y ($300) and Z ($100) x 60%	1,200
Loss of F ($400) x 80%	(320)
DI's share of earnings	1,750

Note that in Examples (6) and (7), only the earnings of the Schedule C incorporated AFNs above have been computed. The earnings of Y would be included in the calculation of reinvested earnings for DI's Schedule B incorporated AFNs and the profits of W would be included in the calculation of DI's net transfer of capital to all unincorporated AFNs of DI in Schedule A.

(d) *Reinvested earnings.* The method of calculating the reinvested earnings of any schedular group of incorporated AFNs during a year is set forth in § 306

[11] Except to the extent the context otherwise requires, the same principles should be applied in calculating earnings of unincorporated AFNs for purposes of determining the net transfer of capital made to such AFNs under § 313(b).

[12] Note, in this connection, that gains or losses realized by a DI as a result of sales by such DI of interests in AFNs are not taken into account in calculating reinvested earnings under § 306 (b) and (c) in any scheduled area. Rather, the sale may involve a transfer of capital to the DI under § 312(b)(5).

(b).[13] Such reinvested earnings will generally equal DI's share of the earnings of the group for the year less all dividends paid during the year by members of the group to the DI (before deducting foreign withholding taxes) and less than DI's share of all dividends paid during the year by members of group to upper-tier AFNs of the DI in other scheduled areas (before deducting foreign withholding taxes). However, since the regulations adopt the concept that earnings passed up a chain of AFNs are deemed to come from the most remote source, the amount of dividends paid by a schedular group of AFNs during any year must be reduced by the DI's share of (i) all dividends received during the year by such AFNs from lower-tier AFNs of the DI in other scheduled areas (net of foreign withholding taxes), and (ii) all profits remitted during the year to such AFNs by unincorporated AFNs of the DI (such as branches) in other scheduled areas (net of foreign withholding taxes).

Under § 306(d)(1), profits of an unincorporated AFN during the year are deemed to have been remitted to the extent the profits exceed the net increase in the net assets of the AFN during the year; if there has been no change or a decrease in such net assets during the year, all of the profits for such year are deemed to have been remitted.

The following examples illustrate the provisions of §§ 306(b) and 306(d)(1) (000 omitted):

Example (8). A U.S. corporation (DI) has two wholly-owned and two 60%-owned subsidiaries in Schedule C. One wholly-owned subsidiary (D) has a branch (V) in Schedule A. The second wholly-owned subsidiary (E) has a 50%-owned subsidiary (W) in Schedule A. One 60%-owned subsidiary (F) has a branch (X) in Schedule A. The branches V and X in Schedule A are separate AFNs. The other 60%-owned subsidiary (G) has a wholly-owned subsidiary (Z) in Schedule A. DI also has a wholly-owned subsidiary (H) in Schedule A. The following occurs during 1968:

D earns $800 and pays a dividend of $500 to DI.[14] $300 of D's earnings is attributable to profits of V, which increased its net assets by $100. E earns $500 and pays no dividends to DI. $200 of E's earnings is attributable to a dividend received from W, which itself earns $600. F earns $1,000 and pays a dividend of $200 to DI. $200 of F's earnings is attributable to profits of X, which had no change in its net assets. G earns $2,000 and pays a dividend of $500 to DI. $400 of G's earnings is attributable to a dividend received from Z, which itself earns $900. H earns $1,500 and pays a dividend of $1,000 to DI.

DI's share in the total reinvested earnings of its incorporated Schedule C AFNs (D, E, F, and G) is $1,800 ($2,240 less $440), computed as follows:

DI's share of earnings of D ($800) *less* profits of V ($300)	$500
DI's share of earnings of E ($500) *less* dividend received from W ($200)	300
DI's share of earnings of F ($1,000) *less* profits of X ($200)×60%	480
DI's share of earnings of G ($2,000) *less* dividend received from Z ($400)×60%	960
DI's share of total earnings	2,240
less	
Dividend paid by D ($500) less DI's share of profits deemed remitted by V ($200)	300
Dividend paid by E ($0) less DI's share of dividends received from W ($200)	(200)
Dividend paid by F ($200) less DI's share of profits deemed remitted by X (60% of $200, or $120)	80
Dividend paid by G ($500) less DI's share of dividend received from Z (60% of $400, or $240)	260
DI's share of total dividends	440

DI's share in the total reinvested earnings of its incorporated Schedule A AFNs (H, W, and Z) is $900, computed as follows:

DI's share of earning of H	$1,500
DI's share of earnings of W ($600×50%)	300
DI's share of earnings of Z ($900×60%)	540
DI's share of total earnings	2,340
less	
Dividend paid by H	1,000
DI's share of dividend paid by W to E	200
DI's share of dividend paid by Z to G ($400×60%)	240
DI's share of total dividends	1,440

Example (9). Same facts as in Example (8) except that H incurs a loss of $1,000 and pays no dividend. DI's share in the total reinvested earnings of its Schedule A AFNs is $600 (negative) computed as follows:

DI's share of loss of H	($1,000)
DI's share of earnings of W	300
DI's share of earnings of Z	540
DI's share of total earnings	(160)
less	
DI's share of total dividends (i.e. dividends paid by W to E and by Z to G)	$440

(e) *Dividends*. The payment of dividends by incorporated AFNs (either to the DI or other higher-tier AFNs of the DI) is the only method by which a DI may reduce the amount of its share in the reinvested earnings of such incorporated AFNs. This has special significance in Schedule C where the regulations place limits on the amount of reinvested earnings notwithstanding that a DI may have had a negative net transfer of capital to Schedule C for the year involved.

For purposes of the regulations, dividends include all cash dividends, whether paid out of current or accumulated earnings, but stock dividends or dividends in kind will not qualify as dividends under the regulations (see § 306(d)(2)). Distributions in complete or partial liquidation will qualify as dividends under the regulations, but only to the extent that the corporation being liquidated has current or accumulated earnings properly allocable to the distributions. Payments to a DI of amounts previously taxed under the provisions of §§ 551 through 558 and 951 through 981 of the Internal Revenue Code of 1954 will qualify as dividends.

The amount of a dividend paid by an AFN to a DI or to another AFN in a different scheduled area is computed before deducting foreign withholding taxes. On the other hand, the amount of a dividend received by an AFN from another AFN in a different scheduled area (such amount being deductible from the amount of dividends paid by the recipient AFN in calculating its reinvested earnings) is calculated after deducting foreign withholding taxes. Dividends paid by one AFN to another AFN in the same scheduled area have no relevance under the regulations since they (i) are not included in determining the earnings of the recipient AFN, (ii) are not deducted in calculating the total dividends paid by the recipient AFN which are to be deducted from the earnings of such AFN in computing its reinvested earnings, and (iii) are not included as dividends in calculating the total dividends paid by the paying AFN which are to be deducted from the earnings of such AFN in computing its reinvested earnings. However, any foreign withholding taxes imposed on the payment of such dividends should be deducted in calculating the earnings of all incorporated AFNs in the scheduled area involved. Thus, for example, if a DI has a wholly-owned subsidiary (X) in Schedule C which itself has a wholly-owned subsidiary (Y) in Schedule C, X and Y each earn $100, Y pays a $50 dividend to X on which there is imposed a $15 foreign withholding tax, and X pays a $50 dividend to DI on which there is imposed a $15 foreign withholding tax, the total earnings of DI's Schedule C incorporated AFNs is $185 (i.e., $200 minus $15 tax on dividend from Y to X) and DI's share in the reinvested earnings of all such AFNs is $135 (i.e., $185 minus (gross) dividend paid by X to DI).

A dividend will generally be considered as having been paid or received when it first becomes payable on demand. This will ordinarily coincide with the dividend payment date, where one is established. In other cases it may coincide with the declaration date. Note that a dividend which is not paid by an AFN when due is treated, in effect, as having been paid (which will reduce the DI's share in the reinvested earnings of the AFN) and then loaned back to the AFN (which will result in a transfer of capital

[13] If a foreign corporation ceases to be an AFN of a DI during any compliance year and is not an AFN of the DI at the end of such year, the foreign corporation is regarded as not having been an AFN of the DI at any time during the year for purposes of calculating the DI's share in the reinvested earnings of its incorporated AFNs in the scheduled area to which the foreign corporation was assigned; conversely, if the DI acquires a 10% or greater interest in a foreign corporation during any compliance year, the foreign corporation is regarded for such purposes as having been an AFN of the DI during the entire compliance year. It should be noted, however, that the disposition of an AFN during a compliance year does not affect any transfers of capital between the DI and the AFN preceding the date of disposition (see § B312(n), infra).

[14] Dividends paid by incorporated AFNs to DI or other AFNs are before deduction of foreign withholding taxes; dividends and other profit distributions received by AFNs from AFNs in other scheduled areas are after deduction of foreign withholding taxes.

by the DI to the AFN); subsequent payment of the amount due by the AFN will then be treated as a transfer of capital by the AFN to the DI.

It should be noted, however, that a DI may elect, on the original FDI-101 to treat dividends paid within 60 days after the end of any compliance year of the DI as having been paid during such year; such practice, if elected, will also apply to the base period years of 1964 through 1966, and cannot be changed without the permission of the Director. In addition, a DI may reconsider any election, or failure to elect on its original FDI-101 by filing a revised FDI-101 on or before November 14, 1968; provided that the DI has previously satisfied the Director that any such change will not have a material effect on the balance of payments in 1968.

The Office recognizes that, in certain instances, the payment of dividends by a particular AFN may not be feasible or may result in substantial hardship due, for example, to legal barriers such as foreign exchange controls or similar governmental restrictions, contractual limitations or restrictions on the payment of dividends (such as those contained in loan agreements and indentures), lack of control over the AFN, prior deficits of the AFN, insufficient liquid resources of the AFN to pay dividends, or income tax costs substantially in excess (on a percentage basis) of those incurred in prior years. The Office is also aware that, even if a DI has control of an AFN, the payment of dividends in order to enable the DI to comply with the regulations may be objected to by minority stockholders of the AFN. If problems such as these arise with respect to any AFN, the Office expects the DI to compensate therefor by causing other AFNs in the same scheduled area unaffected by such problems to pay additional dividends. Moreover, in Schedules A and B, where the regulations set limits on positive direct investment rather than on reinvested earnings as in Schedule C, a DI may compensate for an inability to pay dividends by causing AFNs in the scheduled area, whether incorporated or unincorporated, to make additional transfers of capital to the DI or by allocating unused long-term foreign borrowing proceeds to the transfers of capital previously made to such scheduled area. If, for reasons of the type referred to above, the DI's AFNs in any scheduled area are unable to pay sufficient dividends to enable the DI to comply with the regulations and if there are no practical alternatives to the payment of dividends, the DI may submit an application for a specific authorization or exemption pursuant to § 801.

§ B312 **Transfers of capital.**

(a) *In general.* Section 312 describes those transactions which will generally be considered "transfers of capital" and those transactions which will generally not be so considered. Essentially, any economic transaction (other than earnings or losses of and dividends paid by incorporated AFNs) which directly or indirectly results in an increase or decrease in a DI's aggregate equity and debt investment in any scheduled area will result in a "transfer of capital" to or from that scheduled area, as the case may be. Thus, current transactions involving immediate cash payment for goods sold or services rendered by a DI to an AFN will not involve a transfer of capital, while the extension of credit by a DI to an AFN will involve a transfer of capital by the DI since it increases the DI's debt investment in the AFN.

It should be noted, however, that a particular "transfer of capital" does not have any independent significance under the regulations. Rather, the regulations focus on the net effect of all transfers of capital made by and to a DI during a given compliance period, and thus transfers of capital will give rise to a violation of the regulations only if they result in positive direct investment in Schedules A or B or a positive net transfer of capital to Schedule C in excess of amounts generally or specifically authorized for that period.

Section 312 defines, in subsection (a), transfers of capital by a DI to an AFN, and, in subsection (b), transfers of capital by an AFN to the DI. Subsection (c) sets forth certain transactions which will not be considered transfers of capital, and subsection (d) is a definitional section. Generally, transactions occurring during the base period years of 1965 and 1966 and transactions occurring after the effective date of the regulations are treated similarly in determining whether a transfer of capital has been made.

Under § 312(a), a transfer of capital by a DI to an AFN includes any transfer of funds or other property, without regard to the situs of property, by or on behalf or for the benefit of a DI directly or indirectly to or on behalf or for the benefit of the AFN; it also includes any transaction or occurrence as a result of or in connection with which the DI directly or indirectly acquires or increases a debt or equity interest in the AFN or the AFN directly or indirectly disposes of or reduces a debt or equity interest in the DI held by the AFN.

Under § 312(b), a transfer of capital by an AFN to a DI is defined as any transaction or occurrence as a result of or in connection with which the AFN directly or indirectly acquires or increases a debt or equity interest in the DI or the DI directly or indirectly disposes of or reduces a debt or equity interest in the AFN held by the DI.

Note that the language of paragraph (a) of § 312 is substantially broader than that of paragraph (b) and that the specific transactions enumerated in paragraph (a) as transfers of capital by a DI to an AFN do not purport to be all of the transactions which may fall within this category; the transactions listed in paragraph (b) of § 312, on the other hand, purport to be the only transactions which will be considered transfers of capital by an AFN to a DI.

Notwithstanding the difference in the language of paragraphs (a) and (b), however, the Office is prepared to rule, generally in certain instances and specifically in others, that certain transactions listed in paragraph (a) will not be deemed transfers of capital by a DI to an AFN and that certain transactions not enumerated in paragraph (b) will be deemed transfers of capital by an AFN to a DI. A number of these transactions are discussed below while others may be expressed in private rulings which will be incorporated in subsequent general bulletins. In each case, the determinative factor is and will be the immediate and potential effect of the transaction on the U.S. balance-of-payments position and the objectives of the Program.

(b) *Valuation of transfers of capital.* Except as otherwise specifically provided in the regulations or noted in this Bulletin, where a transfer of capital (including a transfer under § 505 and a long-term lease of property described in § B312(k), infra.) involves a transfer of tangible or intangible property, the amount of the transfer is the amount thereof as determined by the DI in accordance with generally accepted U.S. accounting principles consistently applied, but in no event less than the value of the property at the time of the transfer as shown on the books and records of the transferor for financial reporting purposes. Thus, for example, if a transfer involves an export credit sale by a DI to an AFN, the amount of the transfer will ordinarily be the inter-company billing price. If transfers of property are valued by a DI at amounts which vary materially from the export declaration value of the property (if applicable), the DI's quarterly report including the transfers should contain an appropriate note and explanation.

(c) *Acquisitions of equity interests in affiliated foreign nationals by direct investors.* In the event a person within the United States (as defined in § 322 of the regulations) acquires an equity interest in a foreign corporation, partnership, or business venture (as defined in § 304(a)(1) of the regulations), a transfer of capital by such person will be involved under § 312(a)(1) if all of the following conditions are satisfied:

(1) The person from whom the acquisition is made is either (i) a foreign national (as defined in § 302 of the regulations), including the foreign corporation, partnership or business venture in which the interest is acquired, or an owner thereof, or (ii) another person within the United States which is not, at the time of the acquisition, a DI in the foreign corporation, partnership, or business venture; and

(2) The person making the acquisition is, at the time of the acquisition, a DI in the foreign corporation, partnership or business venture under §§ 305, 905(b)(1) (relating to associated groups), or 906 (b)(3) (relating to ownership of direct investors) of the regulations or becomes such as a result of or in connection with the acquisition; and

(3) The acquisition is made for value other than the transfer of intangibles as described in § 312(c)(11).

If an acquisition of an equity interest involves a transfer of capital by the DI, the transfer of capital will generally be deemed to have been made to the foreign

corporation, partnership or business venture in which the interest is acquired. There are, however, two exceptions to this rule. First, if the interest is acquired from another foreign corporation, partnership, or business venture which, at the time of the acquisition, is an AFN of the DI, the transfer of capital will be deemed to have been made to the latter AFN. Second (assuming the first exception is inapplicable), if (i) the interest is acquired after December 31, 1967, (ii) the foreign corporation, partnership or business venture in which the interest is acquired is not, at the time of the acquisition, an AFN of the DI but becomes an AFN as a result of or in connection therewith, and (iii) such foreign corporation, partnership or business venture owns an interest or interests in other foreign corporations, partnerships or business ventures which become separate AFNs of the DI as a result of or in connection with the acquisition, the transfer of capital shall be allocated among all of the foreign corporations, partnerships or business ventures which become separate AFNs of the DI as a result of or in connection with the acquisition in a manner which will reasonably reflect the respective values of each direct and indirect interest acquired; as a general rule, an allocation based on the respective book values of the foreign corporations, partnerships and business ventures involved will be acceptable.

The following examples are illustrative:

Example (1). On June 1, 1968, a U.S. citizen and resident (A), who has no AFNs, purchases 10 percent of the outstanding voting stock of a French corporation (X) from a citizen and resident of the United Kingdom for $1,000,000 cash. X has no subsidiaries or business ventures in Schedules A or B which would constitute separate AFNs under § 304. A has made a $1,000,000 transfer of capital to X in Schedule C under § 312(a)(1).

Example (2). Same facts as in Example (1) except that A purchases only 9 percent of the voting stock of X. A has not made a transfer of capital to X. Note, however, that a transfer of capital could be involved if A were a member of an affiliated, associated or family group as described in Subpart I of the regulations and another member or members of the group owned or acquired additional voting stock of X so that the group as a whole owned or acquired 10 percent or more of X's outstanding voting stock. Note also that, if A acquires an additional 1 percent or more of the voting stock of X between June 2, 1968 and May 31, 1969, the $1,000,000 expended in purchasing the 9 percent interest on June 1, 1968 will, under § 313(d)(2), increase A's net transfer of capital to Schedule C in 1968 or 1969 (depending on when the additional 1 percent is acquired) by $1,000,000.

Example (3). Same facts as in Example (1) except that A purchases for $1,000,000 10% of the outstanding preferred stock of X which has no voting rights (other than contingent voting rights which are not presently exercisable). A has not made a transfer of capital to X.

Example (4). Same facts as in Example (3) except that, at the time A purchases the preferred stock of X for $1,000,000, A already owns 10% or more of the outstanding voting stock of X. A has made a $1,000,000 transfer of capital to X in Schedule C.

Example (5). Same facts as in Example (3) except that, at the time A purchases the preferred stock of X for $1,000,000, he already owns more than 10% of such preferred stock. A has not made a transfer of capital to X since A does not own and has not acquired 10% or more of the outstanding voting stock of X and X therefore is not an AFN of A and does not become such as a result of or in connection with the acquisition. Note, however, that, although a foreign corporation will not ordinarily be considered an AFN of a U.S. person unless such person owns or acquires 10 percent or more of the outstanding voting stock of the corporation, the Director retains the authority to determine otherwise if necessary to carry out the purposes of the regulations. This authority will not generally be exercised unless the U.S. person actually owns or acquires a 10 percent or greater present or contingent interest in the capital or earnings of the corporation, participates in and exercises a controlling influence over the affairs of the foreign corporation, and transfers funds or other property to or on behalf or for the benefit of the foreign corporation which transfers aggregate more than $200,000 during any year (see § B304(e), supra).

Example (6). Same facts as in Example (1) except that A acquires the interest in X, the French corporation, from a Panamanian corporation (P) in which A is already a DI. A has made a $1,000,000 transfer of capital to P in Schedule A since acquisitions of equity interests in AFNs *from* AFNs are treated as transfers of capital to the selling AFNs.

Example (7). Same facts as in Example (1) except that X, the French corporation, has a wholly-owned subsidiary in the United Kingdom (Y) and a branch in Brazil (Z) which is a separate AFN under § 304 of the regulations. At the time A acquires the interest in X, X has net assets of $1,000,000 (exclusive of its debt and equity interests in Y and Z), Y has net assets of $600,000, and Z has net assets of $400,000 (calculated in accordance with § 313(b) of the regulations). The $1,000,000 transfer of capital made by A may be allocated $500,000 to X (i.e., 50 percent of $1,000,000), $300,000 to Y (i.e., 30 percent of $1,000,000) and $200,000 to Z (i.e., 20 percent of $1,000,000) or may be allocated among X, Y, and Z in any other manner which fairly reflects the interests acquired in X, Y, and Z.

Example (8). Same facts as in Example (7) except that A acquires the interest in X from a Panamanian corporation (P) in which A is already a DI. A has made a $1,000,000 transfer of capital to P in Schedule A, since no allocation among scheduled areas is made when the acquisition is from another AFN.

Example (9). On April 1, 1968, an individual who is a person within the United States (A) inherits 10 percent of the stock of a French corporation (X) from an uncle who was a French citizen and resident at the time of his death. A has not made a transfer of capital to X although X becomes an AFN of A as a result of the inheritance. The same would be true if A received the stock from X as an inter vivos gift.

Example (10). On August 1, 1968, a U.S. corporation (A), which owns 10 percent of the outstanding voting stock of a United Kingdom corporation (X) acquires for $1,000,000 an additional 5 percent of such outstanding voting stock from another U.S. corporation (B) which is not at that time a DI in X. A has made a $1,000,000 transfer of capital to X since this does not come within the exception set forth in § 312(c)(1).

Example (11). Same facts as in Example (10) except that B, the U.S. corporation, owns 10 percent of the voting stock of X and sells all of such stock to A for $2,000,000. The average of annual direct investment made by B in X during 1965 and 1966 is $200,000 (positive). From January 1, 1968, through July 31, 1968, the only transfer of capital between B and X was a $100,000 contribution made by B to the capital of X. A's purchase of stock from B is not a transfer of capital by A to X. However, the $100,000 positive net transfer of capital made by B to X during 1968 is deemed to have been made by A and the $200,000 average of positive direct investment made by B in X during 1965 and 1966 is also deemed to have been made by A, thereby increasing A's base period experience in Schedule B for purposes of § 504(a)(3) (see § 312(c)(1)). A and B should both file revised Forms FDI-101 reflecting the revised base period statistics.

Example (12). Same facts as in Example (11) except that B owns 20 percent of the outstanding voting stock of X and sells one half of its interest to A for $2,000,000. A has not made a transfer of capital to X. However, $50,000 of the $100,000 positive net transfer of capital made by B to X during 1968 is deemed to have been made by A and $100,000 of the $200,000 average positive direct investment made by B in X during 1965 and 1966 is also deemed to have been made by A (see § 312(c)(1)). A and B should both file revised Forms FDI-101 reflecting the revised base period statistics.

Example (13). A U.S. corporation (DI) has a 50 percent owned subsidiary in Schedule B (X). In 1968, DI transfers equipment and machinery valued at $20,000 to X in exchange for additional stock of X. DI has made a $20,000 transfer of capital to X.

Example (14). On June 1, 1968, a United States corporation (A) acquires from unaffiliated foreign nationals all of the issued and outstanding voting stock of a United Kingdom corporation (X) in exchange for $5,000,000 in market value of A's common stock. A has made a $5,000,000 transfer of capital to X in Schedule B.[15]

Note that, if the proceeds of long-term foreign borrowings (as defined in § 324 of the regulations) were expended in or allocated to the acquisitions referred to in Examples (1), (4), (6), (7), (8), (10), (13), or (14) (or to the positive net transfers of capital deemed made by "A" in Examples (11) and (12)), the DI could deduct an amount equal to the amount of such proceeds in calculating its net transfer of capital to the scheduled area or areas involved; in this connection, it should be kept in mind that foreign borrowings made on or after June 10, 1968, as distinguished from foreign borrowings made prior to that date, must satisfy the standards of § 324(e) of the regulations in order to qualify as "long-term foreign borrowings" (see §§ 324 and 313

[15] In certain instances, where a stock-for-stock or stock-for-assets acquisition is involved and the recipients of the DI's stock agree in writing not to dispose of the stock for at least 3 years from the date of issuance, the Office will give consideration to an application for specific authorization which requests that transfers of capital not be charged to the DI until the restriction upon disposition expires or the recipients first actually dispose of their stock, whichever occurs sooner. Such relief (which may be granted subject to certain conditions) will be available, however, only when the recipients are not so numerous as to make policing of dispositions by the DI impractical.

(d) (1) of the regulations and the discussions at § B324(c) and § B313, infra).

The following examples are illustrative.

Example (15). On March 1, 1968, a U.S. corporation (DI) purchases all of the outstanding stock of a French corporation (X) from an unaffiliated foreign national (F). The purchase price is $1,000,000, $200,000 of which is paid in cash at the closing, the balance being payable in 1971. DI has made a transfer of capital of $1,000,000 to X on March 1, 1968; however, its net transfer of capital during 1968 to Schedule C as a result of the transaction is only $200,000 (positive), since DI has made a long-term foreign borrowing of $800,000 from F on March 1, 1968. When DI pays the balance of $800,000 in 1971, an $800,000 transfer of capital to X will result under § 312(a) (7).

Example (16). Same facts as in Example (15) except that the seller of the stock is another AFN of DI (B) in Schedule B. DI has made a $1,000,000 transfer of capital to B on March 1, 1968; and there is no deduction under § 313(d) (1) since the borrowing was not from an unaffiliated foreign national. However, since B, as a result of the transaction, acquired an $800,000 debt obligation of DI, B is deemed to have made an $800,000 transfer of capital to DI under § 312(b) (1), and the net effect of the transaction is a $200,000 net transfer of capital (positive) to Schedule B. When DI pays the $800,000 balance of the purchase price in 1971, an $800,000 transfer of capital to B will result under § 312(a) (3).

Example (17). On March 1, 1968, a U.S. resident (DI) purchases from an unaffiliated foreign national (F) all of the outstanding stock of an Australian corporation (X) for $1,000,000, of which $500,000 is paid in cash at the closing, the balance being payable in 1971. The $500,000 cash paid at the closing was borrowed by DI from a foreign bank (B) against a 3-year term note. DI has made a $1,000,000 transfer of capital to X on March 1, 1968. However, DI's net transfer of capital during 1968 to Schedule B as a result of the transaction is zero since DI has made a long-term foreign borrowing of $500,000 from F on March 1, 1968 and another long-term foreign borrowing of $500,000 from B. When DI pays the balance of the purchase price and repays the bank loan in 1971, a $1,000,000 transfer of capital to X will result under § 312(a) (7).

Example (18). On April 1, 1968, a United States corporation (A) purchases from unaffiliated foreign nationals all of the outstanding stock of a closely-held German corporation (X). In exchange therefor, A delivers to the sellers $5,000,000 principal amount of 10 years debentures which are convertible into common stock of A and which qualify as long-term foreign borrowings under § 324. A has made a $5,000,000 transfer of capital to X on March 1, 1968. However, A's net transfer of capital during 1968 to Schedule C as a result of the transaction is zero since A has made a long-term foreign borrowing of $5,000,000 on March 1, 1968. When A repays the debentures (conversion into common stock of A constituting repayment as provided in § 324(b) (2)), a transfer of capital to X will result under § 312(a) (7).

In connection with Examples (15) through (18), reference is made to Subpart J of the regulations (§§ 1001–1003) which provides that repayment of a long-term foreign borrowing is generally authorized if the conditions of that subpart are complied with.

As a general rule, acquisitions of profit interests in foreign partnerships and business ventures and acquisitions of equity interests in foreign corporations are treated similarly.[16]

The following examples are illustrative:

Example (19). On June 1, 1968, a U.S. resident (A) acquires from an unaffiliated foreign national certain real estate in France. The purchase price is $5,000,000 cash. One half of the real estate consists of undeveloped land which A intends to hold for investment. The other half has located thereon an apartment house complex which A purchased for its rental income. The real estate is an unincorporated AFN of A under § 304(a) (1) (ii) and A has made a $5,000,000 transfer of capital to such AFN.

Example (20). In order to expand its European sales, a U.S. manufacturing corporation (A) constructs a factory in Belgium to manufacture and sell A's products which had previously been manufactured in and sold from the United States. The factory cost $5,000,000 to construct, $3,000,000 of which is paid by A, the balance being donated by the Belgian government. The factory constitutes an unincorporated AFN of A under § 304(a) (1) (ii) and A has made a $3,000,000 transfer of capital to such AFN. The $2,000,000 donated by the Belgium government is not charged against A.

Example (21). Same facts as in Example (20) except that A does not construct the factory but purchases an existing factory from an unaffiliated United Kingdom corporation (B) for $5,000,000 in cash. A has made a $5,000,000 transfer of capital to its unincorporated AFN (i.e., the factory) in Schedule C.

Example (22). Same facts as in Example (21) except that B is an AFN of A. A has made a $5,000,000 transfer of capital to B in Schedule B.

Example (23). A United States corporation (A) enters into a joint venture with a foreign corporation (B) pursuant to which A and B will operate a business in Schedule B which will produce and sell in Europe products previously manufactured and sold by A in the United States. A and B are to share equally in the profits of the joint venture. A contributes to the joint venture $5,000,000 in cash and also equipment having a value of $2,000,000. B contributes $3,000,000 in cash and a factory worth $4,000,000 which it had previously constructed in Schedule B. The joint venture is an unincorporated AFN of A under § 304(a) (1) (ii) and A has made a $7,000,000 transfer of capital to such AFN. The cash and factory contributed by B, the foreign corporation, are not charged against A.

Example (24). An individual (A) who is a person within the United States purchases from an unaffiliated German national 25 percent of the profits interest in a German partnership which operates a wholesaling business in Germany. The price is $1,000,000 in cash. The partnership is an unincorporated AFN of A under § 304(a) (1) (i) and A has made a $1,000,000 transfer of capital to such AFN in Schedule C.

Note, that the provisions of §§ 324 and 313(d) (1) relating to the investment of proceeds of long-term foreign borrowings are equally applicable to investments in unincorporated AFNs. Thus, to the extent the proceeds of long-term foreign borrowings had been used to make the investments referred to in Examples (19) through (24) (or had been allocated to such investments) no net transfer of capital would have resulted from the investments.

Note, also, that certain acquisitions of equity interests in AFNs by either the DI or another AFN of the DI may not be deemed to involve transfers of capital under § 312(a) if the acquisitions involve a reorganization, recapitalization, merger or consolidation of one or more AFNs or if the consideration for the acquisition is stock in another AFN. In this connection, see § 312(p), infra.

(d) *Acquisition of debt obligations of affiliated foreign nationals by direct investors.* The acquisition by a DI of a debt obligation of an AFN regardless of the nature of the transaction or occurrence giving rise to the obligation (e.g., a loan or advance by the DI to the AFN on open account or otherwise), will generally result in a transfer of capital by the DI to the AFN in an amount equal to the amount of the obligation so acquired. If, however, a debt obligation of an AFN of a DI is acquired by the DI from another AFN of the DI, a transfer of capital will be deemed to have been made by the DI to the selling AFN in an amount equal to cost or other basis of the obligation to the selling AFN; any gain or loss realized by the selling AFN is included in calculating the earnings of that AFN for the period involved.

Note that the exemptions provided in § 312(c) (1) (relating to acquisitions from DIs) and § 312(c) (11) (relating to transfers of intangibles) and the provisions of § 313(d) (1) (relating to the deduction of long-term foreign borrowing proceeds) are applicable to acquisitions of debt obligations as well as acquisitions of equity interests.

The following examples are illustrative:

Example (25). A U.S. corporation (DI) has a 50% owned subsidiary in Brazil (X). On June 1, 1968, DI lends X $500,000 against X's 3-year term note and advances an additional $500,000 to X on open account. DI has made two $500,000 transfers of capital to X. Note that, as X repays this indebtedness, transfers of capital from X to DI in an amount equivalent to the amount repaid will result under § 312(b) (3).

Example (26). DI has a wholly-owned subsidiary (X) in Australia. On July 1, 1968, DI sells merchandise to X for resale and bills X for $100,000 payable within 60 days from the billing date. DI has made a $100,000 transfer of capital to X. Note that, when X repays the indebtedness, a $100,000 transfer of capital from X to DI will result under § 312(b) (3), and thus, if the obligation is created and repaid within the same compliance period, the transaction will not result in any net transfer of capital for that period. It is essential to recognize in this connection that the transfer of capital from DI to X does not arise from the transfer of the merchandise from DI to X per se. Rather, it arises from the fact that DI extended credit to X and thus the transaction is, in effect, treated as if DI had advanced $100,000 in cash to X (this advance constituting a transfer of capital) and X has used these

[16] The significant difference in the treatment of unincorporated and incorporated AFNs is that, in determining a DI's net transfer of capital to all unincorporated AFNs in a scheduled area under § 313(b), the profits or losses of the unincorporated AFNs are taken into account whereas the earnings and losses of incorporated AFNs are not included in determining the net transfer of capital to such AFNs under § 313(a) (See § 313 of the regulations and the discussion at § B313, infra).

funds to pay for the merchandise upon delivery. When goods are delivered or services rendered by a DI to an AFN against immediate cash payment, no transfer of capital results. See § B312(e) for the treatment of transfers of property where no credit or consideration is exchanged between the DI and the AFN.

Example (27). DI has a wholly-owned subsidiary (X) in Argentina. During August of 1968, DI renders management services to X as a result of which X owes DI $10,000. DI has made a $10,000 transfer of capital to X. Note that, when X repays the indebtedness, a $10,000 transfer of capital from X to DI will result under § 312(b) (3).

Example (28). DI has a wholly-owned subsidiary (X) in Argentina. In 1967, DI and X entered into an agreement whereby DI licensed X to manufacture and sell certain products for a royalty of 5 percent of X's gross sales of such products. The royalties are payable on January 31 and July 31 of each year, based on X's gross sales during the preceding July 1–December 31 and January 1–June 30 6-month periods. Between January 1 and June 30, 1968, X's gross sales of these products amount to $1,000,000 and $50,000 in royalties thereby becomes due from X to DI on July 31, 1968. If such royalties are not paid when due, a $50,000 obligation of X will be acquired by DI and DI will thereby have made a $50,000 transfer of capital to X. Note, however, that when this obligation is repaid, a $50,000 transfer of capital from X to DI will result under § 312(b) (3).

Example (29). A U.S. corporation (DI) has a wholly-owned subsidiary in Brazil (X). On April 1, 1968, an Italian bank lends $100,000 to X against X's 3-year $100,000 note bearing interest at the prevailing rate. On July 1, 1969, DI purchases the note from the Italian bank for $95,000. DI has made a $95,000 transfer of capital to X. Note, however, that when X repays the note to DI, a $100,000 transfer of capital from X to DI will result under § 312(b) (3).

Example (30). DI has a 60 percent owned subsidiary (X) in the United Kingdom. On November 1, 1968, X declares a $25,000 dividend to DI payable on December 15, 1968. If the dividend is not actually paid on December 15, DI will have acquired a $25,000 obligation of X and will thereby have made a $25,000 transfer of capital to X. Note, however, that when X repays the obligation, a $25,000 transfer of capital from X to DI will result under § 312(b) (3). Note also that, on December 15, X will be deemed to have paid a $25,000 dividend to DI for purposes of calculating X's reinvested earnings for 1968 (see § 306(d) of the regulations).

Example (31). DI has a 60 percent owned subsidiary in the United Kingdom (X). On July 15, 1968, DI sends one of the employees in its accounting department to review the financial books and records of X. This is done to provide DI with information concerning X's business during the preceding January 1–June 30 period. DI's payment of the employee's salary and expenses will not result in a transfer of capital to X.

Example (32). DI has an 80 percent owned subsidiary in France (X). On August 1, 1968, DI ships merchandise to X on consignment. When all the merchandise is sold, X is to pay DI $100,000. The transaction has the same effect under the regulations as a sale on credit and results in a $100,000 transfer of capital to X at the time of consignment. When X pays DI for the merchandise, a $100,000 transfer of capital from X to DI will result under § 312(b) (3).

Example (33). DI has a 60 percent owned subsidiary in the United Kingdom (X). On August 15, 1968, DI renews a $200,000 loan which it made to X in 1967. On November 15, 1968, $3,000 in interest on the renewed loan becomes due but is not paid by X. Renewal of the loan is not deemed a repayment of the old obligation or the creation of a new obligation and thus no transfer of capital results from the renewal. However, as a result of the failure to pay interest when due, DI has acquired a $3,000 debt obligation of X which results in a $3,000 transfer of capital by DI to X under § 312(a) (1). Payment of this obligation will result in a $3,000 transfer of capital by X to DI under § 312(b) (3).

Example (34). DI has a wholly-owned subsidiary in Australia (X). On December 1, 1968, DI sends certain equipment to X. X is to repair the equipment and return it to DI. DI has not made a transfer of capital to X.

Note that if unincorporated AFNs, rather than incorporated AFNs, had been involved in the above examples, the results would be exactly the same insofar as determining whether a transfer of capital had been made by the DI in the first instance. However, to the extent the unincorporated AFNs incurred losses during the period involved, such losses would effectively reduce the DI's net transfer of capital to such unincorporated AFN under § 313(b). Thus, in Example (32), if X was an unincorporated AFN and did not pay DI for the merchandise in 1968 but incurred a loss of $100,000 during that year, there would be no change in X's net assets during 1968 and a positive net transfer of capital to X would not result (assuming no other relevant transactions during 1968).

(e) *Contributions to capital of affiliated foreign nationals by direct investors.* Section 312(a) (2) is designed to cover those cases which do not come precisely within the language of § 312(a) (1) relating to the acquisition of equity interests and debt obligations of AFNs. Under § 312(a) (2), all transfers of funds or other property by a DI to an AFN without a quid pro quo will be treated as a contribution to the capital of the AFN if the books and records of the DI or the AFN do not reflect the transfer as the acquisition of an equity interest by the DI or the creation of an obligation from the AFN to the DI. Thus, for example, if a DI transfers $100,000 of equipment to its wholly-owned foreign subsidiary and no additional stock is issued to DI and no obligation to repay this sum is created, the DI will be treated as having made a $100,000 contribution to the capital of the AFN.

Increases in the capital of an AFN, whether incorporated or unincorporated, not resulting from economic transactions are not treated as transfers of capital to the AFN. Thus, for example, if marketable securities owned by an AFN increase in value during a compliance period or if fixed assets of an AFN are reappraised to increase their value during such period, no transfer of capital to the AFN will result. Similarly, no transfer of capital to an AFN will result if for any reason an incorporated AFN capitalizes retained earnings. It should be noted, however, that, if an unincorporated AFN has profits during any period such profits are taken into account in calculating DI's net transfer of capital to the relevant scheduled area for that period.

It should also be noted that expenses incurred by the DI in rendering certain types of services primarily for the benefit of the DI, even though rendered in connection with the operations of an AFN, will not be considered as transfers of capital by the DI to the AFN, as a contribution to capital or otherwise, even if the DI is not compensated therefor. Such expenses could include auditing costs for purposes of preparing consolidated statements, travel expenses incurred by directors or officers of the DI in visiting AFNs, expenses incurred by the DI in perfecting title to or registering its patents, trademarks, and the like abroad, and similar expenditures.

Expenses incurred by the DI in the rendition of services primarily for the benefit of an AFN, which are properly chargeable to the AFN under generally accepted U.S. accounting principles, will result in a transfer of capital to the AFN if the DI is not compensated therefor.

(f) *Repayment of indebtedness by a direct investor to an affiliated foreign national.* If a DI is indebted to an AFN, any repayments of the indebtedness will result in a transfer of capital by the DI to the AFN under § 312(a) (3), regardless of the transaction or occurrence giving rise to the indebtedness. Thus, for example, if an AFN lends money or extends credit to a DI, repayment of the obligation will result in a transfer of capital by the DI to the AFN under § 312(a) (3) equivalent to the amount repaid.[17] Note, however, that, if the indebtedness was created on or after January 1, 1968, the creation of the indebtedness would have resulted in a transfer of capital from the AFN to the DI under § 312(b) (1). It is apparent, therefore, that the creation of an obligation and repayment thereof during a given compliance period will produce offsetting transfers of capital and will not therefore result in a net transfer of capital (either positive or negative) under § 313 if such creation and repayment both occur during that compliance peroid. The same, of course, is true if the debtor and creditor relationships are reversed, i.e., the DI lends the money or extends the credit to the AFN (such as the extention of export credits), thus resulting in a transfer of capital from the DI to the AFN under § 312(a) (1) and a transfer of capital from the AFN to the DI under § 312(b) (3) when the AFN repays the indebtedness.[18]

[17] This assumes, of course, that the DI is still a DI in the creditor AFN at the time repayment by the DI is made. If, for example, a U.S. person (DI) receives a loan from an incorporated AFN, the loan will constitute a transfer of capital to the DI under § 312 (b) (1); if the U.S. person repays the loan after it has disposed of sufficient voting stock of the foreign corporation so that the latter ceases to be an AFN of the U.S. person, repayment will not constitute a transfer of capital by the U.S. person under § 312(a) (3).

[18] As noted in the preceding footnote, this assumes that the U.S. person is still a DI in the repaying AFN at the time repayment is made. Repayment would not constitute a transfer of capital to the U.S. person under § 312(b) (3) unless a DI-AFN relationship existed at the time of repayment.

(g) *Reduction of equity interest in a direct investor held by an affiliated foreign national.* Under § 312(a)(4), the reduction of an equity interest in a DI held by the AFN must occur as a result of a redemption of stock, liquidating dividend (whether or not any part is allocable to earnings of the DI), or like transaction for a transfer of capital to result. Thus, for example, if an AFN purchases stock of a DI from the DI for $1,000,000 and the DI subsequently redeems the stock for $1,000,000, the purchase of the stock results in a transfer of capital from the AFN to the DI under § 312(b)(1) and the redemption results in a transfer of capital from the DI to the AFN under § 312(a)(4). If the DI went into liquidation and the AFN received only $200,000 by virtue of its stock ownership, only a $200,000 transfer of capital from DI to the AFN would result under § 312(a)(4); the balance would be treated as a capital loss in calculating the earnings of the AFN for the appropriate period. If the AFN receives more than it paid for the stock upon a redemption or liquidation, the excess would be treated as a capital gain in calculating the earnings of the AFN for the appropriate period.

(h) *Disposition of equity or debt interest in a direct investor held by an affiliated foreign national.* Whereas § 312(a)(4) encompasses those cases where an equity interest in a DI held by an AFN is reduced or liquidated by virtue of a redemption, liquidating dividend or like transaction, § 312(a)(5) covers those cases where such an equity interest or a debt interest of the DI is sold or otherwise transferred by the AFN to another person or persons. Such a disposition will result in a transfer of capital by the DI to the AFN only if the equity interest is sold back to the DI, or if the selling AFN is an "affiliate" of the DI as defined in § 903(a), or if the interest is sold to another AFN and such other AFN is an "affiliate" of the DI as defined in § 903(a) (see § 312(c)(2).

The following examples are illustrative:

Example (35). A wholly-owned French subsidiary (X) of a U.S. corporation (DI) owns 1000 shares of common stock of DI which it purchased from DI for $200,000. On June 1, 1968, X sells the stock to an unaffiliated foreign national for $500,000 in cash. DI has made a $200,000 transfer of capital to X and X has realized earnings of $300,000 (measured by historical cost) if X sells the stock for $100,000 the result would be a $100,000 transfer of capital to X and the realization of a $100,000 loss by X. The results would be the same regardless of the identity of the purchaser since X is an "affiliate" of DI as described in § 903(a). If, on the other hand, DI owned 50% or less of X and X was therefore not an "affiliate" of DI, a transfer of capital to X would result only if the purchaser was DI itself or another AFN of DI which was an "affiliate" of DI as described in § 903(a).

Example (36). Same facts as in Example (35) except that the stock is not sold by X for $500,000 cash, but is sold for $200,000 cash and a three year, $300,000 installment note of the purchaser. The result is the same as in Example (35). Payments made on the note will not involve transfers of capital to X.

(i) *Satisfaction by a direct investor of a debt obligation of an affiliated foreign national.* Under § 312(a)(6), payment by a DI to satisfy an obligation as to which an AFN is the primary obligor will result in a transfer of capital by the DI to the AFN. Thus, for example, payment of the AFNs rent, salary expenses, advertising expenses, legal fees, auditing fees, etc., will involve a transfer of capital to the AFN. Similarly, if a DI guarantees an obligation owed by an AFN to another person, payment by the DI of any part of the principal amount of such obligation and payment of interest with respect thereto which has accrued prior to the AFN being relieved of or defaulting upon its obligation, will constitute a transfer of capital by the DI to the AFN. If a DI guarantees an obligation of an AFN, the making of the guarantee will not itself constitute a transfer of capital by the DI to the AFN. However, if a DI assumes an obligation of an AFN in a transaction in which the AFN is relieved of liability, the assumption of the obligation itself will constitute a transfer of capital by the DI to the AFN while the subsequent payment of the obligation will not. The payment by the DI of interest on an obligation of an AFN after the DI has become primarily liable for the obligation does not constitute a transfer of capital by the DI to the AFN (see § 312(c)(8)).

(j) *Repayment of borrowings by a direct investor.* When a DI obtains a long-term foreign borrowing (as defined in § 324) and invests the proceeds thereof in an AFN, the investment will constitute a transfer of capital under § 312(a), but the DI may deduct the proceeds in calculating its net transfer of capital under § 313(d)(1). Thus, the transaction will not result in a net transfer of capital. Similarly, if a DI prior to January 1, 1968, made a short-term foreign borrowing (i.e. less than 12 months) and expended the proceeds in making transfers of capital to AFNs in 1967, the transfers would not of course be charged to the DI since the regulations did not become effective until January 1, 1968. In both of these situations, therefore, a net charge to the DI does not occur until the DI repays the borrowing, and it is for this reason that repayments of such borrowings constitute transfers of capital under § 312(a)(7).[19] Note that repayment of long-term foreign borrowings will not involve a transfer of capital under § 312(a)(7) unless the proceeds thereof are, at the time of repayment, invested in or allocated to investment in AFNs. Note also that, even if proceeds of a long-term borrowing of a DI are invested in AFNs, repayment will not involve a transfer of capital under § 312(a)(7) if the borrowing was obtained from a person within the United States (regardless of the term of the borrowing) or was obtained from a foreign national but did not qualify as a long-term foreign borrowing under § 324; the reason is that investment of the proceeds of such borrowings in AFNs will result in a transfer of capital without any corresponding deduction under § 313(d)(1).

A transfer of capital under § 312(a)(7) resulting from the repayment of a borrowing by a DI is deemed to have been made to the cheduled area in which the proceeds of the borrowing are invested, or to which they have been allocated, at the time of such repayment. If the proceeds are then invested in or allocated to two or more scheduled areas, the transfer is apportioned among such scheduled areas in the same proportions as the proceeds are so invested or allocated. If any apportionment made by a DI is inconsistent with the purpose of the regulations, the Director has the authority to made an appropriate reallocation.

Note that renewals and certain other refinancings of long-term foreign borrowings do not constitute repayments of the borrowings (see § 324(b)(1) of the regulations) and that mandatory sinking fund payments to a domestic bank (as defined in § 317) as trustee for debenture holders likewise do not constitute repayments of the debentures.[20] On the other hand, the conversion of convertible debentures issued by a DI to foreign nationals into stock of the DI will constitute repayment to the extent of the principal amount of debentures converted (see § 324(b)(2) of the regulations).

The following examples illustrate the provisions of § 312(a)(7):

Example (37). In 1968, DI borrows $1,000,000 from a domestic bank and uses the proceeds to purchase additional stock of an AFN (X). The stock purchase will constitute a transfer of capital by DI to X but the repayment of the borrowing will not constitute a transfer of capital to X under § 312(a)(7) since the borrowing was not from a foreign national. The same would be true if the borrowing was obtained by DI from a foreign national but did not qualify as a long-term foreign borrowing under § 324.

Example (38). In 1968, DI borrows $1,000,000 from a foreign bank for a term of 3 years and immediately lends the proceeds to an AFN (X) for a term of 5 years. The $1,000,000 transfer of capital resulting from the loan to X is offset by the $1,000,000 of long-term foreign borrowing proceeds used in making the loan. When DI repays the bank borrowing, a transfer of capital of $1,000,000 to X will result under § 312(a)(7).

Example (39). In April 1968, DI purchases from an unaffiliated foreign national (N) all of the outstanding stock of a United Kingdom corporation (X). The purchase price is $1,000,000, $500,000 being paid in cash at the closing, the balance of $500,000 being payable (together with accrued interest thereon) 5 years from the date of the closing. DI is deemed to have made a $500,000 long-term foreign borrowing from N on the closing date under § 324. $500,000 of the $1,000,000 transfer of capital resulting from the acquisition is therefore offset by the $500,000 of long-term foreign borrowing proceeds used in making the acquisition. When the balance is so paid, a $500,000 transfer of capital to X will result under § 312(a)(7).

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[19] Repayments of long-term foreign borrowings invested in AFNs prior to January 1, 1965, do not constitute transfers of capital under § 312(a)(7).

[20] Of course, actual redemptions made by the trustee will constitute repayments.

Payment of interest by DI on its own borrowing does not constitute a transfer of capital.

Example (40). On November 1, 1967, DI borrows $1,000,000 from a foreign bank for a term of 6 months and immediately uses the proceeds to make a $1,000,000 contribution to the capital of an AFN (X). On April 30, 1968, DI repays the bank borrowing. The result is a $1,000,000 transfer of capital by DI to X under § 312(a)(7).

Example (41). In 1968, DI borrows $2,000,000 from a foreign bank for a term of 5 years. DI utilizes $1,000,000 of the proceeds of the loan to purchase additional stock of an AFN (X) in Schedule A and utilizes the remaining $1,000,000 to make a 10-year loan to another AFN (Y) in Schedule B. The $1,000,000 transfer of capital resulting from the acquisition of stock of X and the $1,000,000 transfer of capital resulting from the loan to Y are both offset by the $2,000,000 of long-term foreign borrowing proceeds expended in making the transfers. When DI repays the borrowing, a $1,000,000 transfer of capital to X and a $1,000,000 transfer of capital to Y will result under § 312(a)(7).

Example (42). Same facts as in Example (41) except that in 1969, DI sells to unaffiliated foreign nationals for $2,000,000 in cash all of the additional stock of X which it acquired in 1968. The sale results in a $1,000,000 transfer of capital from X to DI and a return to DI of $1,000,000 in long-term foreign borrowing proceeds. Repayment by DI of the bank borrowing will result in a $1,000,000 transfer of capital to Y under § 312(a)(7) since only $1,000,000 of the proceeds is invested in or allocated to investments in AFNs at the time of repayment.

Example (43). Same facts as in Example (42) except that, in 1970, DI loans the $1,000,000 of the proceeds from the sale of stock to another AFN of DI (Z) in Schedule C. The $1,000,000 transfer of capital resulting from the loan is offset by the long-term foreign borrowing proceeds used in making the loan. Repayment of the bank borrowing by DI will result in a $1,000,000 transfer of capital to Y and a $1,000,000 transfer of capital to Z under § 312(a)(7).

Example (44). Same facts as in Example (42) except that Y and Z each repay the $1,000,000 loan in 1970 and the proceeds of the bank borrowing are not invested in or allocated to investment in any AFNs at the time DI repays the bank borrowing. Repayment by DI of the bank borrowing will not result in any transfer of capital under § 312(a)(7). Note, however, that after repayment DI will no longer have any long-term foreign borrowings available for investment in AFNs.

(k) *Lease of property by a DI to an AFN.* Under § 312(a)(8), a lease of property by a DI to an AFN is considered a transfer of capital to the AFN if the property has a useful life at the time of the lease of one year or more, and is not required or expected to be returned to the DI in less than one year. This rule recognizes that long-term leases are substantially similar in economic effect to outright transfers. Accordingly, such long-term leases of property by a DI to an AFN will be considered transfers of capital, without regard to the nature or expected use of the property, while a transfer of capital from the AFN to the DI will be recognized under § 312(b)(2) at the time the property is returned to the DI (see § B312(b), infra, for the valuation of such transfers).

Note that the payment of current rentals under such a long-term lease will not be considered a transfer of capital by the AFN to the DI (see § 312(c)(9)). Rather, rental payments should be deducted in calculating the earnings of the AFN. A sublease will be treated under these provisions in the same manner as an original lease.

The following example is illustrative:

Example (45). DI leases machinery and equipment to an incorporated AFN (X) for a 10-year term for a rental of $1,000 per year. The machinery and equipment have an aggregate value of $12,000 at the time the lease is made. At the end of 10 years, the machinery and equipment will be returned to DI, at which time it will have a value of $2,000. DI has made a $12,000 transfer of capital to X at the time of the lease and X will make a $2,000 transfer of capital to DI when the property is returned. The $1,000 annual rental payments will not constitute transfers of capital from X to DI.

(l) *Pledges and hypothecations.* Any pledge, hypothecation, transfer or acquisition by a DI of foreign balances (as defined in § 203(a)(1)), or any pledge, hypothecation or transfer by a DI of equity securities of a foreign corporation owned by the DI (other than equity securities of an AFN of the DI owned by the DI), will constitute a transfer of capital by the DI if the pledge, hypothecation, transfer or acquisition is made to, with or from a foreign national on or after January 1, 1968, to induce a loan to an AFN of the DI by the foreign national, or to induce a long-term loan to the DI by the foreign national, the proceeds of which qualify as long-term foreign borrowing proceeds and are invested in such an AFN (see § 312(a)(9)). The amount of the transfer is equal to the lesser of (i) the value of the foreign balances or equity securities or (ii) the amount borrowed by or invested in the AFN. The transfer of capital occurs when the funds are borrowed by or invested in the AFN.

The following examples are illustrative:

Example (46). In 1968, DI deposits $1,000,000 with a foreign bank to be held as security for an $800,000 loan by the bank to an AFN of DI, (X). The deposit constitutes an $800,000 transfer of capital by DI to X.

Example (47). In 1968, DI purchases a $1,000,000, 18-month certificate of deposit from a foreign bank and transfers the certificate to another foreign bank to be held as security for a $1,400,000 loan made by the bank to an AFN of DI (X). The transfer of the certificate constitutes a $1,000,000 transfer of capital by DI to X.

Example (48). In 1968, DI deposits $1,000,000 with the home office of a domestic bank to be held as security for a $1,000,000 loan made by a foreign branch of the bank to an AFN of DI. The deposit does not constitute a transfer of capital by DI (since the home office of the domestic bank is not a foreign national) but constitutes a guarantee of the AFN's borrowing under Subpart J of the regulations.

Example (49). DI has a portfolio of equity securities of U.S. corporations. In 1968, DI pledges $1,000,000 in market value of such securities together with $1,000,000 in market value of equity securities of an AFN with a foreign bank as security for a $2,000,000 loan made by the bank to another AFN of DI. The pledge does not constitute a transfer of capital (since the securities pledged are not those of an unaffiliated foreign national) but constitutes a guarantee of the AFN's borrowing under Subpart J of the regulations.

Example (50). In 1968, DI deposits $1,000,000 with a foreign bank pursuant to an arrangement whereby the bank agrees to and does in fact lend $1,000,000 to an AFN of DI (X). The deposit constitutes a $1,000,000 transfer of capital by DI to X whether or not the bank has the legal right under applicable law to resort to the deposit in the event of a default by X (by virtue of a right of set-off or otherwise). If, however DI did not deposit funds specifically to induce the loan to its AFN but rather had funds on deposit with the bank in accordance with its customary practices, there would be no transfer of capital by DI even though DI and the bank agreed that the funds would stay on deposit while the loan was outstanding.

Example (51). In 1968, DI pledges a 6 month certificate of deposit of a foreign bank with another foreign bank as security for a 6-month loan by the second bank to DI. DI invests the proceeds of the loan in an AFN (X). The pledge is not a transfer of capital because the loan to DI is not a long-term foreign borrowing. However, investment of the loan proceeds in X is a transfer of capital to X and there is no deduction under § 313(d)(1) as the loan to DI does not qualify as a long-term foreign borrowing under § 324.

Example (52). Same facts as in Example (51) except that the bank loan is for 12 months. The pledge to the bank is a transfer of capital to X as is the investment of the bank loan proceeds in X. However, there is a single deduction under § 313(d)(1) for the investment of the loan proceeds since the 12-month loan does qualify as a long-term foreign borrowing.

Example (53). Same facts as in Example (51) except that the 6-month certificate of deposit represents the proceeds of long-term foreign borrowings to X and constitutes a direct investment liquid foreign balance as defined in § 203(a)(3). The pledge to the bank is a transfer of capital to X as is the investment of the bank loan proceeds in X. However, there is a deduction under § 313(d)(1) for both the pledge and the investment in X since both were made with proceeds of long-term foreign borrowings.

If a pledge or hypothecation constitutes a transfer of capital by a DI under § 312(a)(9), the release of the pledge or hypothecation will be considered a transfer of capital to the DI under § 312(b) in an amount equal to the amount of the initial transfer of capital by the DI; if, on the other hand, the property pledged or hypothecated is not released but is applied to payment of the secured indebtedness, no additional transfer of capital by the DI will result therefrom.

(m) *Indirect transfers by a direct investor to an affiliated foreign national.* It is important to recognize that § 312(a) focuses on the substance, rather than the form, of economic transactions. Transactions which do not come precisely within the language of any of the subparagraphs of § 312(a) but which a DI undertakes for the benefit of an AFN may involve a transfer of capital by the DI to the AFN even though the transactions are effected through nominees or other intermediaries rather than directly between the DI and the AFN. While the outcome of each transaction will depend on the specific facts and circumstances

involved, DI's should recognize the general rule that transactions effected indirectly by a DI with an AFN will be treated under the regulations as if effected directly by the DI.

(n) *Transfers of capital by an affiliated foreign national to a direct investor.* The provisions of § 312(b), relating to transfers of capital by an AFN to a DI, are roughly parallel to the provisions of § 312(a)(1) through (a)(6) relating to transfers in the opposite direction. Thus, with certain minor exceptions, any transaction which would constitute a transfer of capital by the DI to the AFN under subparagraphs (1) through (6) of § 312(a) will constitute a transfer of capital by the AFN to the DI under § 312(b) if the position of the parties is reversed (e.g., the AFN, rather than the DI, is the lender).

The following points, however, deserve specific mention:

(1) Under § 312(a)(1), the acquisition by a DI of an equity or debt interest in an AFN will ordinarily constitute a transfer of capital by the DI regardless of the identity of the person from whom the interest is acquired; the only exception is if such person is, at the time of the acquisition, a DI in the AFN. Under § 312(b), on the other hand, the acquisition by an AFN of an equity or debt interest in a DI constitutes a transfer of capital by the AFN only if the person from whom the interest is acquired is the DI itself (see § 312(c)(3)). Thus, for example, if an AFN lends $100,000 to a DI, a $100,000 transfer of capital from the AFN to the DI will result under § 312(b)(1). If, however, the loan is made to the DI by a bank and the AFN subsequently acquires the debt obligation, no transfer of capital to the DI will result; however, repayment of the obligation by the DI to the AFN will result in a $100,000 transfer of capital by the DI to the AFN under § 312(a)(3).

(2) As previously mentioned in the discussion in § B312(h), the disposition by an AFN of an equity or debt interest in the DI results in a transfer of capital by the DI under § 312(a)(5) if the AFN is an "affiliate" of the DI as defined in § 903(a) or if the transferee is the DI itself or another AFN which is an "affiliate" of the DI. Under § 312(b)(5), however, the disposition by a DI of an equity or debt interest in an AFN results in a transfer of capital to the DI only if the transferee is either (i) a foreign national or (ii) a domestic bank or nonbank financial institution certified as subject to the Federal Reserve Foreign Credit Restraint Program and the transfer is charged against the ceiling of such bank or is treated as a covered asset of such institution under the Federal Reserve Program (see § 312(c)(4)). Thus if a DI lends $100,000 to an AFN and discounts the note for $98,000 with a domestic bank, a $98,000 transfer of capital by the AFN to the DI will result if the bank is subject to the Federal Reserve Foreign Credit Restraint Program and the acquisition of the note by the bank is charged against the bank's ceiling under such Program. The result would be the same if the note was discounted with a foreign bank (which includes a foreign branch of a domestic bank) or another foreign national. Note, however, that if the DI disposed of the note under circumstances whereby it did not constitute a transfer of capital to the DI, repayment of the note by the AFN to the person holding the note would constitute a transfer of capital to the DI.

(3) As noted previously in the discussion in § B312(h), the disposition by an AFN of a debt or equity interest in a DI will result in a transfer of capital by the DI under § 312(a)(5) in an amount equal to the lesser of the value of the consideration received therefor or the AFN's cost or other basis for the interest. Any gain or loss to the AFN resulting from the transaction is included in calculating the AFN's earnings for the appropriate period. On the other hand, when a DI disposes of a debt or equity interest in an AFN (under circumstances constituting a transfer of capital to the DI under § 312(b)(5)), the amount of the transfer of capital to the DI is the full value of the consideration received therefor (less any amounts which represent a return of long-term foreign borrowing proceeds to the DI under § 324) without regard to whether the transaction results in gain or loss to the DI.

A transfer of capital under § 312(b)(5) will generally be deemed to have been made to the DI by the AFN which issued the debt or equity interest disposed of. There are, however, two exceptions to this rule. First, if the debt or equity interest in an AFN is sold by the DI to another AFN of the DI, the transfer of capital is deemed to have been made to the DI by the latter AFN. Second (assuming the first exception is inapplicable), if an equity interest in an AFN is both acquired and disposed of after December 31, 1967, and at the time of the disposition the AFN involved has subsidiaries or branches in other scheduled areas which are separate AFNs of the DI under § 304, the transfer of capital to the DI resulting from the disposition should be allocated among all AFNs involved in a manner which will fairly reflect the respective values of all direct and indirect interests in AFNs which were disposed of. As a general rule, an allocation based on the book value of each AFN will be acceptable.

It should be noted that the sale of an AFN to an unaffiliated foreign national during any compliance year does not affect any transfers of capital between the DI and the AFN preceding the date of disposition. Thus, for example, if a DI makes a $1,000,000 transfer of capital to an AFN in the beginning of 1968 and sells all of its equity interest in the AFN in December of 1968 to an unaffiliated foreign national for $900,000 in cash, DI has made a positive net transfer of capital of $100,000 during 1968 to the scheduled area of the AFN (assuming no other relevant transactions during 1968).

It should also be noted that, if a DI receives a long-term debt obligation of an unaffiliated foreign national (i.e., original maturity of 12-months or more) in consideration for an interest in the AFN which is disposed of, no transfer of capital to the DI will result from the disposition until the obligation is paid or sold by the DI to another unaffiliated foreign national for cash or other property (other than a long-term debt obligation).

The following examples are illustrative:

Example (54). On December 1, 1968, DI sells 50 percent of the stock of a wholly-owned French corporation (X) to an unaffiliated foreign national (F) for $1,000,000 in cash. X has no subsidiaries or branches outside Schedule C. DI acquired all of the stock of X on February 1, 1968, for $100,000. The result of the sale is a $1,000,000 transfer of captial from X in Schedule C to DI.

Example (55). Same facts as in Example (54) except that F does not pay cash but gives DI its 5 year note for $1,000,000. No transfer of capital to DI will result until the note is paid or DI sells the note to another unaffiliated foreign national for cash or other property (other than a long-term debt obligation).

Example (56). Same facts as in Example (54) except that F is an AFN of DI in Schedule B. The result is a $1,000,000 transfer of capital from F in Schedule B to DI.

Example (57). Same facts as in Example (55) except that F is an AFN of DI in Schedule B. The result is a $1,000,000 transfer of capital from F to DI. However, DI has simultaneously acquired a $1,000,000 obligation of F resulting in a $1,000,000 transfer of capital from DI to F under § 312(a)(1). When F repays the note, a $1,000,000 transfer of capital from F to DI will result under § 312(b)(3).

Example (58). Same facts as in Example (54) except that when DI disposes of the stock of X, X has a wholly-owned subsidiary in each of Schedules A and B (Y and Z). X has net assets of $400,000 (exclusive of its interests in Y and Z) and Y and Z each have net assets of $200,000. The transfer of capital should be allocated $250,000 from each of Y and Z (i.e., 25 percent of $1,000,000) and $500,000 from X (i.e., 50 percent of $1,000,000) or in any other manner which will fairly reflect the respective values of X, Y, and Z.

Example (59). Same facts as in Example (58) except that F is an AFN of DI in Schedule A. The result is a $1,000,000 transfer of capital from F to DI since no allocation is made when the purchaser is another AFN.

Example (60). On August 1, 1968, DI sells all of the assets of its branch in Schedule C (X) to an unaffiliated foreign national for $1,000,000 in cash. The result is a $1,000,000 transfer of capital from X to DI.

Example (61). Same facts as in Example (54) except that DI acquired all of the stock of X for $500,000 utilizing the proceeds of a long-term foreign borrowing. The result of the sale of 50 percent of the stock of X for $1,000,000 is the return of $250,000 in long-term foreign borrowing proceeds to DI (50 percent of $500,000) and a $750,000 transfer of capital from X to DI.

Example (62). Same facts as in Example (55) except that DI acquired all of the stock of X for $500,000 utilizing the proceeds of a long-term foreign borrowing. No transfer of capital or return of long-term foreign borrowing proceeds to DI will result when F the unaffiliated foreign national, gives its 5-year note for $1,000,000. As each payment on the note is made, however, 25 percent of the amount paid will be treated as a transfer of capital from X to DI and the remaining 75% as a return of long term foreign borrowing proceeds to DI.

Example (63). Same facts as in Example (60) except that DI does not sell the assets of its branch X. Rather, it closes down X and transfers all of its assets back to the United States at a time when X has $200,000 in net assets (calculated in accordance with § 313 (b)). The result is a $200,000 transfer of capital from X to DI. The negative net transfer of capital resulting therefrom could not, however, exceed the net decrease in the net assets of X during 1968. Thus, if X had net assets of $100,000 at the beginning of 1968, the negative net transfer of capital to Schedule C would be $100,000 even though X had net assets of $200,000 when it was closed down.

(o) *Transactions not involving transfers of capital.* Section 312(c) of the regulations sets forth certain transactions which will not be deemed to involve transfers of capital although they may technically be encompassed by the language of § 312 (a) or (b). Certain of these transactions have already been referred to in this § B312, supra, while the others are noted in this § B312(o). In addition to the items specifically listed in § 312(c), there are certain other transactions which will not be deemed to involve transfers of capital. These transactions, which relate principally to recapitalizations, reorganizations, mergers, and consolidations of AFNs, are discussed in § B312(p), infra.

(1) Under § 312(c)(5), an increase in an equity interest in a corporation resulting from reinvestment of earnings of such corporation does not involve a transfer of capital. The reinvestment of the DI's share of the earnings of an incorported AFN does, however, constitute an element of direct investment, as defined in § 306(a) (see § B306, supra).

(2) Under § 312(c)(7), the making of a guarantee does not involve a transfer of capital. For a definition of the term "guarantee," see § 1001(c) of the regulations. It should be noted, however, that payments under a guarantee may constitute transfers of capital under § 312 (a)(6) or (b)(6) discussed above (see § B312(i), supra).

(3) Under § 312(c)(8), the payment by the primary obligor of interest currently due, or fees or commissions in connection with borrowings, does not involve a transfer of capital. Prepayments of interest made in the course of customary lending practices or commercial transactions will not be treated as transfers of capital under the foregoing rule. The fees or commissions referred to above include, for example, commitment and termination fees, premiums, underwriters' commissions, original issue discounts, broker-dealer fees, legal and accounting fees, and other like items. Thus, for example, payment by an AFN to a DI of interest on a loan made by the DI to the AFN, or vice versa, does not involve a transfer of capital if the interest is paid when due. If not paid when due, however, an additional debt obligation will be created, resulting in a transfer of capital from the obligee to the obligor under § 312 (a)(1) or (b)(1) and a transfer of capital in the opposite direction under § 312 (a)(3) or (b)(3) when the additional obligation is paid. It should be noted, however, that the exemption applies only to the primary obligor. Thus, payments by a DI, pursuant to a guarantee of an AFN's borrowing, of interest, commissions and fees owed by the AFN, are transfers of capital to the AFN under § 312(a)(6).

(4) Under § 312(c)(10), the payment by a licensee under a license agreement of royalties currently due does not involve a transfer of capital, absent circumstances indicating that such payments are essentially equivalent to transfers of capital and are merely disguised as royalty payments, in which case the Director may exercise his discretion to treat such transfers as transfers of capital. It should be noted that prepayments of royalties are also not treated as transfers of capital if such prepayments are customarily made by licensees under agreements of the type involved in the relevant cases. As is the case with interest payments, the exemption applies only to current royalty payments by a primary obligor or prepayments as noted above.

(5) Section 312(c)(11) provides as a general rule that a transfer by a DI to an AFN, or vice versa, of any of the following items:

1. Patents.
2. Copyrights.
3. Trademarks.
4. Trade names.
5. Trade secrets.
6. Technology.
7. Proprietary processes.
8. Proprietary information.
9. Similar intangibles.
10. Any rights or interests in items 1–9.
11. Contracts or applications relating to items 1–9 shall not constitute a "transfer of capital" regardless of the form of the transfer, or the consideration received in exchange therefor. The foregoing rule, however, is subject to one major proviso: A transfer of any of the above described intangibles by a DI to an AFN on or after January 1, 1968, in exchange for a debt or equity interest in the AFN, shall be considered a transfer of capital by the DI if (i) the transfer represents a substantial departure from a previously established practice of the DI with respect to the exploitation of intangibles of the type transferred, and (ii) the intangible transferred was, prior to the transfer, a substantial source of royalty or other like fixed or determinable, annual or periodical, income.

Note that, if, a post-January 1, 1968 transfer does not constitute a "transfer of capital" because of the foregoing rule, no deduction for amortization or any like charge with respect to the intangible transferred shall be made against earnings in calculating the earnings of the transferee AFN. Note also, that even if a transfer of intangibles does not constitute a transfer of capital, a person within the United States making such transfer may become a DI in a foreign corporation, partnership or business venture if it receives a 10 percent interest (as defined in § 304) in the foreign enterprise in exchange for the transfer.

The determination whether a transfer of intangibles by a DI in a given case constitutes a substantial departure from previously established practices with respect to the exploitation of the same or similar intangibles will depend on all the facts and circumstances of the case.

The following examples are illustrative:

Example (64). In 1968, a U.S. corporation (A) engaged in the manufacture of patented widgits bearing a well-known trademark, enters into a joint venture in Germany, contributing all rights to the manufacture and sale of the patented widgits in Germany, plus exclusive use of the trademark in Germany, in exchange for its interest in the joint venture. A has never theretofore sold, licensed or contributed intanglibles of any nature to any other person or venture. The transfer does not constitute a transfer of capital.

Example (65). A U.S. corporation (A) engaged in the manufacture of patented widgits bearing a well-known trademark, has many licensees for the manufacture and sale of such widgits in the United States and throughout the world, some of which are AFNs and others unaffiliated foreign nationals. The licenses have produced substantial royalty income to A for many years. During 1968, A enters into a joint venture in Japan, contributing all substantial rights to the manufacture and sale of the patented widgits in Japan in exchange for its 50% participation in the joint venture. A has never theretofore engaged in a similar transaction. The transfer is a transfer of capital in an amount equal to the fair market value of the interest acquired by A in the joint venture.

Example (66). A U.S. corporation (A) has many proprietary products bearing established trademarks which it licenses for manufacture and sale to numerous AFNs and unaffiliated foreign nationals throughout the world. It has never contributed the rights to any of these products to any foreign enterprise in exchange for a debt or equity interest in the foreign enterprise. In 1968, A's scientists discover a new product and A immediately transfers the worldwide manufacturing and selling rights to this product to a foreign corporation (X), in exchange for all of the stock of the foreign corporation. The transfer does not involve a transfer of capital as the rights contributed to X did not produce substantial royalty or other like income to A prior to the transfer. As a general rule, royalty or other like income derived from an intangible will not be considered "substantial" for purposes of § 312(c)(11) unless such income (on a gross basis) exceeded either $200,000 or 10 percent of the DI's gross income for the DI's most recently ended fiscal year.

Example (67). A U.S. corporation (A) has 20 proprietary products bearing established trademarks. Eight (8) of such products have been licensed on a royalty basis for manufacture and sale to AFNs and nonaffiliated foreign nationals throughout the world. The worldwide manufacturing and selling rights to four of such products have been contributed to foreign corporations in exchange for controlling equity interests in such corporations in the early 1960s. In 1968, A, which has been manufacturing and selling the remaining 8 products for its own account, contributes the worldwide manufacturing and selling rights to these products to a United Kingdom corporation (X) in exchange for all of the stock of X. The transfer to X does not involve a transfer of capital, as A has an established practice of contributing intangibles to foreign corporations in exchange for equity interests.

(p) *Certain stock-for-stock and stock-for-asset acquisitions, reorganizations*

and like transactions. Certain other transactions not enumerated in § 312(c) will also not be deemed to involve any transfers of capital between a DI and its AFNs even though a foreign enterprise may become or cease to be an AFN of the DI as a result of the transaction. Note, however, that, even if a foreign enterprise ceases to be an AFN of a DI as a result of any such transaction, this does not change the amount of direct investment made by the DI during the base period in the scheduled area of such foreign enterprise. The transactions referred to are as follows:

(1) The acquisition by a DI from an AFN or unaffiliated foreign national, of the stock or assets of a foreign corporation, partnership or business venture in exchange for stock of an AFN.

The following examples are illustrative:

Example (68). DI has a wholly-owned subsidiary in the United Kingdom (X). In 1968, DI transfers all of the stock of X to an unaffiliated foreign national (Y) in exchange for all of the stock in a Brazilian corporation (Z) which is owned by Y. Z operates a manufacturing plant in Brazil. No transfer of capital to or from DI results from this transaction although as a result thereof X ceases to be an AFN of DI and Z becomes an AFN of DI. Note that any direct investment made by DI in X during 1965 and 1966 is still included in determining the amount of direct investment made by DI in Schedule B during 1965 and 1966 for purposes of § 504 (a)(2).

Example (69). Same facts as in Example (68) except that, in 1968, DI transfers all of the stock of X to Z in exchange for all of the assets of Z. Z is then liquidated and the stock of X is distributed to Y. No transfer of capital to or from DI results from this transaction although as a result thereof X ceases to be an AFN of DI and the manufacturing facilities acquired from Z become an unincorporated AFN (i.e., a branch) of DI. Note that any direct investment made by DI in X during 1965 and 1966 is still included in determining the amount of direct investment made by DI in Schedule B during 1965 and 1966 for purposes of § 504(a)(2).

(2) The contribution by a DI to the capital of an AFN of the stock or assets of another AFN.

The following examples are illustrative:

Example (70). DI has a wholly-owned subsidiary in Schedule C and a 50% owned subsidiary in Schedule A. DI's interest in the Schedule A subsidiary is transferred to the Schedule C subsidiary as a contribution to capital. No transfer of capital to or from DI results from the transaction and both subsidiaries continue to be AFNs of DI although the Schedule A subsidiary is now a second-tier AFN.

Example (71). DI has a wholly-owned subsidiary in Schedule C and a branch in Schedule A engaged in manufacturing operations. DI transfers all of the assets of the branch to its Schedule C AFN as a contribution to capital. The result is the same as in Example (70).

(3) A merger of one incorporated AFN into another incorporated AFN of the same DI, or the consolidation of AFNs of the same DI, or the merger or consolidation of an AFN of the DI into or with the DI.

The following examples are illustrative:

Example (72). DI has wholly-owned subsidiaries in Schedules A and C. The Schedule A subsidiary is merged into the Schedule C subsidiary, so that the Schedule A operations become branch operations of the Schedule C subsidiary. No transfer of capital to or from DI results from the transaction. The result would be the same even if one or both of the subsidiaries was not wholly-owned by DI.

Example (73). Same facts as in Example (72) except that the Schedule A and C subsidiaries are consolidated into a newly organized subsidiary in Schedule B. As a result, the Schedule A and Schedule C operations become branch operations of the new Schedule B subsidiary. No transfer of capital to or from DI results from this transfer.

Example (74). Same facts as in Example (72) except that the Schedule A and C subsidiaries are merged into the DI with the result that the operations in Schedule A and C now constitute unincorporated AFNs (i.e., branches) of DI. No transfer of capital to or from DI results from this transaction.

(4) A division of an AFN into two or more entities.

The following examples are illustrative:

Example (75). DI has a wholly-owned subsidiary in Schedule C engaged in the manufacture and sale of household products and heavy machinery. The household products operation is conducted in Schedule C while the heavy machinery operation is conducted by a branch in Schedule B which is a separate AFN. In 1968, the heavy machinery operation is split off into a new wholly-owned subsidiary of DI in Schedule B. No transfer of capital to or from DI results from this transaction.

Example (76). Same facts as in Example (75), except that the DI distributes the stock in the new Schedule B subsidiary to its stockholders, either in exchange for DI's stock or as a payment in respect of such stock. No transfer of capital to or from DI results from this transaction.

(5) A recapitalization of an AFN involving an exchange of stock for stock, debt for debt, stock for debt, or debt for stock.

Example (77). DI owns 80,000 shares of common stock of a French corporation (X), constituting 80 percent of the outstanding common stock of X. In 1968, X offers its stockholders one share of a new 6 percent $100 par value preferred stock in exchange for two shares of common stock. DI accepts the offer with respect to 10,000 shares of common stock and accordingly receives 5,000 shares of the new preferred stock. No transfer of capital to or from DI results from this transaction.

Example (78). Same facts as in Example (77) except that X offers its stockholders a 6 percent $1,000 face amount subordinated debenture in exchange for 20 shares of common stock. DI accepts the offer with respect to 10,000 shares of common stock and accordingly receives 500 debentures. No transfer of capital to or from DI results from this transaction.

Example (79). Same facts as in Example (77) except that, in 1968 DI, which then owns convertible debentures of X acquired in 1966, converts all of the debentures into an additional 5,000 shares of common stock of X. No transfer of capital to or from DI results from the conversion.

Example (80). DI has an incorporated AFN (X) in Schedule C. In January 1968, DI lends X $200,000 on open account. In November 1968, this indebtedness is converted into 4,000 additional shares of common stock of X at a time when X's common stock has a market value of $50 per share. No transfer of capital to or from DI results from this transaction. Note, however, that since the original loan was made in 1968, DI has nevertheless made a $200,000 positive net transfer of capital to Schedule C during 1968 (assuming no other relevant transactions in Schedule C during that year). The conversion of the debt into equity neither increases nor decreases the amount of the positive net transfer of capital.

§ B313 **Net transfer of capital.**

(a) *In general*. Section 313 of the regulations sets forth the rules for determining the amount of a net transfer of capital made by a DI to any scheduled area during any period. Such net transfer of capital is calculated by adding together (algebraically) the DI's net transfer of capital to its incorporated AFNs in the scheduled area (§ 313(a)) and the DI's net transfer of capital to its unincorporated AFNs in the scheduled area (§ 313(b)). Under § 313(d)(1), the resulting sum is reduced by the proceeds of long-term foreign borrowings invested in or allocated to investments in the scheduled area during the period involved; if, on the other hand, the DI acquires an AFN in the scheduled area during the relevant period, the resulting sum is increased by all transfers of capital made by the DI to such AFN during the 12-month period immediately preceding the date of the acquisition (§ 313(d)(2)). The rules set forth in § 313 apply to the base period years of 1965 and 1966 as well as to 1968 and succeeding years.

(b) *Net transfer of capital to incorporated affiliated foreign nationals*. Under § 313(a), a net transfer of capital by a DI to all incorporated AFNs in any scheduled area during any period is defined as:

(1) The aggregate of all transfers of capital made during such period by the DI to such AFNs (as described in §§ 312(a) and 505); less

(2) The aggregate of all transfers of capital made during such period by such AFNs to the DI (as described in §§ 312(b) and 505).

The following examples are illustrative:

Example (1). A U.S. corporation (DI) has a subsidiary in Schedule A (AFN) to which it transfers, during 1968, $100,000 as an advance on open account, $50,000 as a contribution to capital, and $40,000 resulting from an increase in accounts receivable due from AFN to DI arising out of sales of merchandise from DI to AFN. In the same year, AFN repays $110,000 of a $200,000 loan made by DI to AFN in 1967. DI has no other incorporated AFNs in Schedule A. DI's net transfer of capital during 1968 to its incorporated Schedule A AFN is $80,000, calculated as follows:

Transfers by DI under § 312(a):	
Advance on open account to AFN	$100,000
Contribution to capital of AFN	50,000
Increase in accounts receivable from AFN	40,000
Total	190,000

less		
Transfers to DI under § 312(b):		
Repayment of loan by AFN		110,000
Transfers by DI	$190,000	
Transfers to DI	—110,000	
Net transfer	80,000	

Example (2). At the beginning of 1968, a U.S. corporation (DI) has two wholly-owned incorporated AFNs in Schedule A (X and Y). In March 1968, DI purchases all the stock of a Brazilian corporation (Z) from an unaffiliated foreign national for $200,000 in cash. The following also occurs during 1968: DI lends $100,000 to X on open account and leases equipment to X for a term of 3 years, the equipment having a value of $50,000; X redeems at cost an issue of preferred stock held by DI for $50,000; Y repays a $300,000 loan made by DI to Y in 1966; Y declares a $20,000 dividend to DI which is payable on December 15th but is not paid during 1968; DI repays a $100,000 loan owing by Y to a U.S. bank, together with accrued interest and other charges aggregating $10,000. DI's net transfer of capital during 1968 to its incorporated Schedule A AFNs (X, Y, and Z) is $130,000, calculated as follows:

Transfers by DI under § 312(a):		
Purchase of Z		$200,000
Open account loan to X		100,000
Lease of equipment to X		50,000
Dividend not paid by Y when due		20,000
Payment on Y's loan		110,000
Total		480,000
Transfers of DI under § 312(b):		
Redemption by X		50,000
Repayment of loan by Y		300,000
Total		350,000
Transfers by DI	$480,000	
Transfers to DI	−350,000	
Net transfer	130,000	

Example (3). Same facts as in Example (2), except that the following also occurs during 1968: A wholly-owned subsidiary of DI in Schedule B makes a $150,000, 3-year loan to Z, the transaction being treated under § 505(a)(3) as a $150,000 transfer of capital from the Schedule B subsidiary to DI and a $150,000 transfer of capital by DI to Z; X's branch in Schedule C incurs a loss of $30,000 but has no change in its net assets during 1968, the transaction being treated under § 505(a)(6) as a $30,000 transfer of capital from X to DI; $100,000 of royalties which become payable by Y to DI during 1968 are not in fact paid during 1968; DI extends trade credits totaling $220,000 to Z; DI sells 25% of the stock of Y to an unaffiliated foreign national for $500,000 in cash. DI's net transfer of capital during 1968 to its incorporated Schedule A AFNs is $70,000, calculated as follows:

Transfers by DI under § 312(a):		
Transfers in Example (2)		$480,000
Loan to Z (§ 505(a)(3))		150,000
Royalties not paid by Y when due		100,000
Extension of trade credits to Z		220,000
Total		950,000
Transfers to DI under § 312(b):		
Transfers in Example (2)		350,000
Transfer from X (§ 505(a)(6))		30,000
Sale of stock of Y		500,000
Total		880,000
Transfers by DI	$950,000	
Transfers to DI	−880,000	
Net transfer	70,000	

(c) *Net transfer of capital to unincorporated affiliated foreign nationals.* Under § 313(b), a net transfer of capital by a DI to all unincorporated AFNs in any scheduled area during any period is defined as the DI's share of the aggregate net increase or net decrease during such period in the aggregate net assets of such AFNs. The net assets of an unincorporated AFN should reflect all assets (wherever located) and liabilities properly allocable to the AFN under generally accepted U.S. accounting principles consistently applied, whether such assets and liabilities are recorded in the legal books of account or in other books of account including those of the parent AFN. However, in calculating the net assets of unincorporated AFNs in any scheduled area at any time:

(i) Equity interests in, and debt obligations of, such unincorporated AFNs held by the DI or by AFNs of the DI should be excluded as liabilities of such unincorporated AFNs; [21] and,

(ii) Equity interest in, and debt obligations of, the DI or AFNs of the DI held by such unincorporated AFNs should be excluded as assets of such AFNs.[21]

Any net increase or decrease in the net assets of an unincorporated AFN resulting from changes in the valuation of such assets during the period involved (such as unrealized gains or losses), rather than from economic transactions, should be eliminated from the calculation. However, depreciation of tangible assets should be taken into account to the extent it is deducted in calculating earnings of the unincorporated AFN.

Where a DI directly owns an unincorporated AFN (e.g., a branch of the DI), the DI's share in the net change in net assets will equal the profits (or losses) of the AFN plus all transfers of capital made by the DI (or other AFNs of the DI) to the AFN less all remittances made by the AFN to the DI. When the DI does not own all of the unincorporated AFN, transfers of capital between the AFN and its other owners and such other owners' share of the AFN's profits or losses are not included in calculating the DI's share in the net change in the unincorporated AFN's net assets.

The following examples are illustrative:

Example (4). A U.S. corporation (DI) has two branches in Schedule A (X and Y). The net assets of X and Y at the beginning of 1968 are $200,000 and $300,000, respectively. The following occurs during 1968: X incurs a loss of $100,000 and DI transfers $50,000 to X on open account; Y earns $90,000 and remits $30,000 to DI; DI spends $500,000 for the construction of a manufacturing plant in Schedule A (Z) which becomes an unincorporated AFN (Z) (i.e., a branch) of DI. At the end of 1968, X and Y have net assets of $150,000 and $360,000, respectively. DI's net transfer of capital during 1968 to its unincorporated Schedule A AFNs is $510,000 (i.e., $50,000 net decrease in X's assets plus $60,000 net increase in Y's assets plus $500,000 net increase in Z's assets (construction of plant).

Example (5). Same facts as in Example (4) except that, at the beginning of 1968, DI has two other branches in Schedule A (V and W), which have net assets of $50,000 and $100,000, respectively. During 1968, V is closed down and all of its assets are transferred to DI in the United States. Also during 1968, DI sells all of the assets of W to an unaffiliated foreign national for $120,000. DI's net transfer of capital during 1968 to its unincorporated Schedule A AFNs is $340,000 (i.e., $510,000 from Example (4) plus $50,000 net decrease in V's assets plus $100,000 net decrease in W's assets minus $20,000 additional funds received upon sale of W's assets).

Example (6). Same facts as in Example (4) except that, in addition, in March 1968, Y invests $50,000 of its own funds in a parcel of real estate in Schedule A which has a fair market value of $100,000 at the end of 1968. The result is the same as in Example (4), since unrealized appreciation in the value of branch assets is not taken into account under § 313(b).

Example (7). Same facts as in Example (4) except that, at the beginning of 1968, $50,000 of Y's assets consist of a building which is completely destroyed by fire during 1968. As a result, Y shows profits of only $40,000, the loss being deducted from profits (the building being uninsured). DI's net transfer of capital to its unincorporated Schedule A AFNs during 1968 is $460,000 (i.e., $510,000 from Example (4) less $50,000 decrease in Y's profits).

Example (8). During 1968, a U.S. corporation (A) enters into a joint venture agreement with an unaffiliated foreign corporation (B) to operate a factory in Schedule C. B contributes to the joint venture an existing plant in Schedule C and equipment, the plant and equipment being value in the aggregate at $10,000,000. A contributes to the joint venture patents and technology valued at $5,000,000 (under circumstances whereby the contribution does not constitute a transfer of capital under § 312(c)(11)) and cash for working capital of $5,000,000. A and B each have a 50 percent interest in the profits of the joint venture. During 1968, a wholly-owned subsidiary of A in Schedule B (X) lends $3,000,000 to the joint venture, repayable at the end of five years. Also during 1968, the joint venture realizes $500,000 in gross revenues, spends $300,000 for operating expenses and depreciates its plant and equipment by $200,000. At the end of 1968, the joint venture has $8,200,000 in cash, patents valued at $5,000,000, plant and equipment valued on its books at $9,800,000, and no liabilities other than the $3,000,000 liability to X. A's net transfer of capital during 1968 to its unincorporated AFNs in Schedule C is $8,000,000, calculated as follows:

[21] Note, however, that, under § 505(b) of the regulations (see § B505(e), infra.), an obligation of an unincorporated AFN held by an AFN in another scheduled area (assuming neither of the AFNs is a Canadian AFN as defined in § 1101 of the regulations) is not excluded as a liability of the unincorporated AFN if the obligation arises out of the extension of a short-term (12 months or less) trade credit extended to the unincorporated AFN. Conversely an obligation of an AFN held by an unincorporated AFN in another scheduled area (assuming neither is a Canadian AFN) is not excluded as an asset of the unincorporated AFN if the obligation arises out of a short-term trade credit extended by the unincorporated AFN.

Net assets of joint venture as of January 1, 1968: 0.
Net assets of joint venture as of December 31, 1968:

Plant and equipment	$9,800,000		
Patents and technology	5,000,000		
Cash	8,200,000		
			[22] $23,000,000

Increase in net assets during 1968: $23,000,000.
A's share in net increase:

Net increase		$23,000,000	
Less:			
Plant and equipment contributed by B	10,000,000		
Patents and technology	5,000,000	$8,000,000	
Net transfer of capital			8,000,000

[22] Note that the $3,000,000 loan by the Schedule B subsidiary (X) is not included as a liability of the joint venture.

Note that when a DI owns only part of an unincorporated AFN, the DI's share in any net change in the net assets of the AFN will equal the net change in the net assets less that portion of the change attributable to transfers of capital from (or to) the other owners and the share of such other owners in the profits (or losses) of the AFN.

Note, also that in Example (8), A will have a $3,000,000 negative net transfer of capital to Schedule B during 1968 (i.e., the $3,000,000 deemed transferred by X to DI under the § 505 (a)(1) and (a)(2) as a result of the $3,000,000 loan made by X to the joint venture).

Example (9). A U.S. resident (DI) is a partner in a pastnership organized under German law and doing business only in Germany. DI has a 50% share in the profits of the partnership. The other partners (X and Y), each of which has a 25% share in the profits of the partnership, are residents and citizens of Germany. At the beginning of 1968, the partnership has net assets of $1,000,000. During 1968 the partnership earns $100,000 and distributes $20,000 to DI and $10,000 to each of X and Y. Also during 1968, DI lends $200,000 to the partnership on open account. At the end of 1968, the partnership has net assets of $1,260,000 (excluding liabilities to DI). DI's net transfer of capital during 1968 to its unincorporated Schedule C AFN is $230,000 (i.e., DI's $50,000 share of profits plus $200,000 loan less $20,000 remitted to DI).

Example (10). Same facts as in Example (9) except that the partnership incurs a loss of $50,000 and makes no distributions to the partners. At the end of 1968, the partnership has net assets of $1,150,000 (excluding liabilities to DI). DI's net transfer of capital during 1968 to its unincorporated Schedule C AFNs is $175,000 (i.e., DI's $25,000 share of loss plus $200,000 loan).

Example (11). Same facts as in Example (9) except that, during 1968, each of X and Y lends $300,000 to the partnership on open account. At the end of 1968, the partnership has net assets of $1,260,000 (excluding liabilities to DI but including liabilities to other partners) and the result is therefore the same as in Example (9).

A DI's net transfer of capital to all unincorporated AFNs in a scheduled area includes the DI's share of the net changes in the net assets of unincorporated AFNs in the scheduled area which are owned by other AFNs of the DI located in other scheduled areas, so long as such other AFNs are "affiliates" of the DI, as described in § 903(a) of the regulations. The calculation of any such net change should be made as if the DI itself were the immediate parent of the unincorporated AFN; the DI's share of the net change is a percentage thereof equal to the DI's percentage interest in the immediate parent.

The following examples are illustrative:

Example (12). A U.S. corporation (DI) has a wholly-owned subsidiary (C) in Schedule C which has a branch (A) in Schedule A. At the beginning of 1968, A's balance sheet is as follows:

Assets		*Liabilities and net assets*	
Cash	$75,000	Trade payables	$210,000
Customer receivables	140,000	Home office (net assets)	765,000
Inventory	360,000		
Fixed assets (net)	400,000		
Total	975,000	Total	975,000

During 1968, A earns $25,000 and DI and C each transfer $75,000 in cash directly to A as an advance. On August 1, 1968, a wholly-owned subsidiary of DI in Schedule B (X) sells $50,000 of inventory to A on 6-month credit terms. At the end of 1968, A's balance sheet is as follows:

Assets		*Liabilities and net assets*	
Cash	$340,000	Trade payables [23]	$310,000
Customer receivables	175,000	Home office (net assets) [24]	940,000
Inventory	410,000		
Fixed assets (net)	325,000		
Total	1,250,000	Total	1,250,000

[23] Including payable of $50,000 owed to X. Note that, if the credit terms extended by X had been for more than 12 months, the payable would not be included under trade payables but would be included in the home office account and would therefore increase DI's net transfer to A by $50,000 and result in a $50,000 negative net transfer of capital to Schedule B (see § 505(b) and 505(a)(2)).

[24] Including payable of $75,000 owed to DI.

DI's net transfer of capital during 1968 to its Schedule A unincorporated AFNs is $175,000 (i.e., the increase in the home office account (net assets) from $765,000 to $940,000 during 1968). Note, however, that DI will have a $75,000 negative net transfer of capital to Schedule C (i.e., the $75,000 deemed transferred by DI to C under § 505(a)(1) and (a)(2) less the $150,000 deemed transferred by C to DI under § 505(a)(6)).

Example (13). Same facts as in Example (12) except that DI owns only 80% of the voting stock of C. DI's net transfer of capital during 1968 to its Schedule A unincorporated AFNs is $140,000 (i.e., 80% of $175,000). Note, however, that DI will have a $45,000 negative net transfer of capital to Schedule C (the $75,000 deemed transferred by DI to C under § 505(a)(1) and (a)(2) less the $120,000 deemed transferred by C to DI under § 505(a)(6)).

Example (14). Same facts as in Example (12) except that DI owns only 50% of the voting stock of C. DI's net transfer of capital during 1968 to its Schedule A unincorporated AFNs is zero (see § 505(a)(4)). Note, however, that DI will have a $75,000 positive net transfer of capital to Schedule C (the $75,000 deemed transferred by DI to C under § 505 (a)(1) and (a)(2)).

(d) *Net transfer of capital to all affiliated foreign nationals in a scheduled area.* Under § 313(c), a DI's net transfer of capital to all AFNs in a scheduled area during any period is calculated by adding together (algebraically) the DI's net transfer of capital to all incorporated AFNs in the scheduled area during such period (i.e., the result of the calculation under § 313(a)) and the DI's net transfer of capital to all unincorporated AFNs in the scheduled area during such period (i.e., the result of the calculation under § 313(b)). If the calculation produces a positive result, the DI is said to have made a "positive net transfer of capital" to the scheduled area during the period involved; if a negative result is produced, the DI is said to have made a "negative net transfer of capital" to the scheduled area during the period involved.

Thus, for example, by combining the facts in Examples (1) and (4), the DI's net transfer of capital to all AFNs in Schedule A during 1968 is $590,000 (positive) (i.e., $80,000 plus $510,000). Similarly, by combining the facts in Examples (2) and (5), the DI's net transfer of capital to all AFNs in Schedule A during 1968 is $470,000 (positive) (i.e., $130,000 plus $340,000).

(e) *Deduction for investments of proceeds of long-term foreign borrowings.* In calculating a DI's net transfer of capital to a scheduled area during any period (including the base period years of 1965 and 1966), the DI should deduct an amount equal to the proceeds of long-term foreign borrowings to the extent the proceeds were expended during such period in making transfers of capital to the scheduled area or were allocated (on the books and records maintained by the DI under §§ 203(b) and 601) to any such transfers (see § 313(d)(1)).

There are two important caveats in this connection. First, the borrowings must qualify as long-term foreign borrowings by the DI as defined in § 324 of the regulations; borrowings by AFNs of a DI will not qualify for the deduction. Second, the borrowings must have been

obtained by the DI during or prior to the compliance year for which the deduction is claimed.

The following examples are illustrative:

Example (15). In March 1968, a U.S. corporation (A), which then has no AFNs, acquires all of the stock of an Argentinian corporation from an unaffiliated foreign national (X). The purchase price is $1,000,000, $500,000 of which is payable in cash at the closing, the balance to be paid in equal annual installments of $100,000 (together with accrued interest) commencing one year from the date of the closing. Each installment is represented by a promissory note of A payable to X. A's net transfer of capital to Schedule A during 1968 is $500,000 (i.e., $1,000,000 purchase price minus $500,000 proceeds of long-term foreign borrowings). Each principal payment by A on the notes will constitute a transfer of capital to the Argentinian corporation under § 312(a)(7) and will be taken into account in determining the net transfer of capital made by A to Schedule A in 1969 and each subsequent year that a payment is so made. It should be pointed out, however, that, if the acquisition was consummated on or after June 10, 1968, the borrowing made by A would not qualify as a long-term foreign borrowing unless X agreed in writing with respect to each note that, for a period of three years from the date of the closing or until maturity of the note, it would not sell or otherwise transfer the note to (i) a resident or national of the United States (other than a foreign bank described in § 317(b)(2)) or a Canadian person (as defined in § 1101(d)), or (ii) any person who X has reason to believe will sell or otherwise transfer a note to any such United States resident or national or Canadian person (see § 324(e)).

Example (16). A U.S. corporation (DI) has a wholly-owned subsidiary in Schedule C (AFN). On June 1, 1968, DI purchases equipment from an unaffiliated foreign national (X). The purchase price is $1,000,000, all of which is to be paid on May 31, 1969, and DI gives X its promissory note for $1,000,000 payable on May 31, 1969. DI then transfers the equipment to AFN as a contribution to its capital. DI has not made any net transfer of capital to Schedule C during 1968, although payment of the principal of the note in 1969 will result in a transfer of capital to AFN under § 312(a)(7). It should be pointed out, however, that if the purchase was made on or after June 10, 1968, the borrowing made by DI would not have qualified as a long-term foreign borrowing unless X made the agreement specified in § 324(e) with respect to the $1,000,000 note.

Example (17). From January 1 to November 30, 1968, DI makes transfers of capital aggregating $130,000 to its AFNs in Schedule A. On December 1, 1968, DI borrows $100,000 from a foreign bank for a 3-year term and allocates the $100,000 proceeds on its books and records to the transfers of capital which it previously made to its Schedule A AFNs. DI's net transfer of capital during 1968 to Schedule A is $30,000. Note, however, that the $100,000 proceeds, if actually held by DI in the form of liquid foreign balances (as defined in § 203(a)), would be subject to the reduction provisions of § 203(c). Note also that the allocation could not have been made if the borrowing had been made in 1969 rather than December 1, 1968 as stated.

Example (18). A U.S. corporation (DI) has a subsidiary in Schedule A (AFN). On June 1, 1968, DI borrows $100,000 from a foreign bank, the debt being repayable on July 1, 1969. DI then lends the $100,000 to AFN, the latter debt being repayable on June 1, 1969. DI has no net transfer of capital to Schedule A during 1968. On June 1, 1969, AFN repays its debt to DI, so that DI then has $100,000 long-term foreign borrowing proceeds available for making transfers of capital (see § 324(c)). On July 1, 1969, DI repays its debt to the foreign bank, such repayment not resulting in a transfer of capital to AFN under § 312(a)(7) since the proceeds of the borrowing are not then invested in or allocated to investments in any scheduled area. As a result, DI has no net transfer of capital to Schedule A during 1969 and has no long-term borrowing proceeds available after July 1, 1969.

Example (19). Same facts as in Example (8) except that the $500,000 contribution made by A to the working capital of the joint venture is made with the proceeds of a 3-year loan obtained by A from a foreign bank. DI's net transfer of capital during 1968 to Schedule A is $3,000,000.

Note that, under § 312(d)(1), it is the gross amount of proceeds borrowed which is deducted in calculating net transfers of capital. Thus, for example, in Example (19), if DI actually received only $4,500,000 from the foreign bank ($500,000 being deducted in advance for interest and other lending charges) and invested the entire $4,500,000 plus $500,000 of its own funds in the joint venture, a deduction of $5,000,000 would still be made under § 313(d)(1) in calculating DI's net transfer of capital. In effect, therefore, DI is treated as having paid the interest and other charges to the foreign bank out of its own funds (such payment not involving a transfer of capital) and having invested $5,000,000 of long-term foreign borrowing proceeds in the joint venture (see § B324(f), infra).

(f) *Step acquisitions*. In calculating a DI's net transfer of capital to all AFNs in a scheduled area during any period (including the base period years of 1965 and 1966), the DI should include all transfers of funds or other property as a result of which the DI became a DI in any AFN and all transfers of funds or other property to or on behalf of or for the benefit of such AFN made by or on behalf of or for the benefit of such DI within 12 months (whether or not during the period for which the calculation is being made) prior to the date of the transfer by which it became a DI in such AFN, to the same extent as if the DI had been a DI in such AFN during such 12-month period.

The following examples are illustrative:

Example (20). On November 1, 1968, a U.S. corporation (A), which has no AFNs, acquires 8% of the voting stock of a French corporation (X) for $1,000,000 in cash from an unaffiliated foreign national. On December 1, 1968, A lends X $500,000. On March 1, 1969, A acquires an additional 2% of the voting stock of X from the same unaffiliated foreign national for $250,000 in cash. A's net transfer of capital during 1968 to Schedule C is zero. A's net transfer of capital during 1969 to Schedule C is $1,750,000.

Example (21). Same facts as in Example (20) except that the initial purchase of voting stock of X is made on February 1, 1968. A's net transfer of capital during 1969 to Schedule C is $750,000. There is no net transfer of capital in 1968.

Example (22). On January 1, 1968, a U.S. corporation (A) which has no AFNs, enters into a construction contract with an unaffiliated foreign national (B) whereby A is to construct a factory for B in a Schedule C country. On March 1, a project office is opened and preliminary survey work on the project is commenced. On April 1, 1968 A sends equipment, machinery and supplies valued at $1,000,000 to the project site. At the time work on the project office is opened on March 1, A reasonably expects that such work will be completed by the end of February, 1969 and thus the project is not an AFN of A because of the exemption provided in § 304(d)(ii). At the end of 1968, the net assets employed in the project amount to $1,000,000, but there has been no net transfer of capital to Schedule C during 1968 since the project is not an AFN. During 1969, A sends additional equipment, machinery and supplies valued at $1,000,000 to the project site and, at the end of 1969, the net assets employed in the project amount to $2,000,000. Work on the project is not in fact completed until March 1, 1970. Accordingly, since work on the project was not in fact completed within 12 months from the date it commenced, the project is an AFN of A commencing January 1, 1969, and, because of the provisions of § 313(d)(2), A has made a positive net transfer of capital of $2,000,000 to Schedule C during 1969.

§ B321 Calendar years and fiscal years.

(a) *In general*. The term "year", as used in the regulations, is defined in § 321(a) to mean a calendar year except with respect to DIs who have secured permission under § 321(b) to measure compliance with the regulations on the basis of their normal fiscal year. Although the Director may, in appropriate cases, permit a fiscal year DI to comply with the substantive provisions of the regulations on the basis of the DI's normal fiscal year (§ 321(b)) and fiscal year information may be used to complete the Base Period Report on Form FDI-101, all DIs (including all fiscal year DIs) will nonetheless be required to submit cumulative quarterly reports on Form FDI-102 within 45 days following the close of each calendar quarter furnishing data relevant for the calendar quarter. In addition, all DIs must file Form FDI-102F by April 30 covering operations for the previous calendar year. All fiscal year DIs (whether or not receiving permission to measure compliance on a fiscal year basis) must also file an annual report covering operations for their fiscal year (beginning with fiscal years ending after Dec. 31, 1968). The annual fiscal report is due within 120 days from the end of the reporter's fiscal year and is submitted on standard Form FDI-102F with the notation "(fiscal)" in the upper left hand corner of the front page.

(b) *Fiscal year for compliance purposes*. To secure permission to have compliance measured on a fiscal year basis, a DI must submit a written application to the Director identifying special circumstances which the DI feels justify granting the permission referred to in § 321(b). The application must demonstrate that the nature of the DI's business is such that an accurate reflection of total annual operations, as they affect the regulations, can only be made when measured on a fiscal year basis. The applicant must also demonstrate that, notwithstanding the granting of such permission, its operations when measured on a calendar year basis will also

be in substantial compliance with the regulations.

The following examples are illustrative:

Example (1). DI has a wholly-owned subsidiary (X) in Germany. DI maintains its books on a calendar year basis while X maintains its books on a January 31st fiscal year basis. DI is not eligible for relief under § 321(b).

Example (2). DI and its wholly-owned foreign subsidiaries are engaged principally in the manufacture, packaging, and sale of an extensive line of food products. DI and its subsidiaries maintain their books on an April 30th fiscal year basis. Due to the nature of their business, DI and its foreign subsidiaries are subject to the vagaries of the commodities market. Shortages or an overbundance of products, storms, droughts, unseasonal frosts, etc., can have an unpredictable effect on earnings during any given period. All of DI's commercial and financial planning is done on an April 30th fiscal year basis, and if DI were required to comply on a calendar year basis, some unforeseen and uncontrollable event could result in a serious error in any estimate of calendar year statistics. Since DI and its foreign subsidiaries can experience sharp seasonal fluctuations in earnings and because of the difficulty of estimating earnings on a calendar year basis, DI is eligible for the benefits provided by § 321(b) upon a showing that it will use its best efforts to comply with the regulations on a calendar year basis.

§ B322 Person within the United States.

(a) *In general.* The term "person within the United States" is crucial to the concept of a "direct investor" (as defined in § 305). The regulations, as indicated earlier, apply only to DIs and a person cannot be a DI unless he (or it) is a "person within the United States" as defined in § 322.[25]

(b) *Residence.* Paragraph (a)(1) of § 322 provides that an individual who is a resident of the United States is a person within the United States. This rule applies without regard to the citizenship of the individual.

The determination as to whether an individual is a "resident" of the United States depends on the facts and circumstances of each particular case. In general, an individual will be treated as a resident of the United States during any year if he has a permanent place of abode within the United States or is physically in the United States for more than 183 days during the year. However, alien individuals who are present in the United States will not be considered residents of the United States if they have no intention to remain in the United States permanently or for an indefinite period. Thus, for example, an alien individual who is present in the United States as a student, an entertainer on tour, an athlete competing in one or more athletic contests, a patient undergoing treatment for illness or a traveler, will not be treated as a resident of the United States. Residency in the United States will be treated as continuous although the individual makes occasional trips out of the country during such residency.

[25] The term "United States" is defined in § 318 of the regulations.

(c) *Center of economic interest.* Paragraph (a)(2) of § 322 provides that a citizen of the United States who is residing abroad is nevertheless a person within the United States if the center of his economic interests is located within the United States. Whether a U.S. citizen's center of economic interests is located within the United States depends on the particular facts and circumstances of each case. Among the factors that will be considered are the length of time the individual has resided and intends to reside outside the United States, the relative values of the individual's investments in the United States and in foreign countries, and the nature of the U.S. investments (i.e., whether passive portfolio investments or whether active participation in business is involved).

The following examples are illustrative:

Example (1). A U.S. citizen (A) becomes a resident of a foreign country in February 1968. A owns all of the stock of a U.S. corporation (X). After A becomes a nonresident of the United States, he nevertheless continues actively to participate in X's business and makes frequent trips to the United States for this purpose. A's only other investments are of a portfolio and short-term debt nature. A also maintains an apartment in the United States which he uses on his visits to the United States. A is a person within the United States.

Example (2). A U.S. citizen (A) owns a retail merchandising business in the United States. Upon reaching the age of 65, A sells his business to an unrelated person within the United States and purchases an annuity from a U.S. insurance company. In January 1968, A sells his home in the United States and he and his wife move to Iceland, A's ancestral homeland, where he establishes a permanent residence. A's grown children continue to live in the United States. A continues to maintain bank accounts in the United States into which periodic payments from the proceeds of his annuity are made. A also continues to own a small parcel of undeveloped real estate in the United States which he purchased many years ago for investment. A is not a person within the United States.

Example (3). A U.S. citizen (A), resident in a foreign country for many years, owns 75% of the stock of N, a U.S. corporation, which owns 75% of O, another U.S. corporation, which in turn owns 75% of P, a third U.S. corporation. N corporation owns all the stock of six foreign corporations and has 12 branch operations in foreign countries, while O corporation also owns all of the stock of 6 different foreign corporations and has 10 branch operations in foreign countries. N, O, and P all have substantial manufacturing or selling operations in the United States. The products of N, O and P corporations are sold both in the United States and in foreign countries. Total sales of N, O, and P corporations and their 12 foreign affiliated corporations and 22 foreign branches amount to several million dollars annually. All major policy decisions of N, O, and P corporations and their affiliated foreign nationals are made by A, who maintains no fixed office abroad, and these decisions are executed by managerial staff in the United States where the head offices of all three U.S. corporations are maintained. Decisions on particular matters within the policy guidelines laid down by A are made at the head offices of the three U.S. corporations and are relayed to all domestic and foreign operations from such head offices, subject only to the periodic review of A. A conducts no significant separate foreign business activities aside from those conducted through his direction of the affairs of N, O, and P corporations. A is a person within the United States.

Example (4). A U.S. citizen (A) owns all the stock of R corporation, a U.S. corporation with extensive, worldwide foreign operations. In 1965, A establishes his permanent residence in Belgium, and establishes V corporation, a foreign corporation, in Belgium. In September of 1966, V corporation purchases all the stock of R corporation from A in exchange for additional stock in V corporation. In a series of corporate reorganizations carried out in 1966 and 1967, the foreign operations and foreign corporations previously owned by R corporation become foreign operations and corporations conducted and owned, respectively by V corporation. Direction of all such operations is carried on in Belgium; the head offices and senior managerial staff are moved to Belgium, and by December 1967, R corporation is a subsidiary of V corporation with no foreign holdings of its own. A is not a person within the United States in 1968.

Example (5). A U.S. citizen (A), who has permanently resided in Italy since 1961, owns several parcels of undeveloped and commercial real estate in the United States which have an aggregate fair market value of in excess of $10,000,000 in January 1968. The commercial real estate is managed for A by an independent real estate organization which remits profits to A periodically. A maintains certain bank accounts in the United States in connection with his real estate investments and his only other U.S. investments consist of marketable securities of large U.S. corporations. A makes one or two trips per year to the United States primarily to visit relatives. A has no significant investments in foreign countries. A is not a person within the United States.

(d) *Corporation or partnership.* Paragraph (a)(3) of § 322 provides that a corporation or partnership organized under the laws of the United States (excluding a branch of such a corporation or partnership if the branch is a separate foreign national under § 302) is a person within the United States.

(e) *Trusts.* Trusts (other than a trust which is deemed a corporation under § 307(b)) which shall be deemed to be persons within the United States under § 322(a)(4) shall include the following:

(1) An inter vivos trust governed by the laws of the United States to which any property is or has been contributed by a person who, at the time of making the contribution, is or was a person within the United States if:

(i) Such contribution is or was made on or after January 1, 1968; or

(ii) The terms of the trust are such that the income therefrom is currently taxable to such person for U.S. Federal Income Tax purposes; or

(iii) A majority of the trustees thereof are or were, at any time after January 1, 1968, persons within the United States and the Director shall not have been furnished with evidence satisfactory to him that no person or persons within the United States have a substantial beneficial interest in the trust.

(2) A testamentary trust governed by the laws of the United States and created by a person who, at the time of his death, was a person within the United States, if a majority of the trustees thereof are or were at anytime after

January 1, 1968, persons within the United States and the Director shall not have been furnished with evidence satisfactory to him that no person or persons within the United States have a substantial beneficial interest in the trust.

(f) *Estates.* A decedent's estate shall be deemed to be a person within the United States under 322(a)(5) if the deceased was a person within the United States at the time of his death and

(1) A majority of the executors or administrators, as the case may be, are persons within the United States or substantial assets of the estate are being administered under the laws of the United States, and

(2) The Director shall not have been furnished with evidence satisfactory to him that no person or persons within the United States have a substantial beneficial interest in the estate.

(g) *Domestic bank.* Section 322(a)(6) makes clear that a domestic bank (including a domestic branch or office of a foreign bank), as defined in § 317(a), will be considered a person within the United States.

(h) *Special cases.* Under paragraph (b) of § 322, the Director retains the power to determine, in particular cases and based on the facts and circumstances in each case, that a person not described in paragraph (a) of § 322 or the operations (such as a branch) of a person not described in paragraph (a) of § 322 is nevertheless a person within the United States.

The following example is illustrative:

Example (6). Corporation Y, a foreign corporation, has no managerial office or operations in the country of its incorporation. Ninety-five percent of its stock is held by persons within the United States and its shares are traded on a national securities exchange in the United States. The principal office of Y corporation is in the United States and all of its officers and directors are citizens and residents of the United States. Y corporation owns more than 10 percent of the stock (in proportions ranging from 15 percent to 100 percent) in more than 20 foreign corporations. Under the facts of the example, the Director may determine that Y corporation is a person within the United States.

§ B323 International finance subsidiary.

(a) *In general.* Section 323 of the regulations defines the term "international finance subsidiary" of a DI as a corporation organized under the laws of the United States, all the stock of which (disregarding directors' qualifying shares) is owned directly or indirectly by the DI, and the principal business of which is to borrow funds from foreign nationals other than AFNs and to invest such funds in debt or equity securities of AFNs. The section further provides that a DI and all of its international finance subsidiaries are considered a single person for all purposes of the regulations.

Accordingly, direct investment transactions of, and foreign balances held by, an international finance subsidiary of a DI are attributed to the DI, while transactions between the DI and the subsidiary are disregarded for purposes of the regulations. Similarly, long-term foreign borrowings obtained by the international finance subsidiary are considered as borrowings by the DI itself, and only one certificate should be filed by the DI under §§ 1002(a)(6) and 1002(b) in respect of each such borrowing. Thus, if the DI guarantees the due and punctual payment of the principal of, premium, if any, and interest on the debt obligations of the international finance subsidiary, and the due and punctual making of mandatory sinking fund payments, if any, the DI should file a Subpart J certificate as a borrower, not a guarantor, and any payments made by the DI under its guarantee (including the delivery of capital stock of the DI pursuant to the exercise of conversion privileges) will be treated as repayments by a borrower and not by a guarantor. Reports filed by the DI under § 602 should include all relevant items attributable to the international finance subsidiary.

(b) *Off-shore finance subsidiary.* Although a corporation organized under the laws of a foreign country does not technically come within the definition of an international finance subsidiary, the Office will give consideration to requests for specific authorization to permit, among other things, an "offshore finance subsidiary" of a DI to invest proceeds of foreign borrowings from unaffiliated foreign nationals in other AFNs of the DI without having such investments charged to the DI as transfers of capital under § 505. Such relief, if granted, may be subject to appropriate conditions. For purposes hereof, an "offshore finance subsidiary" means a corporation organized under the laws of a foreign country, all the stock of which (disregarding directors' qualifying shares) is directly or indirectly owned by the DI and the principal business of which is to borrow funds from foreign nationals, other than AFNs of the DI, and to invest such funds in debt or equity securities of the DI or AFNs of the DI.

§ B324 Long-term foreign borrowing.

(a) *In general.* Section 324 of the regulations contains a number of provisions dealing with long-term foreign borrowings by a DI. It defines those borrowings which will qualify as long-term foreign borrowings and sets forth rules for determining the amount of proceeds of such borrowings which a DI may expend in or allocate to transfers of capital to its AFNs. In addition, the section describes the consequences of refinancings and conversions of long-term foreign borrowings.

Qualification of a borrowing as a long-term foreign borrowing has two significant aspects. First, the proceeds of such a borrowing expended in or allocated to transfers of capital are deducted in calculating net transfers of capital under § 313(c). Thus, to the extent such proceeds are invested in or allocated to investments in AFNs, the investments will not result in positive net transfers of capital or positive direct investment and will not be charged against the DI's "allowables" under § 503 or 504. Secondly, repayment of such long-term foreign borrowings will be generally authorized by Subpart J of the regulations, without regard to §§ 503 and 504 "allowables" actually available to the DI in the year of repayment, if the DI has filed an appropriate certificate under Subpart J on or prior to the date of the borrowing (see § 1002 (a) and (b)) and has otherwise complied with the provisions of that subpart.

(b) *Basic definition of long-term foreign borrowing.* Under paragraph (a) of § 324, a long-term foreign borrowing is defined as any borrowing by a DI (not by an AFN of the DI) from a foreign national[26] (other than an AFN) with an original maturity of at least 12 months. It includes an extension of credit to the DI by such a foreign national in connection with the purchase of property (including securities or services) by the DI from the foreign national. It should be noted, however, that a borrowing by a DI made on or after June 10, 1968, must meet certain additional tests before it will qualify as a long-term foreign borrowing. These tests are discussed in § B324(c), infra.

The term "borrowing," as used in § 324(a), refers not only to the typical loan of funds to or sale of debt obligations by the DI, but also to every transaction, however designated, the practical economic result of which is that the DI acquires an equity in property with payment by the DI for such acquisition being completely or partially deferred to a date or dates succeeding the date of acquisition.[27] Thus, for example, an installment purchase of property (including a long-term lease or charter of property which is treated as essentially equivalent in substance to an installment purchase under accounting principles generally accepted in the United States) will be treated as a borrowing under § 324(a). In the event any lease or charter by DI is treated as a long-term foreign borrowing under § 324, an appropriate portion of each required lease rental or charter hire payment should be allocated to interest and the remainder to the repayment of principal.

The "original maturity" of a borrowing refers to the date the first principal payment is required to be made (without regard to provisions for acceleration upon default or provisions in convertible debt obligations which permit conver-

[26] Sales of debt obligations to underwriters or dealers in a public offering are disregarded in determining whether the debt obligations are sold to foreign nationals. Only the first public purchasers are considered.

[27] This test is also applicable in determining whether an AFN has made a borrowing for purposes of Subpart J of the regulations.

sion within 12 months).[28] A borrowing made prior to January 1, 1968, shall be considered as having an original maturity of at least 12 months if no principal payments were (or are) in fact made within 12 months from the date of the borrowing. A borrowing made on or after January 1, 1968 will be treated as having an original maturity of at least 12 months if there are express provisions for renewal, extension or continuance for a total term of at least 12 months and the DI reasonably expects that no principal payment will be made within 12 months from the date of the borrowing. It should be noted, in this connection, that the renewal of a long-term foreign borrowing or the refinancing of a long-term foreign borrowing with the proceeds of a subsequent long-term foreign borrowing obtained from the same or another lender does not constitute a repayment of the original borrowing or the making of a new borrowing (see § B324 (d), infra).

The date of a borrowing refers to the date the proceeds are received by the DI, or, if an installment purchase of property is involved, the date of the purchase. However, if the borrowing involves the public issuance of securities, the date of the borrowing is the date the securities are issued, and if use of an overdraft facility is involved, the date of the borrowing is the date the overdraft is used (see § 1002(e) of the regulations).

The following examples are illustrative:

Example (1). On June 1, 1968, DI purchases all of the voting stock of a French corporation from an unaffiliated foreign national. The purchase price is $1,000,000, $250,000 of which is paid in cash at the closing, the balance being payable (together with interest) in three equal annual installments commencing 1 year from the date of closing. DI has made a transfer of capital of $1,000,000 and a long-term foreign borrowing of $750,000 on June 1, 1968.

Example (2). On June 1, 1968, DI purchases a parcel of commercial real estate in Belgium from an unaffiliated foreign national. The purchase price is $500,000, $200,000 of which is paid in cash at the closing, the balance being payable (together with interest) in five equal annual installments commencing 1 year from the date of the closing. The balance of the purchase price is secured by a mortgage on the property. DI has made a transfer of capital of $500,000 and a long-term foreign borrowing of $300,000 on June 1, 1968. Note that if the first installment was payable prior to 1 year of the closing, no long-term foreign borrowing would be involved.

Example (3). On June 1, 1968, DI purchases equipment and machinery from an unaffiliated foreign national and immediately leases the property to an AFN for a 3-year term. The purchase price is $100,000, all of which is payable (together with interest) 1 year from the date of the purchase. DI has made a transfer of capital of $100,000 and a long-term foreign borrowing of $100,000 on June 1, 1968.

Example (4). On July 1, 1967, DI borrows $1,000,000 from a foreign bank against DI's 6-month note. The note contains no provisions for renewal or extension but is in fact renewed for an additional six month term and is repaid at the end of the renewal term. DI has made a long-term foreign borrowing of $1,000,000.

Example (5). Same facts as in Example (4) except that the borrowing is made on July 1, 1968, and is repaid on July 1, 1969. The borrowing does not constitute a long-term foreign borrowing since the borrowing was made on or after January 1, 1968 and there are no express provisions for renewal, extension or continuance.

Example (6). On March 1, 1968, DI enters into a 10-year equipment lease with an unaffiliated foreign national (X) and immediately leases the equipment to an AFN for a term of 5 years. The equipment lease with X is appropriately treated as an installment purchase by DI under accounting principles generally accepted in the United States. Assuming no rental payments are to be made to X under the lease for at least 1 year from the commencement thereof, an appropriate portion of the aggregate rentals should be treated as a long-term foreign borrowing by DI, the remainder being allocated to interest charges. The amount of the long-term foreign borrowing can be offset under § 313(d)(1) against the transfer of capital to the AFN.

Example (7). On March 1, 1968, an international finance subsidiary of a U.S. corporation (A) sells in a public offering in Europe $20,000,000 face amount of debentures at par. The debentures have a 12-year maturity, are convertible into common stock of A after 6 months from the date of issue, and have no required sinking fund payments. A has made a long-term foreign borrowing of $20,000,000.

Example (8). On March 1, 1968, an international finance subsidiary of a U.S. corporation (A) sells in a public offering in Europe $20,000,000 face amount of debentures at par. The debentures have a 12-year term and have no required sinking fund payments. Each $1,000 debenture is sold with a warrant attached to purchase five shares of common stock of A. The warrants are detachable after 6 months from the date of issuance and are exercisable after 12 months from such date. A has made a long-term foreign borrowing of $20,000,000 less an amount of the $20,000,000 proceeds reasonably allocable to the value of the warrants.

Example (9). On March 1, 1968, a U.S. corporation (A) sells in a public offering in Europe 500,000 shares of a new issue of preferred stock for $50 per share. A has not made a long-term foreign borrowing.

(c) *Borrowing made on or after June 10, 1968*. Under § 324(e) of the regulations, a borrowing made on or after June 10, 1968 will not qualify as a long-term foreign borrowing unless one or more of the following tests are satisfied:

(1) The borrowing is made from a foreign bank; or

(2) The borrowing is made from or guaranteed by a foreign country or any agency thereof; or

(3) The borrowing has an original maturity of at least three years, and the acquisition (as of the date of the borrowing) of the debt obligation resulting from the borrowing by a U.S. resident or national would result in such U.S. resident or national being subject to the U.S. Interest Equalization Tax; or

(4) The lender agrees in writing that, for a period of 3 years from the date of the borrowing or until final maturity, whichever first occurs, it will not sell or otherwise transfer the debt obligation resulting from the borrowing to (i) a resident or national of the United States (other than a domestic bank as defined in § 317) or a Canadian person (as defined in § 1101), or (ii) any person who the lender has reason to believe will sell or otherwise transfer the debt obligation to any such U.S. resident or national or Canadian person.

Thus, in each of the examples noted above, the borrowing, if made on or after June 10, 1968, would not qualify as a long-term foreign borrowing unless one of the above conditions was satisfied. In this connection, the following should be noted:

A foreign branch of a domestic bank is considered a foreign bank under § 317 of the regulations.

An industrial or commercial enterprise of a foreign government operating essentially in the private business sector shall not be considered as part of the government of that country or as an agency thereof.

The requirement as to imposition of the U.S. Interest Equalization Tax does not require that the tax actually be imposed on a U.S. resident or national who acquires the debt obligation. It only requires that the nature of the debt obligation be such that it would result in the imposition of the tax on an acquiring U.S. resident or national unless the acquisitions were exempt or excluded from tax based on the identity of the acquiring person or the manner of the acquisition or on other circumstances not reasonably foreseeable when the obligation is issued. Thus, for example, if the issuing corporation is a less-developed country corporation, the acquisition of its debt obligations not being subject to the Interest Equalization Tax under § 4916 of the Internal Revenue Code of 1954, the borrowing would not satisfy the conditions of § 324(e). On the other hand, acquisitions exempt or excluded from tax because of the provisions of §§ 4915 or 4918 of the Internal Revenue Code of 1954 do not affect the qualification of a borrowing as a long-term foreign borrowing.

(d) *Refinancing*. Refinancing of a long-term foreign borrowing, in whole or in part, by virtue of the renewal, extension or continuance of the borrowing or by virtue of a subsequent long-term foreign borrowing obtained from the same or another lender is not deemed a repayment of the borrowing or the making of a new borrowing to the extent of the amount of the long-term foreign borrowing so refinanced (see § 324(b)(1)). Thus, for example, if a DI renews a 1-year note for any additional period of time, the renewal is not considered a repayment of the original borrowing or making of a new borrowing. Similarly, if a DI has a "long-term foreign borrowing" of $100 and obtains a new foreign borrowing of $500 from the original or another foreign lender which qualifies as

[28] Thus, for example, if a June 1, 1968, borrowing of $500,000 from a foreign bank is evidenced by two promissory notes of $250,000 each, payable on January 1, 1969, and June 1, 1969, respectively, no part of the borrowing constitutes a long-term foreign borrowing under § 324. In certain instances, however, where more than one instrument of indebtedness is involved, a factual question will be presented as to whether more than one borrowing is involved. If two or more borrowings are involved, the fact that one is repayable within 12 months will not disqualify the others as long-term foreign borrowings.

a long-term foreign borrowing, $100 of which is used to repay the original borrowing of $100, the $100 so used is not considered a "repayment" of the original borrowing and a new borrowing of only $400 will be deemed to have been made.

(e) *Conversion of debt obligations into equity securities.* The delivery of equity securities of a DI to holders of debt instruments issued by the DI (including its international finance subsidiary) in connection with a "long-term foreign borrowing", pursuant to the exercise of conversion or similar rights, is deemed a repayment of the borrowing to the extent of the principal amount of the indebtedness surrendered by such holders in exchange for such equity securities. The conversion will result in repayment in the year the delivery of stock occurs. Note, however, that under §§ 1002(a)(3) and 1003 of Subpart J, the charge against §§ 503 and 504 "allowables" resulting from the exercise of conversion rights in any year does not occur until the year following such exercise. Thus, for example, if an international finance subsidiary of a U.S. corporation issues $20,000,000 face amount of debentures convertible into stock of the parent and invests the proceeds in Schedule C AFNs of the parent, conversion of $1,000,000 face amount into stock in 1969 (the stock being delivered in 1969) results in a $1,000,000 repayment of the borrowing (i.e., a $1,000,000 transfer of capital to Schedule C) in 1969. However, assuming such repayment in 1969 is generally authorized by Subpart J, no reduction of the parent's 1969 worldwide § 503 allowable and § 504 Schedule C allowable (if any) will be made in 1969; rather, the $1,000,000 repayment in 1969 will reduce such allowables in 1970 and subsequent years until the total reduced equals $1,000,000.

(f) *Calculation of proceeds of long-term foreign borrowing.* "Proceeds of a long-term foreign borrowing" means (1) the gross amount or value (before deducting any discounts, commissions or fees) of funds or other property received by the DI from the first purchaser or holder in exchange for the debt obligation issued or created in connection with the borrowing, plus (2) all amounts (other than amounts representing income or profits earned (including capital gains) from investments or reinvestments of such proceeds) received by the DI upon the repayment or other liquidation of equity interests in or debt obligations of AFNs which were acquired with such proceeds (whether received directly from such AFNs or from other foreign nationals to which such equity interests or debt obligations are sold). The receipt of such amounts by the DI shall not be deemed a transfer of capital to the DI by AFNs of the DI under § 312(b). In calculating the amount of proceeds of a long-term foreign borrowing which are available to a DI to be expended in or allocated to transfers of capital to AFNs at any time, a DI should deduct the amount of such proceeds theretofore expended in or allocated to transfers of capital to AFNs (see § 324 (c) and (d)). Moreover, to the extent that any repayments of a borrowing do not constitute transfers of capital under § 312(a)(7) because the proceeds of the borrowing are not then invested in or allocated to investments in any scheduled area, such repayments should also be deducted in calculating the amount of available proceeds.

The following examples are illustrative:

Example (10). Same facts as in example (7), except that the debentures are sold to the public at an aggregate discount of $500,000 and that, in connection with the borrowing, the international finance subsidiary pays $500,000 in underwriting fees and thus actually receives only $19,000,000 net as a result of the borrowing. The proceeds of the borrowing are nevertheless $20,000,000.

Example (11). DI purchases equipment from an unaffiliated foreign national which it contributes to the capital of an AFN. The purchase price for the equipment is $500,000, $100,000 of which is paid at the time of the purchase, the remainder being due (together with interest thereon) 1 year later. In connection with the purchase, DI incurs expenses of $5,000. The proceeds of the borrowing are $400,000.

Example (12). On June 1, 1968, DI borrows $2,000,000 from a foreign bank repayable on May 31, 1971. $500,000 is immediately loaned by DI to an AFN in Schedule C (X) repayable on May 31, 1969. $500,000 is used to purchase stock of X, and the balance is at the same time allocated by DI on its books and records to equipment and machinery worth $1,000,000 which DI contributed to the capital of X in February, 1968. As of June 2, 1968, DI has no long-term foreign proceeds available to be expended in or allocated to transfers of capital.

Example (13). Same facts as in Example (12). On May 31, 1969, X repays the $500,000 loan obtained from DI. As of June 1, 1969, DI has $500,000 in long-term foreign borrowing proceeds. The $500,000 repayment constitutes a return of long-term foreign borrowing proceeds to DI rather than a transfer of capital to DI under § 312(b).

Example (14). Same facts as in Example (13). On July 31, 1969, DI sells the stock of X which it purchased for $500,000 to an unaffiliated foreign national for $750,000 in cash. As of August 1, 1969, DI has $1,000,000 in long-term foreign borrowing proceeds (i.e., $500,000 in Example (13) plus $500,000 received upon sale of stock representing a return of long-term foreign borrowing proceeds to DI; the $250,000 profit on the sale is treated as a transfer of capital to DI rather than a return of long-term foreign borrowing proceeds).

Example (15). Same facts as in Example (14). On May 31, 1970, DI purchases additional stock of X for $200,000 and also allocates $200,000 of proceeds on its books and records to transfers of capital made by DI to other AFNs in Schedule A in March 1970. As of June 1, 1970, DI has $600,000 in long-term foreign borrowing proceeds ($1,000,000 from Example (14) minus $400,000).

Example (16). Same facts as in Example (15). On May 31, 1971, DI repays the $2,000,000 bank borrowing. Under § 312(a)(7), DI has made a $1,200,000 transfer of capital to Schedule C and a $200,000 transfer of capital to Schedule A, and after repayment has no long-term foreign borrowing proceeds available for investment.

Example (17). On April 1, 1968, DI borrows $1,000,000 from a foreign bank and deposits the proceeds in a domestic bank. The loan is repayable on March 31, 1970. DI does not invest the proceeds in any AFNs. On March 31, 1970, DI repays the bank borrowing in full. DI has not made a transfer of capital and after repayment has no proceeds of long-term foreign borrowings available for investment in AFNs.

Example (18). Same facts as in Example (17) except that DI immediately lends the $1,000,000 proceeds to an AFN which repays the loan on March 1, 1970. On March 31, 1970, DI repays the bank borrowing in full. The result is the same as in Example (17).

(g) *Miscellaneous.* Long-term foreign borrowing proceeds which are held in the form of liquid foreign balances (see § 203 (a)(2)) pending investment in AFNs will constitute direct investment liquid foreign balances (see § 203(a)(3)) and will therefore be subject to the provisions of § 203(d). If, while such proceeds are so held in the form of liquid foreign balances, the DI allocates them on its books and records to transfers of capital, the proceeds lose their character as direct investment liquid foreign balances subject to § 203(d) but at the same time they become liquid foreign balances subject to the reduction provisions of § 203(c).

For purposes of § 324, it is immaterial what use is actually made of the proceeds of long-term foreign borrowings. They may be invested in tangible assets, portfolio securities, bank deposits or in any other manner (within or without the United States) without affecting their character as long-term foreign borrowing proceeds. What is significant under the regulations is the allocation of these proceeds on the books and records of the DI to transfers of capital which the DI makes to its AFNs. The only restrictions on investments of long-term foreign borrowing proceeds are contained in § 203 relating to the maintenance of direct investment liquid foreign balances.

§ B503 Positive direct investment not exceeding $200,000.

(a) *In general.* A DI is generally authorized under § 503(a) to make positive direct investment of not more than $200,000 in any year. The investment can be made in one or more scheduled areas, provided that the amount invested in any scheduled area does not exceed $200,000 and that the amounts invested in all scheduled areas, when added together, do not exceed $200,000. If either of these limitations is exceeded during a year, § 503(a) will not authorize any positive direct investment by the DI for that year.

The following examples are illustrative:

Example (1). During 1968, a U.S. corporation (DI) makes a positive net transfer of capital of $170,000 to Schedule B (calculated in accordance with § 313(c)) and DI's share in the total reinvested earnings of all incorporated AFNs in Schedule B is $35,000 (calculated in accordance with § 306 (b) and (c)). Section 503(a) is inapplicable in this situation since the positive direct investment in Schedule B ($205,000) exceeds $200,000. The result would be the same even if DI has negative direct investment of $5,000 or more in any other scheduled area during 1968.

Example (2). During 1968, a U.S. partnership (DI) has positive direct investment of $150,000 in Schedule A and positive direct investment of $60,000 in Schedule B (calculated in accordance with § 306(a)). Section 503(a) is inapplicable in this situation since the positive direct investments in

Schedules A and B, when added together ($210,000), exceed $200,000. The result would be the same even if DI has negative direct investment of $10,000 or more in Schedule C during 1968. Note, however, that if DI had negative direct investment of $210,000 or more in Schedule C, the investments in Schedules A and B might be authorized by the "downstream carryover" provision of § 504(c).

Example (3). During 1968, a U.S. citizen and resident (DI) makes positive direct investment of $300,000 in Schedule (C) (calculated in accordance with § 503(c)) and negative direct investment of $150,000 in each of Schedules A and B (calculated in accordance with § 306(a)). Section 503(a) is inapplicable in this situation since the positive direct investment in Schedule C ($300,000) exceeds $200,000 and the negative direct investments in Schedules A and B do not offset the positive direct investment in Schedule C.

It should be noted that, in calculating the amount of direct investment in Schedule B during any year, direct investment in Canadian AFNs should be disregarded (see § 1103 of the regulations). Thus, if in Example (2), all of the positive direct investment stated to have been made in Schedule B had actually been made in Canada, the positive direct investment in Schedule B would be zero and the positive direct investment of $150,000 in Schedule A would be authorized by § 503(a).

(b) *Calculation of direct investment in Schedule C*. For § 503 purposes only, the calculation of direct investment in Schedule C for any year should be made by excluding a negative net transfer of capital to Schedule C and negative reinvested earnings in Schedule C (§ 503(c)). The following examples are illustrative:

Example (4). During 1968, the wholly-owned incorporated AFNs of a U.S. corporation (DI) in Schedule C have a total (net) loss of $350,000 (calculated in accordance with § 306(c)), but nevertheless pay dividends of $100,000 to DI. During the same year, DI makes a positive net transfer of capital of $225,000 to Schedule C (calculated in accordance with § 313(c)). Although DI's direct investment in Schedule C calculated under § 306(a) would be $225,000 (negative) (i.e., $225,000 positive net transfer of capital plus $450,000 negative reinvestment earnings), DI's direct investment in Schedule C is, for § 503 purposes, $225,000 (positive), the $450,000 negative reinvested earnings (i.e., the $350,000 loss plus the $100,000 in dividends) being disregarded; such positive direct investment is not authorized by § 503(a).

Example (5). During 1968, a U.S. corporation (DI) reinvests $300,000 of the 1968 earnings of its incorporated AFNs in Schedule C. During the same year, DI makes a negative net transfer of capital of $150,000 to Schedule C (calculated in accordance with § 313 (c)). Although DI's direct investment in Schedule C calculated under § 306(a) would be $150,000 (positive) (i.e., $300,000 reinvested earnings plus $150,000 negative net transfer of capital), DI's direct investment in Schedule C is, for § 503 purposes, $300,000, the $150,000 negative net transfer of capital being disregarded; such positive direct investment is not authorized by § 503(a).

Example (6). During 1968, a U.S. corporation (DI) makes positive direct investment of $130,000 in Schedule A and $70,000 in Schedule B (calculated in accordance with § 306(a)). During the same year, DI reinvests $40,000 of the 1968 earnings of its incorporated Schedule C AFNs and makes a negative net transfer of capital of $80,000 to Schedule C. DI's direct investment in Schedule C, calculated under § 503(c), is therefore $40,000 (positive), the negative net transfer of capital of $80,000 being disregarded. Accordingly, § 503(a) is inapplicable in this situation, since the positive direct investments in Schedules A, B, and C, when added together ($240,000), exceed $200,000.

(c) *Miscellaneous*. Note that the amount of positive direct investment authorized by § 503 to members of an associated group and persons making an election under § 906(b)(1) is limited by §§ 905(b)(2) and 906(b)(3).

§ B504 Authorized positive direct investment in scheduled areas.

(a) *In general*. Section 504 contains the basic authorizations provisions of the regulations. The section authorizes a DI to make annual positive direct investment in Schedule A in an amount equal to 110% of the average of annual direct investment in Schedule A during 1965 and 1966 (calculated as provided in § 306 (a)), while the amount of annual positive direct investment authorized in Schedule B is limited to 65% of the 1965–1966 direct investment average.[29] Although § 504 does not authorize any positive direct investment in Schedule C based on a DI's 1965–1966 direct investment experience, it does authorize a DI to reinvest a portion of its share of the total earnings of its incorporated Schedule C AFNs during any year up to an amount equal to the lesser of (i) 35% of the average of the DI's annual positive direct investment (if any) in Schedule C during 1965 and 1966 (calculated as provided in § 306(a)), or (ii) a percentage of such share equal to the percentage of the DI's share of the total earnings of its incorporated Schedule C AFNs during 1964 through 1966, inclusive, as was reinvested during those years.

Section 504 also contains provisions permitting the "carry-forward" of unused annual § 504 authorizations to later years and the "downstream carry-over" of unused annual § 504 authorizations from Schedule C to Schedules A and B, and from Schedule B to Schedule A.

(b) *Calculation of § 504 historical positive direct investment allowables in Schedules A and B*. The following examples illustrate the method of calculating Schedule A and Schedule B historical investment allowables under paragraphs (a)(1)(i) and (a)(2)(i), respectively, of § 504.

Example (1). During 1965 and 1966, a U.S. corporation (DI) made positive direct investment of $300,000 and $700,000, respectively, in Schedule A. The average of direct investment in Schedule A during 1965 and 1966 is therefore $500,000 ($300,000 plus $700,000 divided by 2), and the annual amount of positive direct investment authorized to DI under § 504(a)(1)(i) is $550,000 (110% of $500,000). If Schedule B rather than Schedule A were involved, the annual amount of positive direct investment authorized to DI under § 504(a)(2)(i) would be $325,000 (65% of $500,000).

Example (2). A U.S. corporation (DI) made zero direct investment in Schedule A during 1965 but made positive direct investment of $300,000 in Schedule A during 1966. DI's average of direct investment in Schedule A during 1965 and 1966 is therefore $150,000 (zero plus $300,000 divided by 2), and the annual amount of positive direct investment authorized to DI under § 504(a)(1)(i) is $165,000 (110% of $150,000). If Schedule B rather than Schedule A were involved, the annual amount of positive direct investment authorized to DI under § 504(a)(2)(i) would be $97,500 (65% of $150,000).

Example (3). A U.S. corporation (DI) made negative direct investment of $200,000 in Schedule A during 1965 but made positive direct investment of $800,000 in Schedule A during 1966. The average of direct investment in Schedule A during 1965 and 1966 is therefore $300,000 ($200,000 (negative) plus $800,000 divided by 2), and the annual amount of positive direct investment authorized to DI under § 504(a)(1)(i) is $330,000 (110% of $300,000). If Schedule B rather than Schedule A were involved, the annual amount of positive direct investment authorized to DI under § 504(a)(2)(i) would be $195,000 (65% of $300,000).

Example (4). A U.S. resident (DI) made no direct investment (either positive or negative) in Schedule A during 1965 and 1966. The average of direct investment in Schedule A during 1965 and 1966 is therefore zero, and DI is not authorized to make any positive direct investment in Schedule A under § 504(b)(1)(i). The result would be the same in every other case where the average of direct investment during 1965 and 1966 is zero or a negative amount. The average would be zero if positive direct investment during one of the base years was offset by an equal amount of negative direct investment during the other base year. The average would be a negative amount if there was negative direct investment during both of the base years, if there was negative direct investment during one of the base years and zero direct investment during the other base year, or if there was negative direct investment during one of the base years and a lesser amount of positive direct investment during the other base year.

(c) *Calculation of § 504 historical reinvested earnings allowable in Schedule C*. Under § 504(a)(3)(i) of the regulations, a DI is generally authorized to reinvest a portion of its share of the annual total earnings of its incorporated Schedule C AFNs. The amount of the DI's share of such annual total earnings which can be reinvested cannot exceed the lesser of (i) 35% of the average of annual positive direct investment (if any) made by the DI in its Schedule C AFNs (both incorporated and unincorporated) during 1965 and 1966 (determined in accordance with § 306(a)), or (ii) a percentage of the DI's share of such annual total earnings equal to the percentage of the DI's share of the aggregate total earnings of its incorporated Schedule C AFNs during 1964, 1965, and 1966 as was reinvested during such years. The latter percentage is referred to as the DI's "reinvestment ratio" and is calculated by dividing (a) a sum equal to the DI's share in the aggregate reinvested earnings of its incorporated

[29] Note that, under §§ 1103 and 1104, direct investment in Canada during the base years of 1965 and 1966 and during 1968 and succeeding years is not included in the direct investment calculations for Schedule B. Accordingly, if investment in Schedule B is referred to in any examples under this § B504, it should be assumed that none of such investment was made in Canada.

Schedule C AFNs during 1964, 1965 and 1966 (determined in accordance with § 306(b)), by (b) a sum equal to the DI's share in the aggregate total earnings of its incorporated Schedule C AFNs during 1964, 1965, and 1966 (determined in accordance with § 306(c)).

The reinvestment ratio will be zero if either the numerator or the denominator of this fraction is zero or a negative amount. If the numerator equals or exceeds the denominator, the reinvestment ratio is 100 percent. A DI will not be entitled to reinvest any earnings of its incorporated AFNs under § 504(c) (3) (i) if the reinvestment ratio is zero or if the average of direct investment made by the DI in Schedule C during 1965 and 1966 is zero or a negative amount.

The following examples are illustrative:

Example (5). During 1964 through 1966, a U.S. corporation (DI) had three wholly-owned subsidiaries in Schedule C (AFNs). The average of annual direct investment by DI in Schedule C during 1965 and 1966 is $1,000,000 (positive). In 1964, AFNs had total earnings of $500,000, received $200,000 as dividends and profit distributions from their subsidiaries and branches in other scheduled areas [30], and paid $200,000 in dividends;[31] in 1965, AFNs had total earnings of $600,000, received $100,000 as dividends and profit distributions from their subsidiaries and branches in other scheduled areas,[30] and paid $400,000 in dividends;[31] and in 1966, AFNs had total earnings of $300,000, received $300,000 as dividends and profit distributions from their subsidiaries and branches in other scheduled areas,[30] and paid $200,000 in dividends.[31] Total earnings reinvested during 1964 through 1966 is therefore $1,200,000 and the reinvestment ratio is 86% (i.e., $1,200,000 reinvested earnings divided by $1,400,000 total earnings). In 1968, DI's share of the total earnings of all AFNs is $500,000. The amount of such earnings which DI may reinvest under § 504(a) (3) (i) is $350,000 calculated as follows:

Subdivision (a): 35% of 1965-1966 average annual direct investment=$350,000.
Subdivision (b): $500,000 x reinvestment ratio of 86%=$430,000.

Example (6). Same facts as in Example (5) except that, during 1964, AFNs had a total (net) loss of $800,000, received no dividends and profit distributions from their subsidiaries and branches, and paid no dividends. Total earnings reinvested during 1964 through 1966 is therefore $100,000 (negative) and the reinvestment ratio is zero (i.e., $100,000 (negative) reinvested earnings is divided by $100,000 total earnings). The amount of 1968 earnings which DI may reinvest under § 504(a) (3) (i) is zero, calculated as follows:

Subdivision (a): 35% of 1965-1966 average annual direct investment=$350,000.
Subdivision (b): $500,000 x reinvestment ratio of 0=$0.

Example (7). Same facts as in Example (5) except that the average of annual direct investment during 1965 and 1966 is $2,000,000. The amount of 1968 earnings which DI may reinvest under § 504(a) (3) (i) is $430,000 calculated as follows:

Subdivision (a): 35% of 1965-1966 average annual direct investment=$700,000.
Subdivision (b): $500,000 x reinvestment ratio of 86%=$430,000.

Example (8). Same facts as in Example (5) except that the average of annual direct investment during 1965 and 1966 is $200,000 (negative). The amount of 1968 earnings which DI may reinvest under § 504(a) (3) (i) is zero, calculated as follows:

Subdivision (a): 35% of 1965-1966 average annual direct investment=$70,000 (negative).
Subdivision (b): $500,000 x reinvestment ratio of 86%=$430,000.

Example (9). During 1964 through 1966, a U.S. corporation (DI) had two incorporated AFNs in Schedule C (AFNs). The average of annual direct investment by DI in Schedule C during 1965 and 1966 is $800,000. From 1964 through 1966, AFNs had total earnings of $1,000,000 received $500,000 in dividends and profit distributions from their subsidiaries and branches in other scheduled areas,[32] and paid no dividends. Total earnings reinvested during 1964 through 1966 is therefore $1,500,000 and the reinvestment ratio is 100% (i.e., $1,500,000 reinvested earnings divided by $1,000,000 total earnings).[33] During 1968, AFNs have total earnings of $250,000. The amount of such earnings which DI may reinvest under § 504(a) (3) (i) is $250,000 (i.e., the entire amount), calculated as follows:

Subdivision (a): 35% of 1965-1966 average annual direct investment=$280,000.
Subdivision (b): $250,000 × reinvestment ratio of 100%=$250,000.

(d) *Calculation of "carry-forwards" in Schedule A*. Under § 504(b) (1), a DI which does not use all of its § 504(a) (1) positive direct investment allowable in Schedule A during any year (i.e., the historical investment allowable plus the amount carried forward from the prior year under § 504(b) (1) and § 504(a) (1) (ii)) may make positive direct investment in Schedule A in succeeding years up to the amount of the unused portion of its allowable. In addition, if a DI has negative direct investment in Schedule A during any year, it may make positive direct investment in Schedule A in succeeding years up to the amount of such negative direct investment.

The following examples are illustrative:

Example (10). A U.S. corporation (DI) is authorized to make positive direct investment of $550,000 in Schedule A under § 504 (a) (1) (i). During 1968, DI makes positive direct investment of $200,000 in Schedule A. In 1969, DI is authorized to make positive direct investment of $900,000 in Schedule A (i.e., $550,000 under § 504(a) (1) (i) plus $350,000 under § 504(a) (1) (ii)).

Example (11). Same facts as in Example (10), except that, during 1968, DI has negative direct investment of $300,000 in Schedule A. In 1969, DI is authorized to make positive direct investment of $1,400,000 in Schedule A (i.e., $550,000 under § 504(a) (1) (i) plus $850,000 under § 504(a) (1) (ii)).

Example (12). Same facts as in Example (11). During 1969, DI makes positive direct investment of $300,000 in Schedule A. In 1970, DI is authorized to make positive direct investment of $1,650,000 in Schedule A (i.e., $550,000 under § 504(a) (1) (i) plus $1,100,000 under § 504(a) (1) (ii)).

Example (13). Same facts as in Example (11). During 1969, DI made positive direct investment of $700,000 in Schedule A. In 1970, DI is authorized to make positive direct investment of $1,250,000 in Schedule A (i.e., $550,000 under § 504(a) (1) (i) plus $700,000 under § 504(a) (1) (ii)).

(e) *Calculation of "carry-forwards" in Schedule B and "downstream carry-overs" from Schedule B to Schedule A*. Under § 504(b) (2), a DI which does not use all of its § 504(a) (2) Schedule B positive direct investment allowable in Schedule B during any year (i.e., the historical investment allowable plus the amount carried forward from the prior year under § 504(b) (2)) may make additional positive direct investment in Schedule A during that year or in Schedules A and B in succeeding years; in addition, if a DI has negative direct investment in Schedule B during any year, it may make additional positive direct investment in Schedule A during that year or in Schedules A and B in succeeding years up to the amount of such negative direct investment (see § 504(b) (2) of the regulations). Of course, additional amounts invested in Schedules A and B cannot in the aggregate exceed the aggregate of such unused allowable plus the negative direct investment. The amount of the additional positive direct investment authorized by § 504(b) (2) is calculated in the same manner as under § 504(b) (1).

The following examples are illustrative:

Example (14). A U.S. corporation (DI) has an historical positive direct investment allowable of $500,000 in Schedule B. During 1968, DI plans to make positive direct investment of only $300,000 in Schedule B. As a result, DI may make positive direct investment of up to $200,000 in Schedule A during 1968 (in addition to the amount of positive direct investment in Schedule A authorized by § 504(a) (1)). If DI did not plan to make any positive direct investment in Schedule B during 1968, it could make additional positive direct investment of $500,000 in Schedule A during that year. That portion of the $500,000 Schedule B allowable not used in either Schedule B or Schedule A during 1968 may be used in Schedule B or Schedule A in succeeding years.

Example (15). A U.S. corporation (DI) has no historical investment allowable in either Schedule A or Schedule B. During 1968, DI's wholly-owned subsidiary in Schedule B makes a $300,000 5-year loan to another wholly-owned subsidiary of DI in Schedule A, the transaction being treated under § 505 of the regulations as a transfer of capital from the Schedule B subsidiary to DI and a transfer of capital from DI to the Schedule A subsidiary. There are no other transfers of capital by or to DI during 1968, nor do any of DI's AFNs have earnings (or losses) during 1968. As a result of the negative direct investment in Schedule B during 1968 resulting from the loan, the positive direct investment of $300,000 in Schedule A during 1968 resulting from the loan is authorized by § 504(b) (2).

Example (16). During 1970, a U.S. corporation (DI) which has a § 504(a) (2) allowable of $1,250,000 in Schedule B but no § 504(a) (1) allowable in Schedule A, makes positive direct investment of $500,000 in Schedule B and $750,000 in Schedule A. The positive direct investment of $500,000 in Schedule B is authorized by § 504(a) (2) and the positive direct investment of $750,000 in Schedule A is authorized by § 504(b) (2).

[30] Net of foreign withholding taxes.

[31] Before deducting foreign withholding taxes.

[32] Net of foreign withholding taxes.

[33] The reinvestment ratio can never exceed 100%.

(f) *Calculation of "excess-dividend" allowable in Schedule C.* Under § 504(c) (1) of the regulations, a DI whose incorporated Schedule C AFNs in 1968 or any subsequent year pay more dividends than they are required to pay (by reason of the Schedule C limitation on reinvested earnings) is authorized to make additional positive direct investment in Schedules A and B and a positive net transfer of capital to Schedule C during that year up to the amount of the excess dividends paid. To the extent additional positive direct investment in Schedules A or B or a positive net transfer of capital to Schedule C is not made during such year, the DI may reinvest additional earnings of its incorporated Schedule C AFNs in succeeding years. Of course, the additional amounts invested in all schedules cannot in the aggregate exceed the amount of excess dividends paid.

The following examples illustrate the provisions of § 504(c) (1):

Example (17). During 1968, the incorporated Schedule C AFNs of a U.S. corporation (DI) have no earnings or loss but nevertheless pay dividends of $100,000 to DI. During the same year, DI makes positive direct investment of $50,000 in Schedule A, although it has no allowable in Schedule A under § 504(a) (1). Since the Schedule C AFNs paid "excess dividends" of $100,000, the positive direct investment of $50,000 in Schedule A is authorized by § 504(c) (1). Moreover, during 1969, DI will be authorized under § 504 (a) (3) (ii) to reinvest $50,000 of the 1969 earnings of its incorporated Schedule C AFNs.

Example (18). A U.S. corporation (DI) has a wholly-owned subsidiary in each of Schedules A, B, and C. DI is not authorized under § 504 (a) (1) or (a) (2) to make any positive direct investment in Schedules A or B. During 1968, the Schedule C AFN has total earnings of $800,000, of which DI is authorized to reinvest $700,000 under § 504(a) (3) (i). During 1968, the Schedule C AFN pays dividends of $600,000 although it was only required to pay dividends of $100,000 to bring DI within the $700,000 reinvested earnings limitation. Also in 1968, DI makes positive direct investment of $100,000 in each of Schedules A and B, and a positive net transfer of capital of $200,000 to Schedule C. Since the Schedule C AFN paid "excess dividends" of $500,000, the positive direct investments in Schedules A and B and the positive net transfer of capital to Schedule C, aggregating $400,000, are authorized by § 504(c) (1). Moreover, during 1969, DI will be authorized under § 504(a) (3) (ii) to reinvest an additional $100,000 of the 1969 earnings of its Schedule C AFN.

Example (19). Same facts as in Example (18). During 1969, the Schedule C AFN has total earnings of $1,000,000 (of which DI is authorized to reinvest $700,000 under § 504(a) (3) (i) plus $100,000 under § 504(a) (3) (ii)), and the Schedule C AFN pays dividends of $400,000 to DI. Also during 1969, DI makes positive direct investment of $25,000 in Schedule A and a positive net transfer of capital of $50,000 to Schedule C. Since the Schedule C AFN paid "excess dividends" of $200,000, the positive direct investment in Schedule A and the positive net transfer of capital to Schedule C, aggregating $75,000, are authorized by § 504(c) (1). Moreover, during 1970, DI will be authorized, under § 504(a) (3) (ii), to reinvest an additional $125,000 of the 1970 earnings of its Schedule C AFN.

(g) *Calculation of "negative net transfer of capital" allowable in Schedule C.* Under § 504(c) (2) of the regulations, a DI which makes a negative net transfer of capital to Schedule C during 1968 or any subsequent year (calculated in accordance with § 313(c)), is authorized to make additional positive direct investment in Schedules A and B during that year; to the extent such additional positive direct investment is not made, the DI may make additional positive direct investment in Schedules A and B and positive net transfers of capital to Schedule C during succeeding years. Of course, the additional amounts invested in all schedules cannot in the aggregate exceed the amount of the negative net transfer of capital. It is important to note, however, that a negative net transfer of capital to Schedule C does not authorize a DI to reinvest additional earnings of its incorporated Schedule C AFNs during the year of the negative net transfer of capital or during succeeding years.

The following examples illustrate the provisions of § 504(c) (2):

Example (20). A U.S. resident (DI) is not authorized to make any positive direct investment in Schedule B under § 504(a) (2). During 1968, DI makes positive direct investment of $300,000 in Schedule B, consisting of a positive net transfer of capital of $200,000 and reinvested earnings of $100,000. During the same year, DI has a negative net transfer of capital of $500,000 to Schedule C. The $300,000 of positive direct investment in Schedule B is authorized by § 504(c) (2). Moreover, § 504(c) (2) authorizes DI, in 1969 and succeeding years, to make positive direct investment in Schedules A and B and positive net transfers of capital to Schedule C aggregating $200,000.

Example (21). A U.S. corporation (DI) is authorized to make positive direct investment of $100,000 in Schedule A under § 504(a) (1). During 1968, a subsidiary of DI in Schedule C makes a $1,000,000, 3-year loan to another subsidiary of DI in Schedule A, the transaction being treated under § 505 of the regulations as a transfer of capital from the Schedule C subsidiary to DI and a transfer of capital from DI to the Schedule A subsidiary. There are no other transfers of capital from or to DI during 1968. During 1968, however, DI reinvests $100,000 of the 1968 earnings of its incorporated Schedule A AFNs; it does not reinvest any earnings in Schedules B or C. The positive direct investment of $1,100,000 in Schedule A during 1968 resulting from the loan and reinvestment of earnings is authorized by § 504(a) (1) ($100,000) and § 504(c) (2) ($1,000,000).

(h) *Calculation of § 504(c) (3) "carry-forward" allowable in Schedule C.* Section 504(c) (3) (i) covers those cases where a DI's incorporated Schedule C AFNs have a total (net) loss during 1968 or any succeeding year; it allows the DI to reinvest earnings of its incorporated Schedule C AFNs in years following the year in which the loss is incurred up to the amount of its share of the loss. In addition, § 504(c) (3) (ii) covers those cases where a DI may reinvest earnings under the provisions of § 504(a) (3) but the DI's share of such earnings is less than the amount of earnings the DI is authorized to reinvest under § 504(a) (3); in such cases § 504(c) (3) (ii) allows the DI to reinvest earnings of its incorporated Schedule C AFNs in following years equal to the difference between the authorized amount and the amount of the DI's share of the actual earnings.

The following examples illustrate the provisions of § 504(c) (3):

Example (22). DI has no reinvested earnings allowable in Schedule C under § 504 (a) (3) during 1968. During 1968, the incorporated Schedule C AFNs of DI have a total (net) loss of $500,000 and pay no dividends. During 1969, DI is authorized under § 504 (a) (3) (ii) to reinvest up to $500,000 of the 1969 earnings of its incorporated Schedule C AFNs.

Example (23). Same facts as in Example (22) except that DI's incorporated Schedule C AFNs pay dividends aggregating $100,000 during 1968. During 1969, DI is authorized under § 504(a) (3) (ii) to reinvest up to $600,000 of the 1969 earnings of its incorporated Schedule C AFNs. $500,000 of this allowable arises by virtue of § 504(c) (3) (i) and $100,000 by virtue of the "excess dividend" provisions of § 504(c) (1) which were not utilized during 1968 to make additional positive direct investment in Schedules A or B or a positive net transfer of capital to Schedule C.

Example (24). Same facts as in Example (23). During 1969, DI's incorporated Schedule C AFNs have total earnings of $200,000, and pay no dividends. The reinvested earnings of $200,000 is authorized by § 504(c) (3) (ii). Moreover, during 1970, DI will be authorized under § 504(a) (3) (ii) to reinvest up to $400,000 of the 1970 earnings of its incorporated Schedule C AFNs.

Example (25). Same facts as in Example (23). During 1969, DI's incorporated Schedule C AFNs have a total (net) loss of $300,000 and pay no dividends. During 1970, DI will be authorized under § 504(a) (3) (ii) to reinvest up to $900,000 of the 1970 earnings of its incorporated Schedule C AFNs.

§ B505 Transfers between affiliated foreign nationals.

(a) *In general.* Section 505 sets forth a number of rules concerning transfers of funds or other property between AFNs of a DI. Any transfer of capital by or to a DI resulting from the application of these rules is included in calculating the DI's net transfer of capital to the scheduled area involved under § 313 of the regulations.[34] Section 505 does not relate to the calculation of a DI's share in the reinvested earnings of incorporated AFNs under § 306.

(b) *Transfers by or to unincorporated affiliated foreign nationals.* For purposes of applying the provisions of § 505 (a) (2) through (a) (6) and 505(b), a transfer of funds or other property by an unincorporated AFN of a DI to the DI or to another AFN of the DI is treated as a transfer by the immediate parent of such unincorporated AFN (assuming that the transferee is not the immediate parent and that the immediate parent is the DI or an incorporated AFN); conversely, a transfer to an unincorporated AFN of a DI by the DI or by another AFN of the

[34] Note that § 505, as it originally appeared in the regulations, contained an absolute prohibition of "upstream" transfers of capital (i.e., transfers from AFNs in Schedule A to AFNs in Schedules B or C and from AFNs in Schedule B to AFNs in Schedule C). Present § 505 provides, in essence, that "upstream" (as well as "downstream") transfers between AFNs of a DI are taken into account in calculating the DI's net transfer of capital to the scheduled areas to which the transferor and transferee are assigned.

DI is treated as a transfer to the immediate parent of the unincorporated AFN (assuming that the transferor is not the immediate parent and that the immediate parent is the DI or an incorporated AFN) (see § 505(a)(1)). The "immediate parent" of a subsidiary or branch owned directly by a DI is the DI itself, while the "immediate parent" of a subsidiary or branch owned indirectly by the DI is the intervening AFN which directly owns the subsidiary or branch (see § 505(c)).

The following examples are illustrative:

Example (1). A U.S. corporation (DI) has a wholly-owned subsidiary in Schedule A which has a branch in Schedule B. DI also has a wholly-owned subsidiary in Schedule C. In 1968, the Schedule B branch lends $100,000 directly to the Schedule C subsidiary. The $100,000 is deemed transferred by the Schedule A subsidiary (i.e., the immediate parent of the Schedule B branch) to the Schedule C subsidiary.

Example (2). Same facts as in Example (1) except that, in 1968, the Schedule C subsidiary lends $100,000 directly to the Schedule B branch. The $100,000 is deemed transferred by the Schedule C subsidiary to the Schedule A subsidiary (i.e., the immediate parent of the Scheduled B branch).

Example (3). Same facts as in Example (2) except that the $100,000 loan to the Schedule B branch is made by a branch in Schedule A of the Schedule C subsidiary. The $100,000 is deemed transferred by the Schedule C subsidiary (i.e., the immediate parent of the Schedule A branch) to the Schedule A subsidiary (i.e., the immediate parent of the Schedule B branch.

Example (4). Same facts as in Example (1) except that, in 1968, DI itself lends $100,000 to the Schedule B branch. The $100,000 is deemed transferred by DI to the Schedule A subsidiary.

Section 505(a)(1) does not apply, however, if both the transferor and transferee are unincorporated AFNs and if both have the same immediate parent. Thus, a transfer from a Schedule A branch of a DI to a Schedule B branch of a DI is not governed by § 505(a)(1); any net changes in the net assets of the branches resulting from this transfer will automatically be taken into account under § 313(b).

(c) *Treatment of transfers deemed made under § 505(a)(1)*. Under § 505(a)(2), any transfer of funds or other property which is deemed under § 505(a)(1) to have been made by or to a DI is treated as a transfer of capital by or to the DI, as the case may be. A transfer of capital will not result under § 505(a)(2), however, unless the transferor or transferee AFN is an "affiliate" of the DI as defined in § 903(a)[35] and the transfer would have constituted a transfer of capital under § 312 if actually made by or to the DI directly.

The following examples are illustrative:

Example (5). A U.S. corporation (DI) has a branch in Schedule A and a 60 percent owned subsidiary in Schedule C. In 1968, the Schedule C subsidiary lends $500,000 directly to the Schedule A branch on open account. The transaction results in a $500,000 transfer of capital from Schedule C to DI. Note, however, that to the extent the transaction results in a net increase in the net assets of the branch as of the end of 1968, DI will have made a positive net transfer of capital to unincorporated AFNs in Schedule A under § 313(b). If the subsidiary and branch were located in the same scheduled area, the transaction would effectively "net out".

Example (6). Same facts as in Example (5) except that, in 1968, the Schedule A branch lends $500,000 directly to the Schedule C subsidiary. The transfer results in a $500,000 transfer of capital from the DI to incorporated AFNs in Schedule C. Note, however, that to the extent the transaction results in a net decrease in the net assets of the branch as of the end of 1968, DI will have made a negative net transfer of capital to unincorporated AFNs in Schedule A under § 313(b). If the subsidiary and branch were located in the same scheduled area, the transaction would effectively "net out".

Example (7). A U.S. corporation (DI) has a 51 percent owned subsidiary in Schedule A which has a branch in Schedule B. In 1968, DI lends $100,000 directly to the Schedule B branch. The transfer results in a $100,000 transfer of capital from DI to the Schedule A subsidiary. Note, however, that to the extent the transfer results in a net increase in the net assets of the branch as of the end of 1968, DI will have a positive net transfer of capital to unincorporated AFNs in Schedule B under § 313(b), and the Schedule A subsidiary will be deemed to have made a transfer of capital to the DI (see § 505(a)(6)).

(d) *Transfers between incorporated affiliated foreign nationals*. Under § 505(a)(3), a transfer of funds or other property from one incorporated AFN of a DI to another incorporated AFN of the DI (including a transfer deemed under § 505(a)(1) to have been made between incorporated AFNs) is treated as a transfer of capital by the transferor AFN to the DI (equal to the full amount or value of the funds or other property transferred) and as a further transfer of capital in an equivalent amount from the DI to the transferee AFN. The rule applies only if either the transferor or the transferee AFN is an "affiliate" of the DI as defined in § 903(a) and if the transfer would have constituted a transfer of capital under § 312 if made by the DI. Of course, if the transferor and transferee are in the same scheduled area, the transaction will effectively "net out".

The following examples are illustrative:[36]

Example (8). During 1968, a wholly-owned Schedule C subsidiary of a U.S. corporation (DI) makes a $200,000, 3-year loan to another wholly-owned Schedule A subsidiary of DI. Under § 505(a)(3), the transaction is treated as a $200,000 transfer of capital from Schedule C to DI and a $200,000 transfer of capital from DI to Schedule A. Accordingly, the transaction reduces by $200,000 the net transfer of capital made by DI to Schedule C during 1968 and increases by an equivalent amount the net transfer of capital made by DI to Schedule A during the same year. The result would be the same even if neither of the AFNs was wholly-owned by DI so long as DI owned more than a 50 percent interest in one of the AFNs. Thus, for example, the same result would be reached if DI owned 51 percent of the Schedule A AFN and only 10 percent of the Schedule C AFN, or vice versa, the theory being that DI can prevent the transaction if it owns more than a 50 percent interest in either of the AFNs.

Example (9). Same facts as in Example (8) except that neither the transferor nor transferee AFN is wholly-owned by DI but, rather, are 51 percent owned by other AFNs of DI in Schedule B, in each of which DI owns a direct interest of 60 percent. The result is the same as in Example (8).

Example (10). A U.S. corporation (DI) has a wholly-owned subsidiary in Schedule A which has a branch in Schedule B. DI also has a wholly-owned subsidiary in Schedule C which has a branch in Schedule A. During 1968, the Schedule A branch lends $100,000 directly to the Schedule B branch. Under § 505(a)(3), the transaction is treated as a $100,000 transfer of capital from the Schedule C subsidiary to DI and a $100,000 transfer of capital from DI to the Schedule A subsidiary.[37]

Section 505(a)(3) also covers the purchase by incorporated AFNs of a DI of interests in other foreign nationals which became AFNs as a result of purchase and sales by incorporated AFNs of interests in lower-tier AFNs.

The following general rules are applicable to such transactions:

(i) If an incorporated AFN of a DI acquires from an unaffiliated foreign national an interest in a foreign national which becomes an AFN of the DI as a result of the acquisition the full amount of the purchase price is treated as a transfer of capital by the acquiring AFN to the DI and as a further transfer of capital by the DI to the acquired AFN. However, if the acquisition is made after December 31, 1967, and the acquired AFN has subsidiaries and/or branches in other scheduled areas which become separate AFNs of the DI as a result of the acquisition, the transfer of capital by the DI should be allocated among the different scheduled areas involved in a manner which will fairly reflect the respective values of the direct and indirect interests acquired. As a general rule, an allocation based on the respective book values of the entities involved will be accepted. The result is the same whether the acquiring AFN pays cash or gives its debt obligation in exchange for the interests acquired. If, however, the consideration for the acquisition is stock of

[35] Under § 903(a) an "affiliate" of a person within the United States means any other person (other than an individual), wheresoever located, in which the aggregate of direct interests owned by such person within the United States and any affiliate or affiliates (as defined in § 903(a)) of such person exceeds 50 percent.

[36] Where a Schedule B AFN is involved, assume it is in a Schedule B country other than Canada.

[37] The transfer of funds from the Schedule A branch is to be treated under § 505 as a transfer from the immediate parent (the Schedule C subsidiary) under § 505(a)(1)(i). The transfer of funds to the Schedule B branch is to be treated under § 505 as a transfer to its immediate parent (the Schedule A subsidiary) under § 505(a)(1)(ii). Since the transfer is deemed to be from the Schedule C subsidiary to the Schedule A subsidiary, § 505(a)(3) provides that it is treated as a transfer of capital for purposes of § 312 (a) and (b) as a transfer of capital first from the Schedule C subsidiary to the DI and then from the DI to the Schedule A subsidiary.

the acquiring AFN, no transfer of capital to or from the DI will result (see § B505(e), infra).

(ii) If an incorporated AFN of a DI sells an interest in another AFN to an unaffiliated foreign national, there will be a transfer of capital by such other AFN to the DI in an amount equal to the purchase price and a further transfer of capital by the DI to the selling AFN in an amount equal to the cost or other basis to the selling AFN of the interest sold. Any capital gain or loss realized by the selling AFN upon the sale will be included in determining the earnings of the AFN for the period involved. Note, however, that an allocation of the transfer of capital to the DI among different scheduled areas will be required (in the same manner as set forth in the preceding paragraph) if the sale is made after December 31, 1967, the interest sold was acquired after December 31, 1967 and the AFN in which the interest is sold has subsidiaries and/or branches in different scheduled areas which are separate AFNs of the DI. The result is the same whether the selling AFN receives cash or a debt obligation of the purchaser in exchange for the sale. If, however, the consideration for the sale is stock in a foreign national which becomes an AFN of the DI as a result of the transaction, no transfer of capital to or from the DI will result (see § B505(e), infra).

The following examples are illustrative:

Example (11). During 1968, a wholly-owned Schedule B subsidiary of a U.S. corporation (DI) purchases from an unaffiliated foreign national, for $1,000,000 in cash, all of the stock of a French corporation. Under § 505 (a)(3), the transaction is treated as a $1,000,000 transfer of capital from Schedule B to DI and a $1,000,000 transfer of capital from DI to Schedule C. Accordingly, the transaction reduces by $1,000,000 the net transfer of capital made by DI to Schedule B during 1968 and increases by an equivalent amount the net transfer of capital made by DI to Schedule C during the same year. The result would be the same even if DI owned only 51 percent of the Schedule B AFN. Note, however, that, if DI owned an interest of 50 percent or less in the Schedule B AFN, the transaction would not involve any transfer of capital to or from DI, regardless of the amount of the interest in the French corporation acquired by the Schedule B subsidiary, since the DI is presumed in this situation to lack control over the transaction. Note also that if the acquiring and the acquired corporation were in the same scheduled area, the transaction would effectively "net out".

Example (12). Same facts as in Example (11) except that the purchase by the Schedule B subsidiary is made with the proceeds of a long-term loan obtained by the Schedule B subsidiary from a foreign bank. The result is the same as in Example (10). The deduction from net transfers of capital authorized by § 313(d)(1) applies only to proceeds of long-term foreign borrowings obtained by a DI, not to borrowings obtained by its AFNs.

Example (13). A U.S. corporation (DI) has a wholly-owned subsidiary in Schedule B which in turn has a wholly-owned subsidiary in Schedule C. During 1968, the Schedule B subsidiary sells all of the stock of the Schedule C subsidiary (which it purchased for $500,000) to an unaffiliated foreign national for $1,000,000 in cash. Under § 505(a)(3), the transaction is treated as a $1,000,000 transfer of capital from Schedule C to DI and a $500,000 transfer of capital from DI to Schedule B. The $500,000 profit (measured by historical cost) realized by the Schedule B subsidiary will be taken into account in calculating that subsidiary's 1968 earnings. The result would be the same even if DI owned only 51 percent of the Schedule B AFN. Note, however, that if DI owned an interest of 50 percent or less in the Schedule B AFN, the transaction would not involve any transfer of capital to and from DI, since the DI is presumed in this situation to lack control over the transaction.

Example (14). Same facts as in Example (11) except that the Schedule B subsidiary pays only $500,000 in cash and gives a 5-year note to the seller for the $500,000 balance of the purchase price. The result is the same as in Example (11). No transfers of capital will be involved when the Schedule B subsidiary subsequently makes payments on the note.

Example (15). Same facts as in Example (13) except that the Schedule B subsidiary receives $500,000 in cash and a 5-year note of the purchaser for the $500,000 balance of the purchase price. The result is the same as in Example (13). No transfers of capital will be involved when the Schedule B subsidiary subsequently receives payments on the note.

Example (16). During 1968, a wholly-owned subsidiary of a U.S. corporation (DI) in Schedule A leases machinery to another wholly-owned subsidiary of DI in Schedule B. The machinery has a value of $1,000,000 when leased and the lease expires in 1971. The transaction is treated under § 505(a)(3) as a $1,000,000 transfer of capital from Schedule A to DI and a $1,000,000 transfer of capital from DI to Schedule B (see § 312 (a)(8)) and § B312(k), supra). Note that current rental payments under the lease made by the Schedule B subsidiary to the Schedule A subsidiary will not involve transfers of capital; rather, they will reduce the earnings of the Schedule B subsidiary and increase the earnings of the Schedule A subsidiary. When the machinery is returned to the Schedule A subsidiary at the end of the lease term, there will be a transfer of capital from Schedule B to DI (equal to the then residual value of the machinery) and an equivalent transfer of capital from DI to Schedule A.

Example (17). During 1968, a wholly-owned schedule C subsidiary of a U.S. corporation (DI) borrows $1,000,000 from a foreign bank. Repayment of the loan is guaranteed by another wholly-owned subsidiary of DI in Schedule B. In 1970, the Schedule B subsidiary is called upon to pay $500,000 under its guarantee and in fact makes such payment. The transfer is treated under § 505 (a)(3) as a $500,000 transfer of capital from Schedule B to DI and a $500,000 transfer of capital from DI to Schedule C. Note that any resulting positive direct investment in Schedule C would be generally authorized under Subpart J of the regulations if DI filed an appropriate certificate under § 1002(b) at or prior to the time the guarantee was made.

(e) *Transactions between affiliated foreign nationals not involving transfers of capital*. As a general rule, a transfer of capital to or from a DI will not be involved under § 505(a)(3) if (1) an AFN of a DI transfers an interest in a lower tier AFN and receives in exchange stock of a foreign corporation which becomes an AFN of the DI as a result of the transaction or if (2) there is a recapitalization, reorganization, merger or consolidation involving one or more AFNs. Although a foreign enterprise may cease to be an AFN of a DI as a result of the transaction, the transaction does not affect the amount of direct investment made by the DI during the base period years in the scheduled area of such foreign enterprise.

The following examples are illustrative:

Example (18). A wholly-owned Schedule B subsidiary of a U.S. corporation (DI) transfer to an unaffiliated foreign national all of the stock of its wholly-owned Brazilian subsidiary in exchange for all of the stock of a French corporation. The transaction does not result in any transfer of capital to or from DI. Note, however, that, as a result of the transaction, DI becomes a DI in the French corporation and ceases to be a DI in the Brazilian corporation. The result would be the same if the other party to the transaction was also an AFN of DI.

Example (19). A wholly-owned German subsidiary of a U.S. corporation (DI) is reincorporated in the United Kingdom. The transaction does not result in any transfer of capital to or from DI. Note, however, that the business of the newly created United Kingdom subsidiary which is conducted in Germany will be a branch of the United Kingdom subsidiary and may therefore be a separate unincorporated Schedule C AFN of DI (see § B304, supra).

Example (20). A wholly-owned United Kingdom subsidiary of U.S. corporation (DI) is merged into a wholly-owned Italian subsidiary of DI. The transaction does not result in any transfer of capital to or from DI. Note, however, that the business of the Italian company which is conducted in the United Kingdom will be a branch of the Italian subsidiary and may therefore be a separate unincorporated Schedule B AFN of DI (see § B304, supra.)

See also Examples (66) through (78) in the discussion under § B312, supra.

Under § 505(b), transfers of capital to and from a DI will not result under § 505(a)(3) if one incorporated non-Canadian AFN of the DI extends a trade credit to another incorporated non-Canadian AFN of the DI in the ordinary course of business pursuant to arm's-length terms if the obligation is in fact paid within 12 months.

The following examples are illustrative:

Example (21). On September 1, 1968, a wholly-owned Schedule C subsidiary of a U.S. Corporation (DI) sells equipment to another subsidiary of DI in Schedule A in the ordinary course of business pursuant to arms-length terms. The $1,000,000 purchase price is payable in full by March 1, 1969. There is no transfer of capital to or from DI. The result would be the same if the sale of services, rather than the sale of goods, were involved.

Example (22). Same facts as in Example (21), except that no part of the purchase price is paid by September 1, 1969. There is a $1,000,000 transfer of capital from Schedule C to DI and from DI to Schedule A which is deemed to have occurred on September 1, 1969 or on such sooner date as it became apparent that the Schedule A subsidiary would not be able to make payment prior to September 1, 1969. The result would be the same if the sale of services, rather than the sale of goods, were involved.

See also Example (8) under § B313, supra.

A transfer of property from one AFN of a DI to another AFN of the DI before or after the effective date in exchange

for a debt or equity interest in the transferee AFN does not involve a transfer of capital to or from the DI (regardless of the form of the transfer or the consideration exchanged therefor) if the property transferred consists of patents, copyrights, trademarks, trade names, trade secrets, technology, proprietary processes, proprietary information or similar intangibles or any rights or interests therein or applications or contracts relating thereto. No deduction for amortization or any like charge with respect such an intangible transferred after January 1, 1968 shall be made against earnings in calculating the earnings of the transferee AFN.

(f) *Transactions between subsidiaries and their branches in different scheduled areas.* As pointed out in the discussion under § B313(c), supra, a net transfer of capital by DI to its unincorporated AFNs in any scheduled area during any period will generally equal the DI's share in the aggregate net increase (or decrease), during the year, in the aggregate net assets of such AFNs. The calculation under § 313(b) for any scheduled area includes changes in the net assets of unincorporated AFNs located in such scheduled area whether such AFNs are branches of the DI itself or of subsidiaries of the DI located in different scheduled areas.

Although a DI's share in the net increase or decrease in the net assets of a subsidiary's branch may be included in the DI's calculation under § 313(b) for the scheduled area in which the branch is located, not every such net increase or decrease in branch assets results in a corresponding transfer of capital from or to the scheduled area in which the parent is located. A corresponding transfer of capital from or to the parent results only when the net increase or decrease in branch assets cannot be attributed to earnings or losses of the branch (see § 505(a) (5) and (6)).

The following examples are illustrative:

Example (23). A U.S. corporation (DI) has a wholly-owned subsidiary in France which in turn has a branch in Brazil. DI has no other AFNs anywhere in the world. During 1968, the branch has earnings of $50,000 but its net assets increase by $100,000 due to a transfer of $50,000 from the subsidiary to the branch. This results under § 313(b) in a $100,000 positive net transfer of capital to Schedule A (DI's share in the net increase in branch assets) and under § 505(a) (6) in a $50,000 negative net transfer of capital to Schedule C (the amount by which DI's share in the net increase in branch assets ($100,000) exceeded DI's share in the branch's earnings ($50,000)).

If DI owned only 60% of the French subsidiary, the result would be a $60,000 positive net transfer of capital to Schedule A (60% of $100,000) and a $30,000 negative net transfer of capital to Schedule C, (60% of $50,000). If DI owned 50% or less of the French subsidiary, no net transfer of capital would be involved.

Example (24). Same facts as in Example (23) except that, during 1968, the branch has earnings of $50,000 but its net assets decrease by $150,000 due to a remittance of $200,000 from the branch to the subsidiary. This results under § 313(b) in a $150,000 negative net transfer of capital to Schedule A (DI's share in the $150,000 net decrease in branch assets) and under § 505(a) (5) in a $150,000 positive net transfer of capital to Schedule C (DI's share in the $150,000 net decrease in branch assets). Moreover, the full amount of the earnings of the branch ($50,000) is treated as having been distributed to its Schedule C parent and is deducted from the dividends paid by the parent to DI (see § B306(c), supra). If DI owned only 70% of the French subsidiary, the result would be a $105,000 negative net transfer of capital to Schedule A (70% of $150,000) and a $105,000 positive net transfer of capital to Schedule C (70% of $150,000). Moreover, $35,000 of the earnings of the branch (DI's 70% share in the $50,000 earnings of the branch) would be treated as having been distributed to its Schedule C parent and should be deducted from the dividends paid by the parent to DI. If DI owned 50% or less of the French subsidiary, no net transfer of capital would be involved; however, an appropriate percentage of the earnings of the branch would still be treated as having been distributed to its Schedule C parent and would be deducted from the dividends paid by the parent to DI.

Example (25). Same facts as in Example (23) except that, during 1968, the branch has no earnings (or losses) but its net assets decrease by $100,000 due to a remittance of $100,000 from the branch to the subsidiary. This results under § 313(b) in a $100,000 negative net transfer of capital to Schedule A (DI's share in the $100,000 net decrease in branch assets) and under § 505 (a) (5) in a $100,000 positive net transfer of capital to Schedule C (DI's share in the $100,000 net decrease in branch assets). If DI owned only 80% of the French corporation the result would be an $80,000 negative net transfer of capital to Schedule A (80% of $100,000) and a $80,000 positive net transfer of capital to Schedule C (80% of $100,000). If DI owned 50% or less of the French corporation, no net transfer of capital would be involved.

Example (26). Same facts as in Example (23) except that, during 1968, the branch incurs a loss of $100,000 but there is no change in its net assets due to a transfer of $100,000 from the subsidiary to the branch. Under § 505(a) (6), this results in a $100,000 negative net transfer of capital to Schedule C (DI's share of the $100,000 loss). If DI owned only 90% of the French corporation the result would be a $90,000 negative net transfer of capital to Schedule C (90% of $100,000). If DI owned 50% or less of the French corporation, no net transfer of capital would be involved.

Example (27). Same facts as in Example (23) except that, during 1968, the branch incurs a loss of $100,000 but has a $50,000 increase in its net assets due to a transfer of $150,000 from the subsidiary to the branch. This results under § 313(b) in a $50,000 positive net transfer of capital to Schedule A (DI's share in the $50,000 net increase in branch assets) and under § 505(a) (6) in a $150,000 negative net transfer of capital to Schedule C (DI's share in the $50,000 net increase in net assets plus DI's share of the $100,000 loss). If DI owned only 60% of the French corporation, the result would be a $30,000 positive net transfer of capital to Schedule A (60% of $50,000) and a $90,000 negative net transfer of capital to Schedule C (60% of $150,000). If DI owned 50% or less of the French corporation, no net transfer of capital would be involved.

Example (28). Same facts as in Example (23) except that, during 1968, the branch incurs a loss of $100,000 while its net assets decrease by only $25,000 due to a transfer of $75,000 from the subsidiary to the branch. This results under § 313(b) in a $25,000 negative net transfer of capital to Schedule A (DI's share of the $25,000 net decrease in branch assets) and under § 505(a) (6) in a $75,000 negative net transfer of capital to Schedule C (the amount by which DI's share of the loss ($100,000) exceeds DI's share of the net decrease in branch assets ($25,000)). If DI owned only 70% of the French corporation the result would be a $17,500 negative net transfer of capital to Schedule A (70% of $25,000) and a $52,500 negative net transfer of capital to Schedule C (70% of $75,000). If DI owned 50% or less of the French corporation, no net transfer of capital would be involved.

Example (29). Same facts as in Example (23) except that, during 1968, the branch incurs a loss of $100,000 while its net assets decrease by $250,000 due to a remittance of $150,000 from the branch to the subsidiary. This results under § 313(b) in a $250,000 negative net transfer of capital to Schedule A (DI's share of the $250,000 net decrease in branch assets) and under § 505(a) (5) in a $150,000 positive net transfer of capital to Schedule C (DI's share in the $250,000 net decrease in branch assets less DI's share of the $100,000 loss). If DI owned only 80% of the French corporation, the result would be a $200,000 negative net transfer of capital to Schedule A (80% of $200,000) and a $120,000 positive net transfer of capital to Schedule C (80% of $150,000). If DI owned 50% or less of the French corporation, no net transfer of capital would be involved.

(Sec. 5, Act of Oct. 6, 1917, 40 Stat. 415, as amended, 12 U.S.C. 95a; E.O. 11387, Jan. 1, 1968, 33 F.R. 47)

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