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§ 226.404 Premiums for vendor's single interest insurance required by creditor.

(a) Under § 226.4(a)(6), charges or premiums for insurance, written in connection with a credit transaction, against loss of or damage to property may be excluded from the finance charge if the creditor makes the disclosures required under that subparagraph. Under § 226.4(a)(7), a premium or other charge for any other guarantee or insurance protecting the creditor against the customer's default or other credit loss is included in the finance charge. The question arises as to whether Vendor's Single Interest (V.S.I.) coverage, when required by the creditor to be written in connection with a transaction, is insurance of the type described in § 226.4(a)(6) or in § 226.4(a)(7).

(b) V.S.I. coverage is written only in connection with a credit transaction and indemnifies the creditor against, among other perils, conversion, embezzlement, and secretion of the collateral by the customer; and amounts payable on account of loss are payable only to the creditor; and the amount of any indemnity payable under the policy is directly related to the amount of the credit loss, in that such indemnity can never exceed the amount of the unpaid principal balance of the debt. The insurer has no liability under a V.S.I. policy unless, at the time the policy was written, no payment was more than a specified number of days past due, and a claim under the policy is not valid unless the customer has defaulted in payment. Additionally, many V.S.I. policies indemnify the creditor against expense incurred in transporting the collateral to the creditor from the place of repossession.

(c) V.S.I. coverage is, therefore, insurance which protects the creditor against the customer's default or other credit loss, and when required by the creditor to be written in connection with any transaction, the premium therefore is included in the finance charge under § 226.4(a)(7).

(Interprets and applies 15 U.S.C. 1605)

§ 226.405 Property insurance written in connection with a transaction—obtained from or through the creditor.

(a) Footnote 4 to § 226.4(a)(6) specifies that a policy of insurance against loss or damage to property or liability arising out of its use is not considered to be "written in connection with" a transaction when it "* * * was not purchased by the customer for the purpose of being used in connection with that extension of credit." Therefore, whenever such a policy is purchased by the customer for the purpose of being used in connection with a specific extension of credit, it is insurance "written in connection with" that transaction.

(b) If such property insurance which is written in connection with a transaction is required by the creditor and is obtainable from or through him, the cost thereof for the term of the initial policy or policies must be disclosed to the customer, irrespective of whether the customer purchases or expects to purchase such insurance from the creditor, in order for the premium to be excluded from the finance charge.

(Interprets and applies 15 U.S.C. 1605)

§ 226.811 Renewals of notes by mail.

(a) Under paragraph (j) of § 226.8, renewals of notes with new maturity dates constitute refinancings and are consequently new transactions. A common practice is for creditors to permit renewal of such notes by mail. In many of such instances the creditor does not know whether the customer will reduce his original obligation by a payment on principal or, if reduced, the amount of that reduction. The question arises as to what disclosures should be made by mail to the customer in these circumstances.

(b) If the creditor knows the amount of the principal payment, all disclosures should be made on the basis of the resulting new amount financed. If, however, the creditor does not know whether the customer will reduce his original obligation, or if so, by how much, he should disclose on the assumption that there will be no reduction. In such circumstances he may make one or more additional disclosures based on one or more examples of graduated principal reduction. For example, if a single payment note was for $1,000 at 8 percent for 3 months, in addition to the other required disclosures, the creditor should disclose an amount financed of $1,000 with a finance charge of $20, and may, in addition, disclose that with a principal payment of $300 the amount financed would be $700 with a finance charge of $14, and with a principal payment of $500 the amount financed would be $500 with a finance charge of $10.

(Interprets and applies 15 U.S.C. 1639)

Dated at Washington, D.C., the 1st day of August 1969.

By order of the Board of Governors.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 69-9671; Filed, Aug. 15, 1969; 8:45 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 69-SO-52]

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

Alteration of Control Zone and Transition Area

On June 28, 1969, a notice of proposed rule making was published in the FEDERAL REGISTER (34 F.R. 9997), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Dyersburg, Tenn., control zone and transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., October 16, 1969, as hereinafter set forth.

1. In § 71.171 (34 F.R. 4557), the Dyersburg, Tenn., control zone is amended as follows: "* * * within 2 miles each side of the Dyersburg VORTAC 258° radial * * *" is deleted and "* * * within 1.5 miles each side of the Dyersburg VORTAC 258° radial * * *" is substituted therefor.

2. In § 71.181 (34 F.R. 4637), the Dyersburg, Tenn., transition area (34 F.R. 7122) is amended to read:

DYERSBURG, TENN.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Dyersburg Municipal Airport (lat. 36°00'00" N., long. 89°24'20" W.); within 3 miles each side of the Dyersburg VORTAC 078° radial, extending from the 6.5-mile radius area to 8.5 miles east of the VORTAC.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a), sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in East Point, Ga., on August 7, 1969.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 69-9693; Filed, Aug. 15, 1969; 8:47 a.m.]

[Airspace Docket No. 69-SW-44]

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

Designation of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to designate the Warren, Ark., transition area.

On July 1, 1969, a notice of proposed rule making was published in the FEDERAL REGISTER (34 F.R. 11102) stating the Federal Aviation Administration proposed to designate a 700-foot transition area at Warren, Ark.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., October 16, 1969, as herein set forth.

In § 71.181 (34 F.R. 4637), the following transition area is added:

WARREN, ARK.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Warren Municipal Airport (lat. 33°33'50" N., long. 92°05'00" W.), and within 2 miles each side of the Monticello VORTAC 271° radial extending from the 5-mile radius area to 16 miles west of the VORTAC.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Fort Worth, Tex., on August 8, 1969.

HENRY L. NEWMAN,
Director, Southwest Region.

[F.R. Doc. 69-9694; Filed, Aug. 15, 1969; 8:47 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

SUBCHAPTER D—TRADE REGULATION RULES

PART 419—GAMES OF CHANCE IN THE FOOD RETAILING AND GASOLINE INDUSTRIES

Promulgation of Trade Regulation Rule and Statement of Basis and Purpose

The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, et seq., and the provisions of Part 1, Subpart B of the Commission's procedures and rules of practice, 16 CFR 1.11, et seq., has conducted a proceeding for the promulgation of a trade regulation rule relating to games of chance in the food retailing and gasoline industries. Notice of this proceeding, including two proposed rules, was published in the FEDERAL REGISTER on January 7, 1969 (34 F.R. 218). Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views, and arguments and to appear and orally express their views as to the proposed rules and to suggest amendments, revisions and additions thereto.

The Commission has now considered all matters of fact, law, policy, and discretion, including the data, views, and arguments presented by interested parties in response to the notice and has determined that the adoption of the trade regulation rule and statement of its basis and purpose set forth herein is in the public interest.

§ 419.1 **The Rule.**

The Commission, on the basis of the findings made by it in this proceeding, as set forth in the accompanying Statement of Basis and Purpose, hereby promulgates as a Trade Regulation Rule its determination that in connection with the use of games of chance in the food retailing and gasoline industries, it constitutes an unfair and deceptive act or practice for users, promoters, or manufacturers of such games to:

(a) Engage in advertising or other promotions which misrepresent by any means, directly or indirectly, participants' chances of winning any prize.

(b) Engage in any advertising, including newspaper and broadcast media advertising, or other promotions such as store signs, window streamers, banners, or display materials, or issue any game piece if such game piece refers, on the exposed portion thereof, in any manner to prizes or their number or availability, which fail to disclose clearly and conspicuously:

(1) The exact number of prizes in each category or denomination to be made available during the game program and the odds of winning each such prize made available, this disclosure, for prizes in the amount or value of $25 or more, to be revised each week a game extends beyond 30 days to reflect the number of such unredeemed prizes still available and the odds existing of winning each such unredeemed prize; and

(2) The geographic area covered by the game (e.g., "Nation-wide," "Washington, D.C. metropolitan area," etc.); and

(3) The total number of retail outlets participating in the game; and

(4) The scheduled termination date of the game.

(c) Fail to mix, distribute, and disperse all game pieces totally and solely on a random basis throughout the game program and throughout the geographic area covered by the game, and fail to maintain such records as are necessary to demonstrate to the Commission that total randomness was used in such mixing, distribution, and dispersal.

(d) Promote, sell, or use any game which is capable of or susceptible to being solved or "broken" so that winning game pieces or prizes are predetermined or preidentified by such methods rather than by random distribution to the participating public.

(e) Fail to furnish the Commission at the conclusion of each game, and fail to post clearly and conspicuously in each retail outlet which used the game:

(1) A complete list of the names and addresses of the winners of each prize and the amount or value of the prizes won by each;

(2) The total number of game pieces distributed;

(3) The total number of prizes in each category or denomination which were made available; and

(4) The total number of prizes in each category or denomination which were awarded.

(f) Promote or use any new game without a break in time between the new game and any game previously employed in the same establishment equivalent to the duration of the game previously employed.

NOTE: Under this paragraph (f) a retail establishment which has promoted a game for 60 days may not employ a new game without a 60-day interval between the two.

(g) Terminate any game, regardless of the scheduled termination date, prior to the distribution of all game pieces to the participating public.

(h) Add additional winning game pieces during the course of a game, or in any manner replenish the prize structure of a game in progress.

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

Effective date: October 17, 1969.

Adopted: July 29, 1969.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

STATEMENT OF BASIS AND PURPOSE OF TRADE REGULATION RULE

I. *Background.* The Commission's affirmative interest in the use of so-called "games" or "games of chance" as a promotional device to increase traffic and sales was first indicated when it announced, on October 27, 1966, an investigation of games in food retailing.

Toward the conclusion of the Commission's investigation, the House of Representatives' Subcommittee on Activities of Regulatory Agencies of the Select Committee on Small Business, in June and July 1968, held hearings on the use of games of chance in gasoline marketing. Based upon the testimony and evidence received during the course of the hearings, the subcommittee issued a report[1] which concluded with a recommendation that the Federal Trade Commission move to correct certain abuses connected with games in the gasoline industry discovered by the subcommittee.

The same month the subcommittee report was released (December 1968), the Commission published the results of its investigation into games, contained in a staff report entitled "Economic Report on the Use of Games of Chance in Food and Gasoline Retailing." Part I of the report deals with games of chance in grocery supermarkets; Part II with games in gasoline retailing.

Part I discusses the nature and objectives of games; trends in the use of games; structure of the game promotion industry; the effect of game promotions on costs, sales, margins, and market shares in food retailing; and possible deception in game use. With regard to possible deception in the use of games in

See footnotes at end of document.

food retailing, the Commission's staff found that:

(1) Promoters and grocery retailers commonly "seed" or "sort in" winning prize tickets, particularly the large winners.

(2) Some chains allocated major prizes to particular stores within the chain and at periods within the game program when the promotional impact was considered to be greatest.

(3) Programing of winners was often concentrated in the early weeks of a game's run, so that in the final weeks no large prizes were available.

(4) In some instances "dummy" boxes containing no winners were supplied to the retailer for use when the boxes containing winners had been used.

(5) In other cases, winning pieces were inserted partly "at random" and partly "salted" by the promoter.

(6) In still other instances, large winners were apportioned to stores on the basis of volume and customer count "to provide the broadest possible spread of winners."[2]

Part II of the report, on games in gasoline retailing, is based primarily on testimony before the House subcommittee. As a result of that testimony and evidence received by the subcommittee during the course of the hearings, the subcommittee found:

(1) That, upon occasion, the winning chances in gasoline games have been awarded in a manner not determined by the laws of chance. This includes the placing of winning tickets at preselected stations, presenting winners of large denominations to individual dealers, sometimes with instructions to award them to a specific class of customer; * * *

(2) Some of the games utilized have lent themselves to preidentification of winners by dealers and other handling the games * * *

(3) In the case of sweepstakes * * * not all the prizes advertised are awarded * * *.

(4) Individual dealers have sometimes been coerced by major oil suppliers into utilizing games.

(5) Even in those cases where no patent coercion was evident, dealers are, nonetheless, subject to pervasive and inherent coercion * * *.

(6) The games are paid for, in the main, by the dealers who pay from 1 to 2 cents per prize chance. Data collected by the subcommittee reveal that the amount paid in by the dealers, in the case of almost all suppliers, exceeded the amount paid out in prizes to the public. The cost of the games inevitably adds to the price the consuming public must pay for their gasoline * * *.

(7) The effect of using a gasoline game upon an individual dealer's volume varies sharply with the circumstances * * * (E)ventually the point is reached where the game becomes primarily defensive in nature, in that a dealer without a game might lose gallonage, but using a game will do little or no more than retain his pregame gallonage.[3]

Largely on the basis of the information on possible deception and coercion contained in the reports of the House subcommittee and Commission staff, on January 6, 1969, the Commission initiated a Trade Regulation Rule proceeding concerning games of chance in the food retailing and gasoline industries and published in the FEDERAL REGISTER[4] a notice of the proceeding containing two proposed Trade Regulation Rules. The first proposed rule was concerned with alleged deception in connection with the use of games in both industries and provided that:

In connection with the use of games of chance in the food retailing and gasoline industries, it constitutes an unfair and deceptive act or practice for industry members and promoters and manufacturers of such games to:

(1) Engage in advertising or other promotions which misrepresent by any means, directly or indirectly, participants' chances of winning any prize; or to

(2) Engage in advertising or other promotions, such as store signs or display materials, or issue any game piece if such game piece refers in any manner to prizes or their number or availability, which fail to disclose clearly and conspicuously the exact number of prizes in each category or denomination to be awarded (such disclosure to be revised each week of the game period, for any game of 30 days duration or longer, to reflect any reduction in the number of major prizes, i.e., prizes in the amount or value of $25 or more, which are still available as the game progresses and major prizes are awarded), and which fail to disclose clearly and conspicuously the geographic area covered by the game; or to

(3) Manipulate or rig any game so that winning game pieces or prizes are dispersed on a predetermined basis.

The second proposed rule was concerned with alleged coercion of dealers in connection with the use of games in the gasoline industry and provided that:

In connection with the use of games of chance in the gasoline industry, it constitutes an unfair method of competition and an unfair act or practice for a gasoline supplier, or any of its employees or representatives, to coerce by any means a retail dealer to participate in such games. Such coercion will be presumed:

(1) Where a course of business conduct extending over a period of 1 year or longer between a gasoline supplier and a dealer is materially changed coincident with a failure or refusal of the dealer to participate in such games; or

(2) Where a gasoline supplier advertises generally that a game is available at its dealers, unless the supplier can establish that a majority of its dealers have decided, without demand, request or suggestion by the supplier, to participate in the game.

The notice invited all interested persons to file written data, views, or arguments concerning the proposed rules with the Commission. The original time limit for such submission of February 10, 1969, was subsequently extended to February 17, 1969.

Several months after the initiation of the Commission investigation, voluntary industry guidelines for retail food store promotional games were adopted by certain members of the game producing industry.[5] Salient provisions of these guidelines relate to advertising of games, distribution of game pieces, and game security. The guideline provisions relating to advertising do not go as far as the proposed Trade Regulation Rules in requiring a disclosure in all advertising of the breakdown of a game's prize structure, with weekly revisions. The guidelines suggest that the in-store advertising materials in each outlet using a game disclose the geographic area or number of outlets and the contemplated duration; a description of each type of prize to be made available; the total number and amount of cash prizes and total amount of each other type of prize to be made available; and the fact that the game may be terminated prior to its contemplated duration if that right is reserved.

The guidelines also suggest that any advertisement stating the total number of prizes or total value of prizes also state the geographic area or number of outlets and the game's contemplated duration. The guidelines condemn the advertising of prizes when it is known that they have been redeemed.

With regard to the distribution of game pieces the guidelines provide that:

Winning game pieces for each prize category shall be distributed among outlets in one or more of the following ways: (a) At random; (b) in equal numbers to each outlet; (c) in a ratio to total game pieces which is uniform among all outlets; or (d) by dividing all outlets into groups of comparable size (judged by criteria such as sales volume, number of stores or customer transactions), and distributing winning game pieces equally among such groups.

Winning game pieces for each prize category shall be programed, on a time basis, so that they are distributed to participants in one or more of the following ways: (a) At random; (b) in substantially equal numbers in each week of the program; (c) in a ratio to total game pieces substantially uniform for each period throughout the duration of the promotion; or (d) so as to achieve a rate of redemption of prizes in each category substantially uniform throughout the duration of the promotion: *Provided, however*, That at any time during the promotion, the rate of distribution of winning game pieces may be increased if such increased rate is maintained throughout the remainder of the promotion.

The guidelines also condemn predetermining the identity of individuals who receive prizes, and suggest the taking of reasonable precautions to prevent the identification of any winning game piece until given to a participant and to prevent the identification of packages containing specific winning game pieces by other than certain authorized persons.

Essentially similar guidelines for gasoline service station promotional games were also drafted, but have not been finally adopted.[6]

II. *The Trade Regulation Rule Proceeding.* Interest in the Trade Regulation Rule proceeding was substantial and the response to the invitation for comments on the proposed rules resulted in a public record of written statements, letters and other material of seven volumes and almost 2,200 pages.

Public hearings before the Commission commenced on February 24, 1969, and continued for 2 days a week for the next 6 weeks. All persons who sought orally to express their views on the proposed rules were able to do so. Members of the food, gasoline, and game promotion industries, public officials, economists, consumer organizations, and others, availed themselves of the opportunity. The 855 page stenographic transcript of the hearings has been made a part of the public record.

See footnotes at end of document.

A. *Comments and material relating to the proposed rule concerning possible deception in games in the food and gasoline industries*—1. *The proposed rule's requirement of disclosure of certain material facts*—a. *Comments by game producers.* In August 1968 seven producers of promotional games filed a statement with the Commission requesting it to issue standards governing the operation of games of chance.[7] They reiterated this desire for what they termed "reasonable" Federal regulation of games in their written and oral comments during this proceeding.[8] Insisting that any past abuses which may have occurred in connection with the use of games, such as those recorded in the House subcommittee and Commission staff reports, had been corrected,[9] the producers sought standard Federal regulation of games to assure their fairness and honesty.

Accordingly, every game producer who submitted comments indicated its support for the proposed rule relating to deception, with suggested modifications.[10] The bulk of the producers' comments and suggested modifications concerning this proposed rule were directed toward the rule's disclosure provisions contained in paragraph (2). Like practically everyone else who commented on this rule, the producers fully supported the objectives of paragraph (1) and had no suggestions to offer as to it.[11]

While supporting the objectives of paragraph (2),[12] the producers contended that it is impossible to disclose the exact number of prizes to be awarded, as the paragraph requires,[13] and further, that it is not practical to print and distribute new point-of-sale materials on a weekly basis.[14] They further contended that it is impossible to disclose the full details of a game's prize structure on a game piece or in a spot broadcast announcement.[15]

The producers accordingly recommended modifications, characterized as "minor" or "technical," of paragraph (2) "to help insure the operating practicality" [16] of that section. Their suggestions would permit the disclosure of the "minimum number and value of prizes to be awarded," rather than the "exact number"; [17] would permit the game producer or user to state the "minimum number of prizes currently available, or that can be won, as the contest continues"; [18] and, rather than listing full details of a game's prize structure in all advertising, the producers suggest a clear reference in advertising to a poster at each retail outlet using the game which would disclose the required information.[19]

Although the proposed rule did not require a disclosure of the participant's chances of winning each prize offered, or the odds, the producers indicated that such a disclosure could, and should, be made.[20]

b. *Comments by oil companies.* While the major portion of comments by oil companies on the proposed rules was directed toward the proposed rule relating to alleged coercion of dealers in the gasoline industry, they also offered some comments on the proposed rule concerning deception. Their remarks also concentrated on paragraph (2)'s disclosure requirements and were to the general effect that the paragraph was impractical.

In its written and oral comments, Mobil Oil Corp. suggested modifications of the proposed rule and, as modified, issuance as a guideline rather than as a Trade Regulation Rule.[21] Mobil's suggested modifications were similar to those of the game producers. For example, Mobil suggested permission to estimate the total prizes which will be awarded, since it contends that it cannot know exactly how many major prizes will be awarded.[22] Mobil also stated that the proposed rule's requirement of weekly revision of all advertising raised insurmountable problems, since the sponsor could not know what winning pieces were issued but unredeemed, and thus could not say exactly how many prizes were still available.[23] Even if the rule required only that all advertising be revised weekly to disclose unredeemed prizes, it would still be unreasonable, according to Mobil.[24]

Mobil accordingly recommended that paragraph (2) of the proposed rule be revised to require that advertising or other promotions refer to a notice to be posted at every retail outlet participating in the game which shall disclose the total number of prizes and total dollar value thereof to be offered, based on a reasonable estimate.[25]

Shell Oil Co., while asserting sympathy with the intent of paragraph (2), believes it to be unworkable, since it believes that most game pieces are too small and radio and television spots too short to contain all the required information,[26] and that weekly changes in prize advertisements are unrealistic.[27] Shell's alternative to paragraph (2) of this proposed rule would be to disclose the denomination of prizes to be awarded in newspapers and in posters displayed at participating outlets, but views weekly revision of that material as impractical and unnecessary.[28] As revised, Shell also prefers the adoption of this rule in the form of a guideline rather than as a Trade Regulation Rule.[29]

The Standard Oil Company of Ohio also claimed that paragraph (2) as proposed is not practical or necessary to avoid deception of the public,[30] and the American Oil Co. believes the disclosure requirements to be unreasonable and oppressive.[31] Views contending the disclosure provisions are impractical were also expressed by Sinclair Oil Corp.,[32] Sun Oil Co.,[33] Standard Oil Company of California,[34] Humble Oil & Refining Co.,[35] and Union Oil Company of California.[36]

With respect to disclosing the odds, Shell indicated that due to the interest expressed in them, it plans to advertise the odds for future games.[37]

c. *Comments by food companies.* The food companies and their representatives also expressed concern with the disclosure provisions of paragraph (2) as proposed and, like the game producers and oil companies, felt that the proposed rule may cause practical problems in the implementation of games.[38] It was suggested that other means could be used to apprise the participant of prize availability, such as by store posters referred to in advertising, promotional material and game pieces.[39] However, Gerald E. Brown, Vice President of Safeway Stores indicated that it would be feasible to make disclosure of prize information in newspaper advertising,[40] and Emerson E. Brightman of Grand Union said, if the Commission so desired, that efforts would be made to get prize information into newspapers.[41]

Concerning the disclosure of the odds of winning each particular prize, Mr. Brightman of Grand Union indicated that Grand Union would not object to disclosing the ratio of total game pieces to prize pieces.[42]

d. *Comments by others.* Aside from those offered by members of the game producing, food, and gasoline industries who would be directly affected by the disclosure provisions of paragraph (2), only a few other comments were made specifically relating to the rule's disclosure requirements.

Dr. Stewart M. Lee of Geneva College supported any action which would "give more information to the players of games * * *, which will make him a little more aware of the odds * * *."[43]

Colston E. Warne, President of Consumers Union, thought the proposed rule inadequate since it did not require a disclosure of the odds of winning a prize,[44] but felt that an even better approach would be to ban games altogether.[45]

The Ohio Consumers Association took a position against games and in favor of the Commission's proposed rules, concluding, in part, that: "The highpowered advertising given these games tends to exaggerate the chances of the customer becoming the winner both as to odds, frequency, and dollar amount."[46]

The Oregon Consumer League, in a report of a special committee appointed to investigate gasoline games, recommended legislation which, among other things, would require the disclosure of the minimum number and value of prizes available for distribution.[47]

Greenbelt Consumer Services, Inc., felt it may be "impractical to get adequate or accurate reporting on a weekly basis of the prizes distributed."[48]

2. *Method of distribution of game pieces.* On the basis of information developed in the Commission's staff report,[49] paragraph (3) of the proposed rule relating to deception prohibits the manipulation or rigging of any game so as to predetermine the dispersal of winning game pieces. The objective of the paragraph was to prohibit the practices described in the report of placing winning game pieces in selected retail outlets or localities, or placing them in certain periods of the game program, usually the early weeks, to maximize the game's promotional impact. Producers and users of games denied that these practices were used in recent games,[50] and went to some lengths to describe the manner in which game pieces are currently distributed.

See footnotes at end of document.

a. *Comments by game producers.* As noted earlier, the Industry Guidelines for Retail Food Store Promotional Games [51] adopted by the game producers and the proposed Guidelines for Gasoline Service Station Promotional Games [52] permit several methods of distributing winning game pieces among retail outlets.

William P. Sims, Jr., speaking on behalf of a number of game producers, stated that the guidelines are directed to the claim that certain game users were putting the large prizes in selected outlets.[53] Commenting on guideline (d) relating to distribution among outlets, Mr. Sims said that within each group there would be a full range of winning game pieces from top to bottom.[54]

Robert Herron, President of Herron-Kienzle, Inc., stated that games could be run on a random basis, but that that might result in all the winners ending up in one place.[55] He added that: "The reason we select a group was to be able to put in a given group of stores winners of various denominations and would not know what stores they would come to or be redeemed in. We have no knowledge of that." [56] Mr. Herron explained that his company puts the same number of $1 and $5 winning pieces in each box of game pieces, but the larger level of prizes are put in the boxes completely at random and then the boxes are distributed randomly to the outlets.[57]

Daniel Silverman, President of Dansico Associates, stated that, like Herron-Kienzle, Inc., each box of game pieces his company produces contains minor winners, with major winners placed in the boxes on a random basis and then distributed to retail outlets randomly so that neither Dansico nor its customer know where the major winners are.[58]

Marvin Margolis, vice president and general counsel of Miller-Waltzer Associates, Inc., stated that game pieces are distributed on the most fair and equitable basis so as to give every participant an equal chance to win every category of prize at any given time.[59] To insure this fairness he would prefer to have the ability to segregate various geographic areas "so as to insure the fact there will be an equal distribution within any given area of any given prize." [60] For example, for a game covering the Washington-Richmond area and advertised as one game, Mr. Margolis feels it is much more equitable, if there are three top prizes, to put two in the Washington area and one in the Richmond area, since Washington is twice as large as Richmond, rather than relying on pure chance and having all three prizes end up in Washington or Richmond.[61] Mr. Margolis stated that there were effective programs being run on a pure random basis [62] and that it is possible to distribute game pieces purely at random.[63]

Ralph Glendinning, President of Glendinning Companies, Inc., stated that two methods of mixing winners with other game pieces should be permitted: (a) Random mixing, and (b) uniform mixing of winners throughout the game production, e.g., for every 1 million game pieces, the exact same number of winners for each category of prizes would be mixed within each million.[64]

Admitting that mixing of prizes on a random basis is "unquestionably an acceptable system," like Mr. Herron, Mr. Glendinning said that it could result in a heavy concentration of winners in one city or period of the game at the expense of a low concentration of winners in another city or time period.[65] Accordingly, Mr. Glendinning prefers mixing of prizes on a uniform basis, the method his company used for every game it produced in 1968, a method which insures "that the same number of high level, medium level and low level winners are packed with every one million game pieces * * *".[66] Regardless of whether random or uniform mixing is used at the factory, said Mr. Glendinning, mixed boxes of game pieces should not be identified in any manner so as to enable anyone to ascertain their prize contents, and the boxes should be shipped, stored and delivered to retail outlets on a random basis.[67]

The matter of replenishing, or "adding-in," prizes during the course of a game when all or most of a category of prizes are redeemed was also commented on by the producers.[68] It was stated that in the event a category or denomination of prizes was redeemed prior to a game's scheduled termination, the producer or user could either stop the game; cease advertising for those prizes which were redeemed; or put in additional prizes to bring the prize mix back up to the advertised level.[69] According to Glendinning Companies, Inc., the process of replenishing or adding in prizes can be accomplished simply by adding boxes containing new winners to boxes already in the producer's warehouse.[70] The possibility that the need for replenishment would arise, however, was characterized as "very remote" by Glendinning,[71] apparently because of the ability of the game producer to estimate, in advance of a game, the number of game pieces which will be needed.

This ability of the producer to plan the needs of game users in terms of number of game pieces also reduces, according to the producers, the possibility that any unused game pieces, including possible winning pieces, would be left over after a promotion ends.[72]

b. *Comments by oil companies.* H. J. Peckheiser, executive vice president of Mobil Oil Corp., described how Mobil places a uniform number of low-level winners, 50 cents to $5 prizes, in each box of 1,000 game pieces, and then inserts, at random a certain number of high-level winners in each 1 million game pieces.[73] The boxes of game pieces are then shipped on a random basis.[74]

The written statement of F. C. Moriarty, vice president of Marathon Oil Co.,[75] related that winning tickets for one of its games will be divided equally among shipping cartons which will be shipped to dealers at random.

Sinclair Oil Co. was of the opinion that paragraph (3) could be interpreted to prevent the distribution of prizes as between market areas.[76]

Standard Oil Company of California suggested that the uniform mixing method described by Mr. Glendinning be permitted by the rule.[77]

And the prepared statement of M. B. Holdgraf, vice president of Shell Oil Co., described the manner in which Shell mixes and distributes winning game pieces.[78]

c. *Comments by others.* The Oregon Consumer League, on the basis of its study of games, recommended that the method of distribution, by chance or nonrandom, be disclosed.[79]

Gary E. Persian, legal counsel and executive director, Minnesota Association of Petroleum Retailers, read from an affidavit submitted by a sales representative of Humble Oil Co. to the effect that, during the summer of 1967, affiant "seeded" winning game cards, including two $1,000 cards, on a nonrandom basis into certain boxes of game cards, either to reward cooperative dealers or to increase Humble sales in certain areas.[80]

Other statements as to the placing of winners in certain outlets or periods of the game were made by William D. Tucker, executive secretary, Allied Gasoline Retailers Association of Florida, Inc.;[81] James W. Heizer, executive secretary, Virginia Gasoline Retailers Association, Inc.;[82] and Stanley A. Rodman, executive director, Delaware Valley Service Station Dealers Association.[83]

3. *Game security.* Not specifically mentioned in the proposed rule, but indirectly covered by paragraph (3), is the apparent ability of certain individuals, chiefly gasoline dealers, to identify the prize-winning pieces of a game and remove those pieces from the game pack for awarding to favored customers or for their own gain.

The game producers who commented on the problem of preidentification of winners or "game security" as it was often called, claimed that the problem has "largely disappeared" [84] and that there are very few people who can now predetermine winners since it has become increasingly difficult to do.[85] Mr. Glendinning of Glendinning Companies, Inc., also referred to efforts being made to overcome the problem by improving the technology and materials for game production.[86] He did concede, however, that "* * * anything one man can put together, someone else may be able to break apart. We can never guarantee you 100 percent that this won't happen." [87]

The oil companies likewise tended to minimize the susceptibility of their games to preidentification of winners.

E. R. Bradley, vice president of Sun Oil Co., stated that he did not think it was possible for anyone to identify winning game pieces for Sun's "Antique Car Coin Game." [88]

M. B. Holdgraf, vice president of Shell Oil Co., explained the steps Shell takes to prevent the detection of winning game pieces, including using improved game packages, such as a plastic packet which prevents tracing, unglueing and resealing.[89]

See footnotes at end of document.

William M. McCardell, vice president, Marketing, of Humble Oil & Refining Co., stated that while great improvements have been designed to prevent detection of winning game pieces, "it is likely that such manipulation, even though infrequent and isolated, may occur in the future * * *".[90]

The Commission also heard from Nicholas Del'Spina, a gasoline dealer from New Jersey, who testified as to the methods he used of predetermining winning game pieces in eight oil company games.[91] According to Mr. Del'Spina, "Every time a game comes out, a method is quickly found to crack it."[92] Mr. Del'Spina's attorney, Mr. Donald Weitzman, added that almost every oil company game has been "beaten" by Mr. Del'Spina, including the coin games.[93]

Barry Tumpson, a law student from Pittsburgh, told of his ability to select winning cards in a game used by Humble Oil & Refining Co.[94]

And the Oregon Consumer League reported that the Oregon Gasoline Dealers Association was able to pick winning tickets in a game employed in Oregon by Standard Oil Company of California.[95]

4. *Records and reporting requirements.* Along with their suggested modifications of the proposed rule relating to deception, the game producers also suggested that the Commission require all game producers to maintain adequate records to enable them to report to the Commission the total number of game pieces distributed, the total number of prizes awarded and the total value of those prizes, for each game.[96] The producers also suggested that any rule the Commission issues regulating the manner of distributing game pieces should place upon the producer the responsibility for maintaining such records as are necessary to demonstrate that the distribution methods it used satisfy the rule.[97]

And Mr. Henry Reichman, president of Sales Builders, Inc., a former game promoter and one who voiced criticism of the proposed rules as being inadequate to correct any problems associated with the use of games, wrote: "The only method which, in my opinion, is completely foolproof is to force the supermarket chains and oil companies to publicize at the end of a promotion an all-inclusive listing of game pieces which have been distributed plus a breakdown of winners specifying the various denominations of prizes."[98]

5. *Information as to odds, prize structure and advertisements for certain food and oil company games.* In addition to the comments on the proposed rule by the oil and food companies, the record of this proceeding also contains information submitted by several companies in those industries regarding the prize structure, odds, and advertising material for their games. This information was submitted in response to requests by the staff or the Commission itself. In many instances, the information as to prize structure referred to the number of prizes which were made available or offered to participants, rather than the number of prizes which were actually awarded during the game. Where the latter information was furnished, it is specifically mentioned.

Shell Oil Co. submitted material indicating that for its "Mr. President" game in the Los Angeles area, with 65,999,000 game pieces handed out, four $5,000 prizes were available and all four were awarded; sixty-eight $1,000 prizes were available, with 58 awarded; two hundred and sixty $500 prizes were available with 217 awarded; one thousand and twenty-three $100 prizes were available with 808 awarded; and six hundred and ninety six $50 prizes were available with 581 awarded.[99]

The Standard Oil Company of Ohio, for its game "Pay-Day" with 57,434,000 game pieces issued, awarded 12 top prizes of $3,000, 154 prizes of $1,000, 545 prizes of $100, and 1,253 prizes of $25.[100] Its "Cash In A Flash" game, in progress when the information was submitted, had 14 prizes of $3,000 available for 64,800,000 game pieces. This game also offered 120 prizes of $1,000, 600 prizes of $100, and 1,200 prizes of $25.[101] Despite the odds of over 1 in 4 million in winning $3,000 in these two games, service station banners submitted for the record have emblazoned across them the name of the game and "Win Up To $3,000," nothing more.[102] Newspaper advertisements and television and radio scripts also place emphasis on the opportunity to win $3,000.[103]

The Sun Oil Co., one of the heaviest recent users of games in the oil industry, supplied information on the four games it had used since mid-1968. Its "Double Match For Money" game issued 31 million game pieces and awarded nine automobiles, 19 prizes of $1,000 and 157 prizes of $100.[104] Its "Sunny Dollars Plus" game had 191 million pieces and awarded 82 automobiles, 80 prizes of $2,000, and 1,862 prizes of $100 as of January 4, 1969, with prizes to be redeemed through February 15, 1969.[105] Sun's "Antique Car Coin Game" was to distribute 90 million pieces and make available 48 prizes of $2,500, 140 prizes of $500, and 1,350 prizes of $100.[106] Its "Golden Dividend" game was to issue 2,600,000 pieces and make available seven prizes of $1,000 and 14 prizes of $100.[107] The station ads, billboard ads, window signs, streamers, banners, and television scripts for these games all emphasized the top prize, either cash or an automobile.[108]

Standard Oil of California distributed 10 million game pieces[109] for its "Double Hula Dollars" game and made available eight top prizes of $5,000 with five actually being awarded.[110] One hundred $200 prizes were also made available with 56 being paid, and 625 prizes of $50 were made available, with 348 paid.[111] The pole signs[112] and window signs[113] for this game feature solely and prominently the top prize of $5,000.

Marathon Oil Co.'s "Marathon Derby Dollars," which terminated June 7, 1969, was to issue 20,228,028 game pieces and have available 48 prizes of $1,000, 240 prizes of $100, and 240 prizes of $50.[114] Marathon submitted posters which gave a breakdown of the prizes to be awarded, with space on the poster for weekly revisions of the prizes remaining.[115]

Sinclair Oil Corp.'s "New Dino Dollars" game issued 48,502,240 game pieces and made available 40 automobiles with 27 being awarded; 18 prizes of $2,500 with 13 awarded; 24 prizes of $500 with 11 awarded; and 794 prizes of $100 with 398 awarded.[116] Its "Kickoff" game, conducted on a trial basis, was expected to distribute 2 million game pieces and have available four top prizes of $2,500, 16 prizes of $100, and 13 prizes of $25.[117] Television scripts and newspaper ads for these games mentioned the top prize to the virtual exclusion of lesser prizes.[118]

Union Oil Company of California used a game called "Cash Roulette" in which it distributed 63 million game pieces and awarded 29 top prizes (out of a total of 45 winning tickets distributed) of from $1,000 to $5,000, 82 prizes of $500, and 213 prizes of $100.[119] Promotional materials for this game featured the statement "Win Up to $5,000 Cash."[120]

First National Stores, Inc., informed the Commission that for three of its games concluded last year or early this year it awarded one top prize of $1,000 for approximately every million game pieces, and in a fourth game one $1,000 prize for every 400,000 game pieces.[121] A copy of newspaper advertising submitted for one of the games where the ratio of $1,000 prizes to total game pieces was approximately one to a million carried the caption "Win Up To $1,000" in large print 2 inches high.[122] No reference is made in this ad to any of the lesser prizes. Other newspaper ads and game books submitted for the same games placed similar emphasis on the top prize.[123] Newspaper ads for First National's "Deck O' Money" game, which was scheduled to run from January 6, 1969 to March 29 and was to have available six top prizes of $1,000 with a total of 2 million game pieces,[124] also featured the "Win Up To $1,000" caption in type almost 3 inches high.[125]

Acme Markets, Inc., used nine games since mid-1968. The ratio of the top prizes to total game pieces ranged from its "Match For Money" game where 24 million game pieces were issued and 44 cash or merchandise prizes with a value of $1,000 or more were awarded,[126] to its "Lucky Solitaire" game where 3,100,000 pieces were to be issued and four $500 prizes made available.[127]

The National Tea Co. used a game in the fall of 1968, "Ready Money Bingo," where 32,750,000 pieces were to be distributed with fifteen $1,000 winners,[128] one hundred and fifty $100 winners, and one hundred $25 winners. The advertising and promotional material for this game likewise featured prominent references to the top prize of $1,000.[129] This same company also used games where the ratio of top prize winners available to total pieces varied from one in approximately 677,000 to one in approximately 150,000.[130] Examples of ads for

See footnotes at end of document.

these games, generally featuring the top prize, are in the record.[132]

The Great Atlantic & Pacific Tea Co., Inc., used five games in the last year, with the ratio of top prizes awarded to game pieces issued ranging from approximately one in 2,375,000 to approximately one in 888,000.[132] Advertising and promotional materials for these games, appearing at pages 236 to 282 of Volume II of the public record, as a general rule feature and emphasize the opportunity to win the top prize.

The ratio of top prizes available to game pieces for games used by Allied Supermarkets, Inc., during the past year ranged from one in approximately 767,500 [133] to one in approximately 218,020.[134] Advertising for Allied's games, appearing at pages 354 to 401 of Volume III, the public record, follows the general pattern of emphasizing the top prize.

Arden-Mayfair, Inc., used four games during the past year, with the ratio of top prizes available to game pieces ranging from one in approximately 1,570,000 to approximately one in 700,000.[135] The newspaper ads submitted for these games all featured the opportunity to win the top prize.[136]

B. *Comments relating to the proposed rule concerning possible coercion in games in the gasoline industry*—1. *Comments by gasoline dealers and dealer associations.* With one exception,[137] every gasoline dealer or dealer association appearing at the hearings or filing written comments claimed that oil companies used coercion in one form or another to get dealer participation in games in the gasoline industry. And a majority of those dealers and associations were of the opinion that the proposed rule relating to coercion would not put an end to this alleged coercion and accordingly called for a prohibition of games in their industry.

For example, John M. Huemmrich, president of the National Congress of Petroleum Retailers and a service station dealer for 36 years, stated that 85 to 90 percent of dealers oppose games [138] and that charging dealers for chances which the oil company advertises as free to motorists economically coerces the dealer.[139] Mr. Heummirch called for a ban on games.[140]

Jerry M. Ferrara, executive director of the New Jersey Gasoline Retailers Association and a dealer for 19 years, described how pressure might be exerted on a dealer to participate in a game.[141] Mr. Ferrara added that the coercion that exists in the industry can never be proven, because "the individual dealer—we are not going to try to take him into court when his very livelihood is at stake. He is not going to go up against the oil company * * *."[142] Mr. Ferrara expressed his opposition to any promotion where the dealers must share in the cost,[143] and called for a prohibition of games.[144]

Jacob Puteska, president of the New Jersey Gasoline Retailers Association and a Sun Oil Co. dealer for 36 years,[145] described the manner in which Sun initiated a game among its dealers. He said: "The dealer, I think, has very little to say about whether he wants these games or not. Otherwise, you are going to stand on your lot day and night arguing with the customers—why don't you have the games, where are the games, your company is giving you these games—and in many cases, Commissioners, the customer thinks that those games are free to you."[146]

Richard R. Richmond, a Sun Oil Co. dealer, although not a "lessee dealer," wrote that he has been "an unwilling participant in Sun Oil Company's games since their inception in June 1966."[147] Mr. Richmond, who admits that he can comment more freely since he is not under a lease with his supplier, said that he accepts games only because if he doesn't he will lose business to those dealers who are participating in them. To him this is "* * * economic coercion which is no less severe because it is not administered with a contract, club or gun."[148]

Harry B. Greaves, president of the Oklahoma division of the Mid-America Gasoline Dealers Association and a dealer himself, does not know "even one operator who likes or approves them (games)" and urges the Commission to outlaw them.[149]

Mr. Joseph E. Berger sent the Commission a copy of a letter he sent to The Standard Oil Co. canceling his lease because of pressure exerted on him after he refused to participate in games. Mr. Berger alleges that "Because of my stand on the subject (games), unpleasant relations with The Standard Oil Co. have resulted, the greatest of which was the insult of a six-month lease."[150]

In addition to the above dealers who filed written comments or who made statements at the hearings, a number of officials of retail gasoline dealer associations appeared or filed written comments. All of them also opposed the use of games on the ground that dealers were coerced to participate in them,[151] and many called for an outright ban of games.[152]

2. *Comments by oil companies.* The oil companies, on the other hand, insisted that their policy was not to coerce dealers. H. J. Peckheiser, executive vice president of Mobil Oil Corp., does not believe coercion of dealers is a problem, since the self-interest of the supplier lies in the opposite direction.[153] He said that Mobil is "not out to coerce or abuse the dealer, but to help him run his business,"[154] but added: "I wish I could say categorically that coercion has never been attempted. I cannot. But I can say that our company will not condone coercive tactics of any kind * * *."[155]

M. B. Holdgraf of Shell Oil Co. also would not say that representatives of Shell never coerce dealers,[156] although it is against company policy. He stated that Shell dealers are "tough business people" who are not being coerced to take the games, and if it does happen, it is corrected.[157]

Mr. Holdgraf also referred to a survey by Shell in which 91 percent of dealers in Newark, N.J. said they approved of games and 82 percent said they made more money during the games.[158] In response to that survey, William H. Ligon, Managing Director of the Texas Association of Petroleum Retailers, produced a survey of dealer attitudes toward games taken in Dallas, El Paso, Fort Worth and Houston, Tex., during the early part of April 1969. Of those dealers responding to the survey, 92 percent of the Humble dealers, 97 percent of the Mobil dealers, and 84 percent of the Shell dealers said that they would like to see all oil companies outlaw or quit games.[159]

Mr. Holdgraf contends that the argument that advertising of games creates a demand which forces dealers to use them is not supported by the facts.[160] Shell, he said, does not advertise games in any market unless a substantial majority of dealers have agreed to participate in them.[161]

William M. McCardell, vice president, Marketing, Humble Oil & Refining Co., stated Humble's position as being opposed to any attempt to coerce dealers,[162] but admitted that "Isolated incidents of improper conduct by a sales representative, though prohibited and not condoned, can occasionally occur."[163] In referring to the minority of Humble dealers who elected not to participate in games, Mr. McCardell said: "Competitive pressures in the marketplace may place dealers who elect not to participate in a sales promotion at a competitive disadvantage in relation to other retailers who do elect to participate. However, to declare that effective market-wide sales promotion programs are therefore 'inherently coercive' and should be prohibited would deny to the many wanting to use and benefit from such programs one of the basic values of their affiliation with a branded supplier."[164]

E. R. Bradley, vice president, Sun Oil Co., disagreed with the belief that the acceptance of games is not voluntary on the part of the dealer.[165]

All of the major oil companies who appeared or submitted statements, even the Atlantic Richfield Co. which asked the Commission to prohibit games, opposed the issuance of the proposed rule relating to coercion in the gasoline industry,[166] and submitted many lengthy legal arguments in support of their position.[167]

C. *Comments on regulation vs. prohibition of games.* A number of witnesses who appeared at the hearings, including the representative of one major oil company,[168] or filed written comments, urged the Commission to prohibit games altogether rather than to regulate them. Among the reasons given for this position were that games are illegal lotteries or that they possess great opportunities for deception or coercion which regulation would not be able to correct.

Those who felt that the opportunity for coercion presented by the games could not be remedied by regulation included Congressman John D. Dingell;[169] William D. Snow, general counsel, National Congress of Petroleum Retailers;[170] John M. Huemmrich, president, National Congress of Petroleum Retailers;[171] Gary E. Persian, legal counsel and executive director, Minnesota Association of Petroleum Retailers;[172]

See footnotes at end of document.

O. W. Britton, executive director, Retail Gasoline Dealers Association of Michigan; [170] Jerry M. Ferrara, executive director, New Jersey Gasoline Retailers Association; [171] James W. Heizer, executive secretary, Virginia Gasoline Retailers Association, Inc.; [172] William Ligon, executive secretary, Texas Association of Petroleum Retailers; [173] Richard R. Richmond, a gasoline dealer; [174] and Harry B. Greaves, president of the Oklahoma division of the Mid-America Gasoline Dealers Association.[175]

Others advocating the abolition of games for a variety of reasons, including the views that they are lotteries or illegal gambling devices, or fraudulent or deceptive, were Congressman Silvio O. Conte; [176] Congressman Benjamin S. Rosenthal; [177] John W. Houston, executive secretary, Georgia Association of Petroleum Retailers, Inc.; [178] Dr. Stewart M. Lee, Geneva College; [179] Colston E. Warne, president, Consumers Union of the United States; [180] Nicholas Del'Spina, president, United Stations of New Jersey; [181] Dr. Richard L. D. Morse, Kansas State University; [182] Mrs. Sacha K. Miller; [183] William Ligon, executive secretary, Texas Association of Petroleum Retailers; [184] Dr. Thomas Brooks, University of Connecticut; [185] Barry Tumpson; [186] Frank J. Kottke, Washington State University; [187] American Petroleum Refiners Association; [188] and Pennsylvania Petroleum and Fuels Association.[189]

Additionally, the record of this proceeding contains approximately 400 letters from consumers, received since this proceeding was initiated, alleging that food and gasoline games are fraudulent, deceptive, rigged, or cause higher prices. The majority of these letters ask the Commission to ban games altogether.

As already noted, members of the game producing, food, and gasoline industries, with the exception of the Atlantic Richfield Co., suggested, with varying degrees of enthusiasm, regulation of games, at least with respect to their possibly deceptive aspects, rather than abolition of them.

III. *Summary and conclusions.* On the basis of the record of the Trade Regulation Rule Proceeding, including those portions referred to in the preceding section, the Commission has concluded that the issuance of a Trade Regulation Rule regulating the conduct of games of chance in the food retailing and gasoline industries is required by that record, and is in the public interest. The Commission has also reached the conclusion that, for reasons discussed below, the rule should address itself only to the area of possible or alleged deception in connection with the use of games in both industries, and not to the area of possible or alleged coercion in connection with the use of games in the gasoline industry.

A. *Possible deception in games*—1. *Disclosure of material facts.* In general, industry members who would be affected by any rule issued with regard to games went on record in this proceeding as favoring the principle of full disclosure of the material facts of a game and endorsed the objective of the proposed rule relating to deception to guarantee this disclosure. Those industry members who commented on the rule, however, were virtually unanimous in claiming that, as proposed, the rule was impractical and that compliance with it was not possible.

The Commission has concluded that the requirement of a full and complete disclosure of a game's material facts must be an essential part of any rule purporting to regulate games. The primary reason for this conclusion is the manner in which games are advertised and promoted. As previously noted, games are advertised and promoted in such a manner that the major prizes are given heavy emphasis. It appears that such emphasis is necessary in order to attract participants, and thus potential purchasers, to the user's retail outlets. Yet the chances of winning the heavily emphasized top prizes are slim indeed. The ratio of winning game pieces for the top prizes to the total game pieces for games in the record of this proceeding range from 1 in 150,000 to one in 7 million, and the odds of winning a major prize other than the top prize were also slight. Advertising which repeatedly emphasizes the opportunity to win large prizes, when the chances of winning those prizes is often very remote is, we conclude, inherently deceptive. Such deception can be cured only by a disclosure of the actual prize structure and odds for games.

Accordingly, one of the most important sections of the rule which the Commission today adopts is concerned with disclosure of the prize structure and odds for games in the food and gasoline industries. Since industry members support the general principle of disclosure, the Commission's chief task has been to fashion a rule, the disclosure provisions of which are practical from a compliance standpoint but also which, in view of the information on game advertising, odds, and prize structure contained in this record, effectively protects the public interest.

Having therefore given careful consideration to material presented during the course of this proceeding, including comments of industry members, the rule which the Commission issues today differs significantly in its disclosure requirements from the rule the Commission proposed at the inception of this proceeding.

One of the oft-repeated objections made by industry members to the proposed rule was that they had no way of telling "the exact number of prizes in each category or denomination to be awarded" during a game, as the proposed rule required, since some winning tickets for prizes might be discarded, lost or misplaced, and thus some prizes would never be redeemed or "awarded." Likewise, industry members argued that the proposed rule's requirement of weekly revisions of advertising to reflect prizes "still available" was unrealistic, in part, because they would not know how many winning pieces had been distributed, but not redeemed, and thus were no longer "still available."

The Commission is of the opinion that the industry arguments regarding these two points are well founded and, accordingly, the final rule has been changed to reflect those arguments. The final rule requires that the exact number of prizes in each category or denomination "to be made available" be disclosed, and that this disclosure be revised weekly to reflect those prizes "which remain unredeemed."

Since the final rule requires disclosure in all advertising and promotional material of the exact number of prizes to be offered or made available, revised weekly as prizes are redeemed, it would not be possible to replenish prizes during the game as a category or denomination of prizes are reduced or exhausted without rendering false prior disclosures as to the exact number of prizes offered. Accordingly, the rule in paragraph (h) specifically prohibits replenishing or adding in prizes during a game. This provision of the rule would not appear to cause any difficulty for producers or users of games, however, since game producers are able to predict accurately the number of game pieces and prizes needed for a game so as to render "very remote" [193] the need for replenishment.

Also implicit in the final rule's requirement that the exact number of prizes to be made available during a game be disclosed is that no game can be terminated prior to issuance of all game pieces to the participating public. If a game were terminated prior to distribution of all pieces, then any winning pieces contained in the undistributed game pieces would not have been made available to participants and thus the initial disclosure as to the exact number of prizes to be made available would have been false. Accordingly, paragraph (g) of our rule prohibits terminating any game prior to distribution of all pieces. Like the problem of replenishment, the problem of left over game pieces was characterized by the game producers as unlikely to occur.[194] Paragraph (g) should, therefore, impose no hardship on those subject to its requirements.

In its report on games the Commission's staff found that for the four largest promoters the chance of obtaining a winning piece for a $1,000 prize in a single store visit averaged 1.2 per million.[195] The report added that: "Even the more sophisticated consumers have no way of knowing the real odds of winning a prize." [196] And, as noted, information submitted during this proceeding indicated that the chances of winning a major prize are often remote.

The Commission is of the opinion that a disclosure of the odds for winning each prize offered is vital to enable participants and potential participants to make an informed decision as to whether or not to continue or begin playing a game. In our judgment, a disclosure solely of the number of prizes available in each category or denomination is virtually meaningless without revealing what a participant's chances are of winning those prizes. Several producers and users of games indicated that

See footnotes at end of document.

information as to the odds should be disclosed to participants.[187] We agree and, accordingly, although not required by the proposed rule, our final rule requires a disclosure of the odds of winning each prize offered, with a weekly revision as to prizes in the amount of value of $25 or more.

Industry members also contended that it was impractical to require, as the proposed rule does, that the disclosure as to prize structure be made in all game advertising and promotions and on game pieces if they refer to prizes or their number or availability. Some industry members suggested that advertising carry a clear reference to a sign to be posted at each participating outlet disclosing the required information. The Commission disagrees with this contention and, therefore, the rule which it today adopts requires the disclosures of the prize structure and odds in "advertising, including newspaper and broadcast media advertising, or other promotions, such as store signs, window streamers, banners, or display materials" and on game pieces if they refer, on the exposed portion thereof, to prizes or their number or availability.

The Commission recognizes that this requirement may cause certain difficulties for game producers and users. However, it seems obvious that games advertising, which as we have seen invariably emphasizes the opportunity to win a major prize, is a prime factor in inducing a potential participant and thus a potential customer to a retail outlet using a game. Any rule which did not require complete disclosure of all material facts in advertising would not adequately protect the public interest. A reference in advertising to a sign in each outlet carrying the required prize and odds information would be inadequate since a potential game participant-customer who was induced to visit a retail outlet using the game rather than some other on the basis of advertising, and who, upon reading the prize and odds information at that outlet decided it would not be worthwhile to participate in the game, may nevertheless at that point decide it would not be feasible to take his business to some other outlet. This opinion is supported by the judgment of Frank J. Kottke, Professor of Economics at Washington State University, who stated that: "However, in light of the value of the participant's time, in instances where he plans to buy less than $25 of goods or services on the particular occasion he rarely will go elsewhere to buy these goods and services once he has taken the trouble to present himself at the game operator's place of business."[188] Accordingly, advertising which fails to inform potential participants of the game's odds and prize structure could effectively and, in our opinion unfairly, divert business from a nongame using outlet to one using the game.

Industry members also objected to making disclosures on game pieces, arguing primarily that they are too small to carry the required information. The Commission has carefully considered this argument but nevertheless is of the opinion that, like other promotional materials, game pieces must contain the information required by the rule. However, the disclosure on game pieces is only necessary if the pieces refer, on an exposed portion, to prizes or their number or availability.

Industry members further objected to having to revise advertising of disclosed information weekly as the proposed rule requires. Some even insisted it was impractical to revise point-of-sale materials weekly. Again, the Commission is aware of the practical difficulties involved, but feels that the public interest requires up-dating of all odds and prize disclosures on a weekly basis. Particularly since distribution of all game pieces must be on a purely random basis, as our final rule requires, the odds and prize structure of a game will be volatile and ever-changing. It is highly material for a game participant or potential participant, in order to make an informed decision as to whether to continue or begin playing a game and thus visit, and perhaps patronize, a retail outlet using a game, to know, as the game progresses, the prizes which remain and his chances of winning those prizes. Since games are frequently programed in terms of weeks and since some advertising, such as food advertising, is changed weekly, it would appear to be logical to require the revision of disclosures as to unredeemed prizes and odds on a weekly basis.

However, as the proposed rule provided, the disclosures need not be revised for games of 30 days' duration or less.

Other material facts which the Commission concludes should be disclosed, and are thus required to be disclosed by the final rule, include the geographic area covered by the game (this was required by the proposed rule and received little or no comment); the total number of retail outlets participating; and the game's scheduled termination date.

2. *Method of distribution of game pieces.* Although users and producers of games deny that such practices occur in current games, a major abuse identified in the Commission's staff report[189] was the placement of winning pieces in certain favored retail outlets, or localities,[190] or for certain periods in the game cycle deemed desirable for maximizing the promotional impact of the game.

The third paragraph in the proposed rule would prohibit these practices, but in our view does not go far enough in that it does not require the dispersal of game pieces on a purely random basis. We are of the opinion that in "games of chance" the element of "chance" should apply to all aspects of the game. Therefore, in order to avoid the slightest possibility of any manipulation or rigging, all game pieces should be dispersed on a purely random basis throughout the game program and throughout the geographic area covered by the game.

Significantly, the industry guidelines permit random distribution and it was stated on more than one occasion by industry members that total random distribution of game pieces was possible and acceptable.

The rule also requires the maintenance of records to demonstrate that randomness was used in the dispersal of game pieces. This requirement was suggested by the producers[191] and is hereby adopted by the Commission.

3. *Game security.* One of the areas which troubles the Commission most about games is the possibility that certain individuals may be able to solve or "break" games and thus identify winning game pieces. Winning game pieces so identified could thus be retained by the individual for his own benefit or, if the individual were a retailer, such as gasoline station dealer, he could give the winning pieces to selected customers. In either event, the participating public would be deprived of an opportunity to win the prizes so identified and the advertised odds for the prizes so identified would be deceptive.

Several witnesses tetified as to the possibility of identifying winners in unopened game pieces. However, industry members, in the main, insisted that they had solved the problem although some conceded that they could not absolutely guarantee that "breaking" would not occur in the future.

Although the Commission may require full and complete disclosure of a game's material facts, and regulate other aspects of it, such as the method of dispersal of game pieces, if the pieces are susceptible of being preidentified, the regulation of games is useless. It was this possibility of preidentifying winners that caused the Commission to give serious consideration to prohibiting games altogether rather than regulating them.

However, industry members insist that great strides have been taken in solving what they consider to be a security problem, and have introduced new packages, such as ones made of plastic, for game pieces. The Commission is therefore giving the industry an opportunity to develop games which cannot be "broken" or "read." The final rule which we adopt today prohibits the industry from promoting, selling or using any game which can be so solved.

4. *Records and reporting requirements.* Paragraph (e) of the final rule requires producers and users of games to post, at the conclusion of a game, certain information in each retail outlet which used the game and to also furnish this information to the Commission. This paragraph adopts the suggestion of the game producers that the Commission require the maintenance of certain records to be furnished to the Commission upon its request. It goes further than the producers' suggestion, however, in requiring that the information be posted in each outlet using the game and furnished automatically to the Commission at the conclusion of each game. Also, in addition to that which was suggested by the producers, the rule requires that this information consist of a complete list of the winners of each prize and the total number of prizes by category or denomination which were made available.

See footnotes at end of document.

5. *Interval between games.* The Commission is also of the opinion that a great potential for confusion and deception exists in the consecutive use of games by a retail establishment, with no interval in between the games. With games running on the heels of each other, participants could easily become confused as to the prize structure, odds, and redemption rights of the game then in progress. A better practice, to assure that deception and confusion would not result, would be to follow each game with a break in time at least equivalent to the duration of the just-completed game. Paragraph (f) of the final rule requires such a break.

B. *Possible coercion in games in the gasoline industry.* Neither a majority of the gasoline dealers or dealer associations nor any of the oil companies who appeared or submitted comments during the course of this proceeding supported the issuance of the proposed rule relating to alleged coercion in connection with the use of games in the gasoline industry, although their lack of support was for entirely different reasons. The oil companies were of the opinion generally that coercion of dealers was not a problem and that therefore no rule is necessary, while a majority of the dealers and associations felt that, rather than issue a rule, the Commission should prohibit games in the industry altogether.

The Commission views with great concern the allegations of the numerous gasoline dealers and dealer associations who appeared during this proceeding to the effect that dealers, directly or indirectly, are coerced to participate in games by their oil company suppliers.

We are convinced that the dealer complaints of coercion go beyond, and are not limited to, allegedly coerced participation in games, but are the direct result of the economic power enjoyed by oil companies vis-a-vis the dealers. We are not convinced, however, that the proposed rule relating to alleged coercion in connection with the use of games is a proper vehicle for regulating or dealing with this disparity of economic power enjoyed by the oil companies.

On the other hand, we are doubtful if the record of this proceeding, consisting as it does of conflicting statements of dealers and companies on the issue of coercion, is legally sufficient to support the drastic remedy of abolition of games in the industry.

Accordingly, the Commission has concluded that the second proposed rule relating to coercion should not be issued, and hereby announces that it will respond to dealer complaints of coercion, whether in connection with the use of games or in any other aspect of the dealer's relationship with his supplier, on a case-by-case basis, utilizing section 5 of the Federal Trade Commission Act and the principles developed thereunder in the TBA cases.[30]

C. *Regulation vs. prohibition of games.* It is clear that games have been in practice, fraudulent and deceptive in some instances. The industry, in response to such charges and to the concern of the public and governmental agencies, has made a commendable effort to correct these abuses. It is unfortunate that these steps came only in response to pressure and that greater care was not utilized initially. The industry guidelines, while not going nearly so far as the rule which we today adopt, are examples of that effort. Members of the game producing industry have assured the Commission that regulation of their industry and of games in the food retailing and gasoline industries will work, and will make games fair and honest. We are therefore according them the opportunity to demonstrate the validity of that assurance by promulgating the rule attached hereto. Compliance with this rule will not be easy; it requires the disclosure of more detailed information than any Trade Regulation Rule previously adopted. Yet full compliance with this rule by all those to whom it applies is expected and will be insisted upon. Such full compliance will, we feel, protect the public interest.

The rule we adopt today is intended to correct the promotion and employment in a deceptive manner of games of chance. The proper function of a regulatory agency is to correct, by regulation if possible, unlawful activity rather than to prohibit the device altogether. It is possible that this rule will not have the intended results, or that compliance with it may not be forthcoming. Perhaps this industry may not be susceptible of regulation. In that event, the Commission, to protect the public interest, will consider imposition of a stricter, prohibitory rule. In any event the rule announced today will be reconsidered by the Commission 18 months following its effective date.

D. *The Commission's rulemaking authority.* The argument was made during the course of this proceeding,[30a] as it has been during practically every Trade Regulation Rule proceeding which the Commission has initiated, that the Commission has no authority to promulgate Trade Regulation Rules.

In our Statement of Basis and Purpose accompanying the Cigarette Rule, we elaborated at length on our Trade Regulation Rulemaking authority [30b] and concluded that Trade Regulation Rules are "within the scope of the general grant of rulemaking authority in section 6(g) (of the Federal Trade Commission Act), and authority to promulgate it is, in any event, implicit in section 5(a)(6) (of the Act) and in the purpose and design of the Trade Commission Act as a whole." [30c] The Commission still adheres to that view.

E. *Effective date of the rule.* The game producers who appeared during this proceeding requested a grace period of 60 days to bring all media advertising and display materials into compliance with any rule the Commission issues, and 90 days to bring game pieces into full compliance.[30d] Another request, received after the record of this proceeding was closed, was for an effective date 150 days beyond the date of announcement of Commission action.

In view of the fact that producers and users of games have been on notice for a considerable period of time that Commission action with regard to games was likely, we do not feel that any period of delay of the rule's effective date longer than 60 days would be justified. Accordingly, the effective date of the rule will be 60 days after publication of the rule in the FEDERAL REGISTER.

FOOTNOTES

[1] The Use of Games of Chance in Gasoline Marketing and Their Impact Upon Small Business, A Report of Subcommittee No. 5 to the Select Committee on Small Business, House of Representatives, 90th Congress, second session (1968).

[2] Economic Report on the Use of Games of Chance in Food and Gasoline Retailing 466–467.

[3] House Subcommittee Report, supra note 1, at 37–38.

[4] 34 F.R. 218 (1–7–69).

[5] Record, Volume V, p. 1214. (As used herein, "Record" refers to the 7 volumes of written comments and material in the public record of this proceeding and "Tr." to the transcript of the public hearings in this proceeding.)

[6] Record, Volume V, p. 1210.

[7] Record, Volume V, p. 837, et seq.

[8] E.g., statements of William P. Sims, Jr., on behalf of a group of game producers, Tr. 57–58; Robert Herron, president, Herron-Kienzle, Inc., Tr. 85; Ralph Glendinning, President, Glendinning Companies, Inc., Tr. 333; and Edward H. DeHart, on behalf of a group of game producers, Tr. 813.

[9] See, e.g., statements of William P. Sims, Jr., on behalf of a group of game producers, Tr. 60; Marvin Margolis, vice president and general counsel, Miller-Waltzer Associates, Inc., Tr. 118; Ralph Glendinning, president, Glendinning Companies, Inc., Tr. 333; and Edward H. DeHart, on behalf of a group of game producers, Tr. 826.

[10] Robert Gordon, president of Poppy Productions, a game producer, supported the proposed rule apparently without reservations, Tr. 182.

[11] Record, Volume III, p. 539.

[12] Ibid.

[13] Id. at 539–40.

[14] Id. at 540–41.

[15] Id. at 541.

[16] Id. at 539.

[17] Id. at 540.

[18] Id. at 541.

[19] Ibid.

[20] Statements of Marvin Margolis, vice president and general counsel, Miller-Waltzer Associates Inc., Tr. 137; Ralph Glendinning, president, Glendinning Companies, Inc., Tr. 330; and Edward H. DeHart on behalf of a group of game producers, Tr. 815.

[21] Record, Volume VII, p. 1870; statement of H. J. Peckheiser, executive vice president, Tr. 412.

[22] Statement of H. J. Peckheiser, executive vice president, Tr. 420, 427.

[23] Record, Volume VII, p. 1867.

[24] Id. at 1868.

[25] Id. at 1869.

[26] Statement of M. B. Holdgraf, vice president, Tr. 689–90.

[27] Id. at 676.

[28] Prepared statement of M. B. Holdgraf, p. 32, appearing after Tr. 693.

[29] Statement of M. B. Holdgraf, vice president, Tr. 653, 700–01.

[30] Record, Volume III, p. 334.

[31] Record, Volume III, p. 349.

[32] Record, Volume III, p. 351.

See footnotes at end of document.

[53] Record, Volume III, p. 533; Statement of E. R. Bradley, vice president, Tr. 783 (Sun is in favor of reasonable regulations to eliminate possible fraud, misrepresentation and deception, and, with a slight modification, the proposed rule relating to deception appears to be reasonable and acceptable).
[54] Record, Volume IV, pp. 600–01.
[55] Record, Volume VI, p. 1618.
[56] Record, Volume VII, p. 2063.
[57] Statement of M. B. Holdgraf, vice president, Tr. 676.
[58] See, e.g., statements of Clarence Adamy, president of the National Association of Food Chains, Tr. 568–69, 572–74; John J. Cairns, Jr., National Director of Sales, Great Atlantic and Pacific Tea Co., Inc., Tr. 607; and Emerson E. Brightman, executive vice president, Grand Union Co., Tr. 612–13.
[59] Statements of Henry Bison, Jr., general counsel, National Association of Retail Grocers, Tr. 443; and Clarence Adamy, president, National Association of Food Chains, Tr. 569–70.
[60] Tr. 605.
[61] Tr. 614–15.
[62] Tr. 612.
[63] Tr. 394.
[64] Tr. 454–56.
[65] Tr. 457.
[66] Record, Volume III, p. 331.
[67] Record, Volume III, p. 415.
[68] Record, Volume IV, p. 650.
[69] Economic Report, Op. Cit. supra note 2, at 460–64, 479–81.
[70] See note 9 supra.
[71] Note 5 supra.
[72] Note 6 supra.
[73] Tr. 66.
[74] Tr. 66–67.
[75] Tr. 86.
[76] Tr. 88.
[77] Tr. 92.
[78] Tr. 106.
[79] Tr. 127.
[80] Tr. 130.
[81] Tr. 130–31.
[82] Tr. 132.
[83] Tr. 136.
[84] Tr. 330.
[85] Tr. 334.
[86] Tr. 334.
[87] Tr. 335.
[88] See, e.g., statements of Robert Herron, president, Herron-Kienzle, Inc., Tr. 89, Daniel Silverman, president, Dansico Associates, Inc., Tr. 110–114; Ralph O. Glendinning, president, Glendinning Companies, Inc., Tr. 340–341, 368–379.
[89] Statement of James Naber, vice president and general manager, Glendinning Companies, Inc., Tr. 372–373.
[90] Record, Volume VI, pp. 1562–1563.
[91] Record, Volume VI, p. 1563.
[92] Statements of William P. Sims, Jr., on behalf of a group of game producers, Tr. 67–68 and James Naber, vice president and general manager, Glendinning Companies, Inc., Tr. 379–80.
[93] Tr. 423–24.
[94] Tr. 424.
[95] Record, Volume II, p. 313.
[96] Record, Volume III, p. 351.
[97] Record, Volume IV, p. 601.
[98] Pp. 5–7, following Tr. 693.
[99] Record, Volume III, pp. 415, 427–28.
[100] Tr. 265–68.
[101] Tr. 279–80.
[102] Tr. 314, 328 (affidavit of Humble Oil dealer).
[103] Tr. 633–35.
[104] Statement of William P. Sims, Jr., on behalf of a group of game producers, Tr. 71, 72–74.
[105] Statements of Ralph O. Glendinning, president, Glendinning Companies, Inc., Tr. 345, and Edward H. DeHart, on behalf of a group of game producers, Tr. 831–33.
[106] Tr. 346.
[107] Tr. 344.
[108] Tr. 774–75.
[109] Prepared statement, pp. 6–8, following Tr. 693.
[110] Tr. 736.
[111] Tr. 475–77.
[112] Tr. 475.
[113] Tr. 477.
[114] Tr. 640–41.
[115] Record, Volume III, p. 413.
[116] Record, Volume III, p. 540.
[117] Statement of Ralph Glendinning, President, Glendinning Companies, Inc., Tr. 330, 336–37.
[118] Record, Volume I, p. 105.
[119] Record, Volume VII, following p. 1986.
[120] Record, Volume I, p. 139.
[121] Record, Volume I, p. 140.
[122] Due to the size of these banners they are stored in the basement of the FTC Building.
[123] This material is also stored in the basement of the FTC Building.
[124] Record, Volume I, p. 197.
[125] Record, Volume I, p. 197.
[126] Record, Volume I, p. 197.
[127] Record, Volume I, p. 198.
[128] Record, Volume I, following p. 198.
[129] Record, Volume II, p. 207.
[130] Record, Volume II, p. 217.
[131] Record, Volume II, p. 217.
[132] Record, Volume II, p. 213A.
[133] Record, Volume II, p. 214.
[134] Record, Volume II, p. 313.
[135] These posters are stored in the basement of the FTC Building.
[136] Record, Volume III, p. 435.
[137] Record, Volume III, pp. 436–37.
[138] Record, Volume III, pp. 441–51, 453–54, 456–59.
[139] Record, Volume III, p. 483.
[140] Record, Volume III, pp. 485–87.
[141] Record, Volume I, p. 114.
[142] Record, Volume I, p. 116.
[143] Record, Volume I, pp, 116A, 124, 125, 126.
[144] Record, Volume I, p. 114.
[145] Record, Volume I, pp. 136, 137.
[146] Record, Volume I, p. 150A.
[147] Record, Volume I, p. 157.
[148] Record, Volume I, p. 161.
[149] Record, Volume I, pp. 162, 163.
[150] Record, Volume I, pp. 160–77.
[151] Record, Volume I, pp. 166, 167, 168, 176.
[152] Record, Volume II, pp. 233–234.
[153] Record, Volume III, p. 354.
[154] Record, Volume III, p. 399.
[155] Record, Volume IV, p. 652.
[156] Record, Volume IV, 652, et seq.
[157] Harlan Triplett, a Cities Service Co. lessee-dealer, Tr. 847, 854.
[158] Tr. 256.
[159] Tr. 257.
[160] Tr. 258–59.
[161] Tr. 291–92.
[162] Tr. 297.
[163] Tr. 298–99.
[164] Tr. 292.
[165] Tr. 302.
[166] Tr. 303.
[167] Record, Volume I, p. 87.
[168] Record, Volume I, p. 92.
[169] Record, Volume I, p. 180.
[170] Record, Volume VI, p. 1420.
[171] Statements of William D. Snow, general counsel, National Congress of Petroleum Retailer, Tr. 205–07, 211–12, 213 (Referring to the decision in Federal Trade Commission v. Texaco, Inc., 393 U.S. 223 (1968), Mr. Snow asks rhetorically: "In what way are games, in what way should there be more toleration of forcing a gambling device on dealers than there is toleration in forcing TBA on them?"), 215, 220–21; John W. Houston, executive secretary, Georgia Association of Petroleum Retailers, Inc., Tr. 235–36, 250–51 ("Short-term leases assure dealer cooperation [in games]"); Gary E. Persian, legal counsel and executive director, Minnesota Association of Petroleum Retailers, Tr. 269–70, 271; William D. Tucker, executive secretary, Allied Gasoline Retailers Association of Florida, Inc., Tr. 280–82, 283–84; James W. Heizer, executive secretary, Virginia Gasoline Retailers Association, Inc., Tr. 314–17, 324, 326–27; Donald Weitzman, Tr. 482–84, 487; William Ligon, executive secretary, Texas Association of Petroleum Retailers, Tr. 551–55; Stanley A. Rodman, executive director, Delaware Valley Service Station Dealers Association, Tr. 629–31; and Derol May, president of the Arkansas Gasoline Retailers Association, Inc., Record, Volume IV, p. 591.
[172] See, e.g., statements of William D. Snow, general counsel, National Congress of Petroleum Retailers, Tr. 218, 224–25; John W. Houston, executive secretary, Georgia Association of Petroleum Retailers, Inc., Tr. 231, 250; Gary E. Persian, legal counsel and executive director, Minnesota Association of Petroleum Retailers, Tr. 269, 271; O. W. Britton, executive director, Retail Gasoline Dealers Association of Michigan, Tr. 277; James W. Heizer, executive secretary, Virginia Gasoline Retailers Association, Inc., Tr. 313, 316; Nicholas Del'Spina, president, United Stations of New Jersey, Tr. 477; William Ligon, executive secretary, Texas Association of Petroleum Retailers, Tr. 546; Richard R. Richmond, Record, Volume I, p. 92; Harry B. Greaves, president, Oklahoma Division, Mid-America Gasoline Dealers Association, Record, Volume I, p. 180; and the resolution of the Missouri Oil Jobbers Association, Record, Volume VII, p. 1854A.
[173] Tr. 399.
[174] Tr. 401.
[175] Tr. 406.
[176] Tr. 682–83.
[177] Tr. 683–84.
[178] Tr. 660–61.
[179] Record, Volume VII, pp. 2110–14.
[180] Tr. 677.
[181] Ibid.
[182] Tr. 734.
[183] Tr. 759.
[184] Tr. 757–58.
[185] Tr. 775.
[186] See, e.g., statements of E. R. Bradley, vice president, Sun Oil Co., Tr. 783–85; H. J. Peckheiser, vice president, Mobil Oil Corp., Tr. 409–10; M. B. Holdgraf, vice president, marketing, Shell Oil Co., Tr. 691; William M. McCardell, vice president, marketing, Humble Oil & Refining Co., Tr. 733.
[187] See, e.g., statement of William Simon on behalf of Humble Oil & Refining Co., Tr. 701, et seq.; and written submissions of The Standard Oil Company of Ohio, Record, Volume III, pp. 334–37; the American Oil Co., Record, Volume III, p. 338, et seq.; Sinclair Oil Corp., Record, Vol. III, pp. 351–52; Sun Oil Co., Record, Volume III, pp. 530–33; Glendinning Companies, Inc., Record, Volume III, p. 549, et seq.; Standard Oil Company of California, Record, Volume IV, p. 597, et seq.; Humble Oil & Refining Co., Record, Volume VI, p. 1616, et seq.; and Mobil Oil Corp., Record, Volume VII, p. 1856, et seq.
[188] L. M. Ream, Jr., vice president, Atlantic Richfield Co., Tr. 533.
[189] Tr. 15, 18–19, 27.
[190] Prepared statement, pp. 3, 20–21, 23, following Tr. 229.
[191] Tr. 258–59.
[192] Tr. 271.
[193] Tr. 277.
[194] Tr. 292.
[195] Tr. 313, 316.
[196] Tr. 546.
[197] Record, Volume 1, p. 92.
[198] Record, Volume 1, p. 180.
[199] Tr. 33.
[200] Tr. 168, 175.
[201] Tr. 250.
[202] Tr. 385.
[203] Tr. 452.

[184] Tr. 477.
[185] Tr. 513–16.
[186] Tr. 526–28.
[187] Tr. 546.
[188] Tr. 622, 626.
[189] Tr. 642, 649.
[190] Record, Volume IV, pp. 637–38.
[191] Record, Volume VI, p. 1387.
[192] Record, Volume VII, p. 1909.
[193] Written submission of Glendinning Companies, Inc., Record, Volume VI, p. 1563.
[194] See e.g., statements of James Naber, vice president and general manager, Glenndinning Companies, Inc., Tr. 380 and William P. Sims, Jr., on behalf of a group of game producers, Tr. 67–68.
[195] Economic Report on the Use of Games of Chance in Food and Gasoline Retailing, 466.
[196] Ibid.
[197] See e.g., statements of Marvin Margolis, vice president and general counsel, Miller-Waltzer Associates, Inc., Tr. 137; Ralph Glendinning, president, Glendinning Companies, Inc., Tr. 330; Edward H. DeHart, on behalf of a group of game producers, Tr. 815; M. B. Holdgraf, vice president, Shell Oil Co., Tr. 676; and Emerson E. Brightman, executive vice president, Grand Union Co., Tr. 612.
[198] Record, Volume IV, p. 637.
[199] Economic Report, supra, note 195, at 460–64, 479–81.
[200] See, e.g., Economic Report on Food Chain Selling Practices in the District of Columbia and San Francisco, A Staff Report to the Federal Trade Commission, p. 5, where it is indicated that the largest food chain in Washington, D.C., placed large prizes in its upper-income and suburban stores and none in its stores in the central city.
[201] Statement of Ralph Glendinning, president, Glendinning Companies, Inc., Tr. 330, 336–337.
[202] Federal Trade Commission v. Texaco, Inc., 393 U.S. 223 (1968); Atlantic Refining Co. v. Federal Trade Commission, 381 U.S. 357 (1964); Shell Oil Co. v. Federal Trade Commission, 360 F. 2d 470 (5th Cir. 1966) cert. denied, 385 U.S. 1002 (1967).
[203] See, e.g., statements of William Simon, on behalf of Humble Oil & Refining Co., Tr. 701, et seq.; Humble Oil & Refining Co., Record, Vol. VI, p. 1616, et seq.; and Mobil Oil Corp., Record, Vol. VII, pp. 1858–1863.
[204] Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking and Accompanying Statement of Basis and Purpose of Rule, 127–50.
[205] Id. at 150.
[206] Record, Vol. VI, p. 1548.

[F.R. Doc. 69–9692; Filed, Aug. 15, 1969; 8:47 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 69–189]

PART 1—GENERAL PROVISIONS

Extension of Limits of Springfield, Mass., Port of Entry

AUGUST 6, 1969.

It has been determined that less costly, and more timely Customs service can be provided to the importing and traveling public through extending the present limits of the port of Springfield, Mass., which now includes the municipality of Springfield, Mass. The extension will also provide a larger geographical area through which the importing and traveling public can be served.

Accordingly, under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623 (19 U.S.C. 2), which was delegated to the Secretary of the Treasury by the President by Executive Order No. 10289, September 17, 1951 (3 CFR Ch. II), and pursuant to authorization provided by Treasury Department Order No. 190, Rev. 6 (34 F.R. 6298), the present geographical limits of the Springfield, Mass., port of entry in the Boston, Mass., Customs district (Region I), are extended to include the incorporated cities of Holyoke and Chicopee, and the incorporated towns of West Springfield, Agawam, Longmeadow, and East Longmeadow.

The geographical limits of the extended port of Springfield, Mass., are described as follows:

All of the area lying within the outer boundaries of the city of Springfield, Mass., and including also the area lying within the outer boundaries of the incorporated cities of Holyoke and Chicopee, and the incorporated towns of West Springfield, Agawam, Longmeadow, and East Longmeadow, all within Hampden County in the State of Massachusetts.

Section 1.2(c) of the Customs Regulations is amended by inserting after "Springfield" in the column headed "Ports of Entry" in the Boston, Mass., Customs district (Region I), "(T.D. 69–189)."

(80 Stat. 379, sec. 1, 37 Stat. 434, sec. 1, 38 Stat. 623, as amended, R.S. 251, sec. 624, 46 Stat. 759; 5 U.S.C. 301, 19 U.S.C. 1, 2, 66, 1624)

This Treasury Decision shall become effective upon publication in the FEDERAL REGISTER.

[SEAL] EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[F.R. Doc. 69–9712; Filed, Aug. 15, 1969; 8:48 a.m.]

Title 20—EMPLOYEES' BENEFITS

Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Regs. No. 4, further amended]

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950——)

Subpart E—Deductions; Reductions; Nonpayments, Increases

Subpart J—Procedures, Payment of Benefits and Representation of Parties

MISCELLANEOUS AMENDMENTS

Regulations No. 4 of the Social Security Administration, as amended (20 CFR 404.1 et seq.) are further amended to read as follows:

1. Paragraph (c)(3) of § 404.408 is amended to read as follows:

§ 404.408 Reduction of benefits based on disability on account of receipt of workmen's compensation.

* * * * *

(c) * * *

(3) *Average current earnings defined*—(i) *In general.* An individual's "average current earnings" for purposes of this section means the larger of:

(*a*) The average monthly wage used for purposes of computing the individual's disability insurance benefit under section 223 of the Act, or

(*b*) One-sixtieth of the total of such individual's wages and earnings from self-employment without the limitations under sections 209(a) and 211(b)(1) of the Act for the 5 consecutive calendar years after 1950 for which such wages and earnings from self-employment were highest. The extent by which such individual's wages and earnings from self-employment exceed the limitations under sections 209(a) and 211(b)(1) of the Act for any calendar year after 1950 is computed in accordance with the provisions of subdivision (ii) of this subparagraph. Any amount so computed which is not a multiple of $1 is reduced to the next lower multiple of $1.

(ii) *Method of determining calendar year earnings in excess of the limitations under sections 209(a) and 211(b)(1) of the Act*—(*a*) *In general.* For the purposes of subdivision (i)(*b*) of this subparagraph, the extent by which the wages or earnings from self-employment of an individual exceed the maximum amount of earnings creditable under sections 209(a) and 211(b)(1) of the Act in any celander year after 1950 will ordinarily be estimated on the basis of the earnings information available in the records of the Administration. (See Subpart I of this part.) If an individual adduces satisfactory evidence of his actual earnings in any year, the extent, if any, by which his earnings exceed the limitations under sections 209(a) and 211(b)(1) of the Act shall be determined by the use of such evidence instead of by the use of estimates.

(*b*) *Estimated wage earnings*—(*1*) *One employer involved.* In any calendar year after 1950 in which wages are reported for an individual, the wages credited to his earnings record for each calendar quarter before the quarter in which the maximum amount creditable under section 209(a) of the Act is attained are deemed to be the individual's actual earnings for each such quarter. The amount of wages for the calendar quarter in which the maximum amount of earnings was attained and for each succeeding calendar quarter of that year, if any, in which the individual worked is deemed to be equal to the largest amount credited to his earnings account in that calendar year for any calendar quarter through the quarter in which the maximum amount of earnings was attained.

Example. In the year 1966 in which $6,600 is the maximum creditable earnings amount under section 209(a) of the Act, W worked

for the XYZ Company. His earnings record shows the following amounts of wages:

1st quarter	$2,400
2d quarter	2,550
3d quarter	1,650
4th quarter	0
Total	6,600

The maximum creditable earnings amount was reached in the third quarter. The amount of wages for that quarter and for the succeeding fourth quarter is deemed to equal the highest quarterly amount credited, i.e., the amount of $2,550 credited to the second quarter. Thus W's total estimated wages for the year 1966 are determined as follows:

1st quarter	$2,400
2d quarter	2,550
3d quarter	2,550
4th quarter	2,550
Total	10,050

(2) *Two or more employers involved.* In any calendar year after 1950 in which wages are reported for an individual by more than one employer, if the total wages reported by any employer equal or exceed the maximum amount of earnings creditable under section 209(a) of the Act, the total wages from such employer for the quarters in which the individual worked for that employer are estimated in accordance with the provisions of (*1*) of this subdivision (ii)(*b*).

Example. In the calendar year 1964 in which $4,800 is the maximum amount of earnings creditable under section 209(a) of the Act, A worked for four employers. The following amounts are creditable to his earnings record:

	Employer No. 1	Employer No. 2	Employer No. 3	Employer No. 4	Total
1st quarter	$1,400	$1,200	$0	$0	
2d quarter	1,200	1,200	150	300	
3d quarter	2,200	1,200	0	1,800	
4th quarter	0	1,200	250	2,700	
	$4,800	$4,800	$400	$4,800	$14,800

Wages from Employer No. 1 reached the maximum in the third quarter. For this quarter and the succeeding fourth quarter, A's wages from Employer No. 1 are deemed to equal $2,200 in each of these two quarters. Wages from Employer No. 2 reached the maximum in the fourth quarter, but since all of the quarterly amounts credited are equal, there are no additional deemed wages. Since the total wages reported by Employer No. 3 never reached the maximum, the actual amounts credited are deemed to be his total wages from such employer. Wages from Employer No. 4 reached the maximum in the fourth quarter. However, since this is the highest quarterly amount credited and there are no succeeding quarters, the total earnings from this employer are deemed to be the actual amounts credited. Thus, A's total wages for 1964 are estimated as follows:

	Employer No. 1	Employer No. 2	Employer No. 3	Employer No. 4	Total
1st quarter	$1,400	$1,200	$0	$0	
2d quarter	1,200	1,200	150	300	
3d quarter	2,200	1,200	0	1,800	
4th quarter	2,200	1,200	250	2,700	
	$7,000	$4,800	$400	$4,800	$17,000

(c) *Estimated earnings from self-employment.* In any such calendar year in which self-employment income is credited to an individual's earnings record and such credit equals the maximum amount of earnings creditable under section 211(b)(1) of the Act, the amount of earnings from self-employment for such individual's taxable year is deemed to equal his total net earnings from self-employment as shown in his tax returns on file in the records of the Administration.

Example. In the calendar year 1957 in which $4,200 is the maximum amount creditable as self-employment income under section 211(b)(1) of the Act, C has maximum self-employment income of $4,200 credited to his earnings record. C's self-employment tax return for 1957 shows net earnings from self-employment of $8,300. Thus, C's earnings from self-employment are deemed to equal $8,300 for 1957.

(d) *Wages and self-employment income involved.* In any such calendar year in which both wages and self-employment income are credited to an individual's earnings record, the amount of such individual's total earnings for such calendar year is deemed to equal the total of his wages as determined under the provisions of (*b*) of this subdivision and the amount of his net earnings from self-employment as determined under the provisions of (*c*) of this subdivision.

Example. For the calendar year 1967 in which $6,600 is the maximum creditable earnings under sections 209(a) and 211(b)(1) of the Act, D who was both employed and self-employed has the following amounts credited to his earnings record:

	Wages	Self-employment income
1st quarter	$1,500	
2d quarter	1,500	
3d quarter	1,500	
4th quarter	1,500	
	$6,000	$600

Since the amount of wages credited do not equal or exceed the maximum amount creditable under section 209(a) of the Act, D's total wages for the year are deemed to be $6,000. However, the amount of net earnings from self-employment shown on D's self-employment tax return is $2,300. D's earnings from self-employment are deemed to equal net earnings from self-employment which he reported for the year. Thus, D's earnings for 1967 are estimated as follows:

Wages	$6,000
Net earnings from self-employment	2,300
Total	8,300

* * * * *

2. Paragraph (b)(3) of § 404.905 is amended to read as follows:

§ 404.905 Administrative actions that are initial determinations.

* * * * *

(b) *Modification of the amount of monthly benefits or lump sum.* The Administration shall, under the circumstances hereafter stated in this paragraph, make findings, setting forth the pertinent facts and conclusions, and an initial determination as to whether:

* * * * *

(3) There should be a reduction under section 203(a) of the Act, or section 224 of the Act before its repeal in 1958, or section 224 of the Act as enacted on July 30, 1965, or section 224 of the Act as amended January 2, 1968, or deduction under section 203 (b), (c), (d), (f), (g), (h)(2), section 222(b), or reduction or suspension under section 228 of the Act with respect to benefits to which an individual is entitled, because of circumstances existing at or after such entitlement, and, if a reduction or deduction is to be made, the amount thereof; or

* * * * *

(Secs. 205, 224, 1102, 53 Stat. 1368, as amended, 49 Stat. 647, as amended, sec. 5, Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 405, 424, 1302)

3. *Effective date.* The foregoing regulations shall become effective upon publication in the FEDERAL REGISTER.

Dated: July 12, 1969.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: August 12, 1969.

ROBERT H. FINCH,
Secretary of Health, Education, and Welfare.

[F.R. Doc. 69-9720; Filed, Aug. 15, 1969; 8:49 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Methomyl

A petition (9F0814) was filed with the Food and Drug Administration by E. I. du Pont de Nemours & Co., Wilmington, Del. 19898, proposing the establishment of a tolerance of 0.2 part per million for negligible residues of the insecticide methomyl (*S*-methyl *N*-[(methyl-carbamoyl)oxy] thioacetimidate) in or on the raw agricultural commodity group fruiting vegetables.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which the tolerance is being established.

Based on consideration given the data submitted in the petition and other relevant material, the Commissioner of Food and Drugs concludes that the tolerance established by this order will protect the public health. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and under authority delegated to the Commissioner (21 CFR 2.120),

§ 120.253 is amended by revising the paragraph "0.2 part per million * * *" to read as follows:

§ 120.253 Methomyl; tolerances for residues.

* * * * *

0.2 part per million (negligible residue) in or on the commodity groups fruiting vegetables and leafy vegetables.

* * * * *

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

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

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: August 8, 1969.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 69-9673; Filed, Aug. 15, 1969; 8:46 a.m.]

Title 32—NATIONAL DEFENSE

Chapter XVII—Office of Emergency Preparedness

PART 1712—FEDERAL DISASTER ASSISTANCE—SETTLEMENT OF CLAIMS

Pursuant to and in conformity with the Act of July 19, 1966, 80 Stat. 309, 31 U.S.C. 952, and in conformity with the standards promulgated jointly by the Attorney General and the Comptroller General pursuant to that Act (4 CFR Ch. II) the following regulations relating to the settlement of certain claims arising under the Federal Disaster Act, as amended (42 U.S.C. 1855–1855hh), and the regulations prescribed pursuant thereto (32 CFR Parts 1710 and 1711) are hereby prescribed as Part 1712 of Title 32.

Sec.
1712.1 Scope.
1712.2 Exclusions.
1712.3 Definitions.
1712.4 Compromise or waiver.
1712.5 Administrative collection activity.
1712.6 Referrals to GAO.

AUTHORITY: The provisions of this Part 1712 issued under the Act of July 19, 1966, 80 Stat. 309, 31 U.S.C. 952; the Federal Disaster Act, as amended (42 U.S.C. 1855–1855hh); and 4 CFR Ch. II.

§ 1712.1 Scope.

This part prescribes standards to be applied and procedures to be followed by the Office of Emergency Preparedness (OEP) in the administrative collection, compromise, termination of OEP collection action, and referral to the General Accounting Office (GAO) of civil claims by OEP in connection with Federal Disaster Assistance (Public Law 81–875, Part 1710 of this chapter; Public Law 89–769, Part 1711, of this chapter; 42 U.S.C. 1855–1855hh).

§ 1712.2 Exclusions.

This part shall not apply to civil claims by OEP arising out of any Federal Disaster Assistance rendered under circumstances in which a State has not accepted responsibility for the administration of such assistance, nor does it apply to the handling of any claims as to which there is an indication of fraud.

§ 1712.3 Definitions.

Except as otherwise stated, the following terms shall have the following meanings when used in this part:

(a) *Claims.* The stated right or rights of the Federal Government to funds either overadvanced or overpaid to a State in connection with a Federal-State Disaster Assistance Agreement.

(b) *Voucher.* Form SF 1034 submitted to OEP by the State on behalf of an applicant for reimbursement of expenses incurred in connection with the performance of approved disaster work.

(c) *Advance.* Amount advanced to States for readvance to applicants to provide working capital prior to submissions of vouchers and limited to certain percentages of the approved application.

(d) *Bill for Collection (Form 1114).* Formal demand for funds due the Federal Government.

(e) *State official.* The individual authorized by the State Governor in the Federal-State Agreement involved to execute all but certain documents.

§ 1712.4 Compromise or waiver.

Section 3(b) of the Federal Claims Collection Act of 1966 (31 U.S.C. 592) authorizes the head of each agency, in conformity with regulations issued jointly by the Attorney General and the Comptroller General, to compromise claims not exceeding $20,000 exclusive of interest, or to terminate collection action with respect to those claims where it appears that no person liable for the claim has present or prospective financial ability to pay a sufficient sum thereon or where the cost of collection of the claim is likely to exceed the amount of recovery. Most claims under this part will be for a specific and undisputed debt arising out of an overadvance of disaster funds to a State (for readvancement to one or more of its political subdivisions) and the debtor will be one of the States of the Union. Consequently, there will be few, if any, instances in which compromise or waiver of claims cognizable under the regulations in this part would be consistent with the intent of section 3(b) of Federal Claims Collection Act.

§ 1712.5 Administrative collection activity.

(a) Civil claims by OEP in connection with Federal Disaster Assistance normally arise when a State voucher for payment of Federal Disaster Assistance is processed and a determination is made by OEP that funds already advanced to the State attributable directly to the voucher in question are in excess of the amount eligible for Federal reimbursement. Collection activity to recover such excess funds shall proceed in the following sequence:

(1) A Bill for Collection (Form 1114), accompanied by a suspension statement or other materials reasonably necessary to give an accounting or explanation of the outstanding overadvance or debt, shall be prepared in the Office of Administration, OEP, forwarded to the OEP Regional Director involved, and immediately transmitted to the appropriate State official. This transmittal shall clearly state that the funds in question are due from the State and that any appeals (see paragraph (b) of his section) to the determination of eligibility for reimbursement must be filed with the Regional Director within 30 days from the date of the Bill for Collection.

(2) If within 30 days, the Regional Director has not received payment of the full amount stated in the Bill for Collection, a written appeal or a written notice of intention to submit an appeal with respect to the eligibility determination, he shall notify the appropriate State official, in writing, that the amount owing is past due and that the consequences of nonpayment have necessitated referral of the entire claim to OEP Headquarters for further action including possible offset against other such vouchers eligible for reimbursement (4 CFR 102.3) or referral to the GAO for collection (4 CFR Part 105). The State will also be informed that further communications shall be with the Chief, Financial Management Branch.

(3) If, within 30 days after date of the notice required in subparagraph (2) of this paragraph, the full amount of the bill has not been received, the Chief, Financial Management Branch, shall notify the appropriate State official that the account is delinquent and subject to offset against any other funds to which the State may be entitled by reason of the same disaster or to referral to the GAO for collection.

(4) If, within 30 days after date of notice required by subparagraph (3) of this paragraph, payment of the full amount stated in the Bill for Collection has not been received, the Director or his designee shall offset the amount stated in the Bill for Collection against any funds otherwise owed the State by reason of the same disaster and the Governor shall be notified of that action. If

it is not feasible to satisfy the indebtedness by such offset the Director or his designee shall notify the Governor of the State that he intends to request the GAO to take the necessary steps to effect collection. This letter shall explain in some detail the possible consequences of such a referral of the claim to the GAO for collection including the possible adverse effect such referral might have on other Federal programs in the State.

(b) Appeals:

(1) Appeals for reconsideration of eligibility for reimbursement shall be submitted not later than 30 days after the date of the Bill for Collection in accordance with the OEP appeal procedures set forth in § 1710.9(f) of this chapter except that a State's written notice of intention to file an appeal shall cause this period to run an additional period of not to exceed 30 days from the date of such notice, if in the opinion of the Regional Director there is sufficient cause for an extension. All collection activities shall be held in abeyance during any period that appeals are being considered. Consideration of appeals shall be handled as expeditiously as possible.

(2) If an appeal receives favorable consideration resulting in the complete satisfaction of the bill and necessitating an additional payment by OEP, the Financial Management Branch shall prepare a suspension-lifting voucher for the additional amount approved. The amount stated in the bill will be deducted from the voucher and a check for the difference shall be processed. That check shall be accompanied by a voucher which explains the transaction.

(3) If an appeal receives favorable consideration resulting in partial satisfaction of the amount stated in the bill, the processes shall be the same as those described in subparagraph (2) of this paragraph except that the State shall receive a revised Bill for Collection (Form 1114) instead of a check. Whenever this occurs, the collection activities described in paragraph (a) of this section shall commence again.

(4) If an appeal is denied, the OEP Regional Director shall inform the appropriate State official of that denial and demand immediate payment of the bill. From this point, OEP's collection activity shall continue as set forth in paragraph (a)(2) et seq., of this section.

(c) Collection in installments: The appropriate State official shall be informed that any plan for repayment which provides for installment over an extended period of time cannot be accepted because of the administrative cost that would be involved in such a plan. Furthermore, it should be pointed out to State officials that Exhibit A3g.I to the Federal-State Disaster Assistance Agreement provides that over-advances shall be "promptly refunded."

§ 1712.6 Referrals to GAO.

Claims not paid within 15 days after the date of the letter submitted in conformity with the next to last sentence of § 1712.5(a)(4) shall be considered administratively uncollectible and OEP collection activity shall terminate. Such claims shall, in conformity with 4 CFR Part 105, be immediately referred to GAO for collection. If a plan for installment payments is received at a point in OEP's administrative collection activity and it is determined that this is the State's final offer, such claim will be offset or referred to GAO without further delay. If the claim is referred to the GAO for collection, the GAO shall be advised of the installment payment offer.

The provisions of this part shall be effective upon publication of this part in the FEDERAL REGISTER.

Dated: August 13, 1969.

G. A. LINCOLN,
Director,
Office of Emergency Preparedness.

[F.R. Doc. 69-9721; Filed, Aug. 15, 1969; 8:49 a.m.]

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter VI—Business and Defense Services Administration, Department of Commerce

[BDSA Reg. 2 (formerly NPA Reg. 2), Direction 12 of Aug. 15, 1969]

BDSA REG. 2, DIR. 12—RESTRICTIONS ON THE PLACEMENT OF RATED ORDERS FOR NICKEL AND DISPOSITION OF NICKEL CONTAINED IN GENERATED SCRAP

This direction under BDSA Regulation 2 is found necessary and appropriate to promote the national defense and is issued pursuant to the Defense Production Act of 1950, as amended. It is necessitated by the shortage of primary nickel arising from a strike in the nickel producing industry in Canada which is a major source of supply for the United States.

In the formulation of this direction there has been consultation with industry representatives and consideration has been given to their recommendations. However, consultation with representatives of all industries affected in advance of the issuance of this direction has been rendered impracticable because it affects many industries.

Sec.
1. What this direction does.
2. Definitions.
3. Restrictions on the placement of rated orders for nickel by consumers.
4. Disposition of nickel contained in generated scrap.
5. Acceptance of rated orders by producers and distributors.
6. Requests for adjustment or exception.

AUTHORITY: Sec. 704, 64 Stat. 816, as amended, 50 U.S.C. App. 2154; sec. 1, Public Law 90-370, 82 Stat. 279.

Section 1. What this direction does.

This direction establishes restrictions on the use of rated orders by consumers for the procurement of nickel until further notice. It limits consumers' use of such rated orders to the quantity of nickel required for current use. It restricts the disposition of nickel contained in generated scrap. It requires a special certification on rated orders for nickel by consumers and prohibits producers and distributors from accepting such rated orders which are not certified as required by this direction.

Sec. 2. Definitions.

As used in this direction:

(a) "BDSA" means the Business and Defense Services Administration of the U.S. Department of Commerce.

(b) "Nickel" means primary nickel (not including nickel derived or recovered from scrap) in the following forms or shapes:

Electrolytic cathodes.	Oxide (including sintered oxide).
Pigs.	Salts.
Ingots.	Chemicals.
Rondelles.	Powder.
Cubes and pellets.	Ferronickel.
Shot.	

(c) "Ferronickel" means a primary form of nickel commonly used as a raw material in the manufacture of ferrous metals and which contains by weight 25 percent or more of nickel.

(d) "Nickel required for current use" means that quantity of nickel which is required to be put into production in the month in which delivery of such nickel is requested, in accordance with the delivery schedule required to fill mandatory acceptance orders for the product or products to be produced with the use of such nickel.

(e) "Producer" means a person engaged in making and/or refining nickel.

(f) "Distributor" means any person (including a warehouseman, jobber, dealer or retailer) engaged in the business of stocking nickel for sale or resale at one or more locations regularly maintained by him for such purpose. A person who, in connection with any purchase of nickel for resale, does not normally take physical delivery of such nickel into his own stock at a location regularly maintained by him for such purpose, shall not be deemed a distributor with respect to such resale.

(g) "Consumer" means any person who uses or consumes nickel in connection with his production or the services which he performs.

Sec. 3. Restrictions on the placement of rated orders for nickel by consumers.

(a) Notwithstanding the provisions of any other regulation or order of BDSA, until further notice, no consumer may place DO and/or DX rated orders for nickel for delivery in any month in an amount greater than the amount of nickel required for current use to fill mandatory acceptance orders. Such orders shall be certified as follows: "Certified under BDSA Regulation 2 for current use to fill mandatory acceptance orders and not for inventory replacement." Such certification shall be signed as provided for in BDSA Regulation 2.

(b) Any consumer who, prior to the effective date of this direction, has placed

a rated order for nickel with a producer or distributor calling for delivery after the month of August 1969, shall cancel from such rated order any amount of nickel in excess of the quantity for which he is authorized to place a rated order as provided in paragraph (a) of this section and shall certify any remaining balance of nickel on such order with the certification provided in paragraph (a) of this section. Such cancellation and certification shall be made by letter or telegram addressed to the producer or distributor with whom such rated order has been placed as soon as possible after the effective date of this direction.

Sec. 4. Disposition of nickel contained in generated scrap.

Pursuant to section 3(b) of Direction 7 to BDSA Regulation 2, as amended by Amendment 1 to that direction, any usable nickel contained in scrap generated by any person in the course of producing nickel alloys, as defined in section 2(c) of BDSA Order M-1B or other alloys containing nickel to fill mandatory acceptance orders, or an equivalent amount of nickel, shall be used by such person only to fill mandatory acceptance orders.

Sec. 5. Acceptance of rated orders by producers and distributors.

No producer and no distributor shall accept a rated order for nickel from a consumer unless such order contains the certification provided in section 3(a) of this direction. Any producer and any distributor who, prior to the effective date of this direction, has accepted a rated order for nickel from a consumer calling for delivery after the month of August 1969, shall not fulfill such order until he has obtained from the consumer who placed such order with him the certification provided in section 3(a) of this direction.

Sec. 6. Requests for adjustment or exception.

Any person affected by any provision of this direction may file a request for adjustment or exception upon the ground that such provision works an undue or exceptional hardship upon him not suffered generally by others in the same trade or industry, or that its enforcement against him would not be in the interest of national defense or in the public interest. The submission of a request for adjustment or exception shall not relieve any person of his obligation to comply with any such provision. Each request shall be in writing, by letter in triplicate, addressed to the Business and Defense Services Administration, U.S. Department of Commerce, Washington, D.C. 20230, and shall set forth all pertinent facts, the nature of the relief sought, and the justification therefore.

This direction shall take effect August 15, 1969.

BUSINESS AND DEFENSE SERVICES ADMINISTRATION,
FORREST D. HOCKERSMITH,
Acting Administrator.

[F.R. Doc. 69-9746; Filed, Aug. 15, 1969; 8:49 a.m.]

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

SUBCHAPTER G—PREVENTION, CONTROL, AND ABATEMENT OF AIR POLLUTION

PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

Minneapolis-St. Paul

On May 7, 1969, notice of proposed rule making was published in the FEDERAL REGISTER (34 F.R. 7385) to amend Part 81 by designating the Minneapolis-St. Paul Intrastate Air Quality Control Region.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments, and a consultation with appropriate State and local authorities pursuant to section 107(a) of the Clean Air Act (42 U.S.C. 1857c-2(a)) was held on May 21, 1969. Due consideration has been given to all relevant material presented.

In consideration of the foregoing and in accordance with the statement in the notice of proposed rule making, § 81.27, as set forth below, designating the Minneapolis-St. Paul Intrastate Air Quality Control Region, is adopted effective on publication.

§ 81.27 Minneapolis-St. Paul Intrastate Air Quality Control Region.

The Minneapolis-St. Paul Intrastate Air Quality Control Region (Minnesota) consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Minnesota:

Anoka County.	Ramsey County.
Carver County.	Scott County.
Dakota County.	Washington County.
Hennepin County.	

(Secs. 107(a), 301(a), 81 Stat. 490, 504; 42 U.S.C. 1857c-2(a), 1857g(a))

Dated: August 11, 1969.

ROBERT H. FINCH,
Secretary.

[F.R. Doc. 69-9654; Filed, Aug. 15, 1969; 8:45 a.m.]

PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

Metropolitan Baltimore

On May 7, 1969, notice of proposed rule making was published in the FEDERAL REGISTER (34 F.R. 7385) to amend Part 81 by designating the Metropolitan Baltimore Intrastate Air Quality Control Region.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments, and a consultation with appropriate State and local authorities pursuant to section 107(a) of the Clean Air Act (42 U.S.C. 1857c-2(a)) was held on May 23, 1969. Due consideration has been given to all relevant material presented, with the result that one county, Carroll County, Md., not in the original proposal, has been added to the Region.

In consideration of the foregoing and in accordance with the statement in the notice of proposed rule making, § 81.28, as set forth below, designating the Metropolitan Baltimore Intrastate Air Quality Control Region, is adopted effective on publication.

§ 81.28 Metropolitan Baltimore Intrastate Air Quality Control Region.

The Metropolitan Baltimore Intrastate Air Quality Control Region (Maryland) consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Maryland:

Anne Arundel County.	Carroll County.
Baltimore City.	Harford County.
Baltimore County.	Howard County.

(Secs. 107(a), 301(a), 81 Stat. 490, 504; 42 U.S.C. 1857c-2(a), 1857g(a))

Dated: August 11, 1969.

ROBERT H. FINCH,
Secretary.

[F.R. Doc. 69-9653; Filed, Aug. 15, 1969; 8:45 a.m.]

Title 7—AGRICULTURE

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 728—WHEAT

Subpart—Regulations Pertaining to Farm Acreage Allotments, Yields, Wheat Certificate Program for Crop Year 1968-69, and Wheat Diversion Program for the 1969 Crop Year

The regulations governing the 1968-69 wheat program (33 F.R. 6508, and 16327), as amended, are amended by deleting §§ 728.351 to 728.355 under centerhead "1969 National Acreage Allotment" and by adding §§ 728.351 and 728.355 to read as follows:

1970 NATIONAL ACREAGE ALLOTMENT

Sec.
728.351 Basis and purpose.

Sec.
728.352 National marketing quota for wheat for the 1970–71 marketing year.
728.353 1970 national acreage allotment for wheat.
728.354 Apportionment of the 1970 national acreage allotment for wheat among the several States.
728.355 Designation of States outside the commercial wheat-producing area for the 1970–71 marketing year.

AUTHORITY: Secs. 728.351 to 728.355 issued under secs. 301, 332, 333, 334, 334a, 335, 375, 377, 379b, 52 Stat. 38, as amended; 53, as amended; 54, as amended; 66, as amended; 73 Stat. 393, as amended; 76 Stat. 621, 626, as amended; 7 U.S.C. 1301, 1332, 1333, 1334, 1334b, 1335, 1375, 1377, 1379b.

1970 NATIONAL ACREAGE ALLOTMENT

§ 728.351 Basis and purpose.

(a) The regulations contained in §§ 728.351 to 728.355 are issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, to (1) announce that a national wheat marketing quota shall not be in effect for the 1970–71 marketing year, (2) announce the amount of the national marketing quota which would have been determined if a national quota had been proclaimed, (3) proclaim the 1970 national acreage allotment for wheat, (4) apportion the national acreage allotment among the several States and (5) designate the commercial wheat-producing area for the 1970–71 marketing year.

(b) Section 332(d) of the act provides that the Secretary shall not proclaim a national marketing quota for the crop of wheat planted for harvest in the calendar year 1970, and that farm marketing quotas shall not be in effect for such crop of wheat.

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

(d) Section 332(b) provides that "The amount of the national marketing quota for wheat for any marketing year shall be an amount of wheat which the Secretary estimates (i) will be utilized during such marketing year for human consumption in the United States as food, food products, and beverages, composed wholly or partly of wheat, (ii) will be utilized during such marketing year in the United States for seed, (iii) will be exported either in the form of wheat or wheat products thereof, and (iv) will be utilized during such marketing year in the United States as livestock (including poultry) feed, excluding the estimated quantity of wheat which will be utilized for such purpose as a result of the substitution of wheat for feed grains under section 328 of the Food and Agriculture Act of 1962; less (A) an amount of wheat equal to the estimated imports of wheat into the United States during each marketing year and, (B) if the stocks of wheat owned by the Commodity Credit Corporation are determined by the Secretary to be excessive, an amount of wheat determined by the Secretary to be a desirable reduction in such marketing year in such stocks to achieve the policy of the act: *Provided*, That if the Secretary determines that the total stocks of wheat in the Nation are insufficient to assure an adequate carryover for the next succeeding marketing year, the national marketing quota otherwise determined shall be increased by the amount the Secretary determines to be necessary to assure an adequate carryover: *And provided further*, That the national marketing quota for wheat for any marketing year shall be not less than one billion bushels." The amount of national marketing quota for wheat for the 1970–71 marketing year set out in § 728.352 and 1970 national acreage allotment for wheat set out in § 728.353 were computed in accordance with the formulas in the act.

(e) The considerations entering into the determination of the national marketing quota for wheat that would have been determined for the 1970–71 marketing year in the amount of 1,255 million bushels are set out in § 728.352. The projected national yield for the 1970 crop of wheat is determined to be 28.9 bushels per acre. The basis for this determination follows: The national yield per harvested acre of wheat during each of the 5 calendar years 1964 through 1968, as reported by the Statistical Reporting Service, USDA, was found to be 25.8, 26.5, 26.3, 25.9, and 28.4, respectively. The average of these five annual yields was computed to be 26.6. Based on a graphic projection of national annual wheat yields for a 16-year (1953–68) base period to determine trend in wheat yields and with consideration given to annual wheat yields in the various production areas, improved current production practices, abnormal weather, and expected harvested acreage, it was determined that the 5-year average of 26.6 should be adjusted upward to 28.9 for the purposes of the projected national yield for the 1970 crop of wheat. On the basis of a national quota of 1,255 million bushels, a national projected yield of 28.9 bushels per acre, and expected underplantings (acreage other than that not harvested because of program incentives) of 2 million acres, a national acreage allotment of 45.5 million acres was determined.

(f) (1) Section 334(a) of the act, as amended, provides that the 1970 national acreage allotment for wheat (less (i) a reserve of not to exceed 1 percentum thereof for apportionment to counties in addition to the county allotments made under section 334(b) of the act on the basis of relative needs of counties for additional allotment because of reclamation and other new areas coming into production of wheat, or because alternative crops are no longer profitable because of plant disease or sustained loss of market in areas which shifted from wheat to alternative crops prior to 1951, and less (ii) a special reserve not in excess of 1 million acres (for the purpose explained in a later paragraph) shall be apportioned by the Secretary among the several States on the basis of the preceding year's allotment for each such State, including all amounts allotted to the State, adjusted to the extent deemed necessary by the Secretary to establish a fair and equitable apportionment base for each State, taking into consideration established crop rotation practices, estimated decrease in farm allotments because of loss of history, and other relevant factors.

(2) The national reserve acreage needed for 1970 is determined to be 8,000 acres. This acreage shall be used (i) to make allotments to counties in addition to the county allotments made under subsection (b) of section 334 on the basis of the relative needs of counties for additional allotments because of reclamation or other new areas coming into production of wheat or (ii) to increase the allotment for any county, in which wheat is the principal grain crop produced, on the basis of its relative need for such increase if the average ratio of wheat acreage allotment to cropland on old wheat farms in such county is less by at least 20 per centum than such average ratio on old wheat farms in an adjoining county or counties in which wheat is the principal grain crop produced or if there is a definable contiguous area consisting of at least 10 per centum of the cropland acreage in such county in which the average ratio of wheat acreage allotment to cropland on old wheat farms is less by at least 20 per centum than such average ratio on the remaining old wheat farms in such county: *Provided*, That such low ratio of wheat acreage allotment to cropland is due to the shift prior to 1951 from wheat to one or more alternative income-producing crops which, because of plant disease or sustained loss of markets, may no longer be produced at a fair profit and there is no other alternative income-producing crop suitable for production in the area or county. The increase in the county allotment under clause (iii) of the preceding sentence shall be used to increase allotments for old wheat farms in the affected area to make such allotments comparable with those on similar farms in adjoining areas or counties but the average ratio of increased allotments to cropland on such farms shall not exceed the average ratio of wheat acreage allotment to cropland on old wheat farms in adjoining areas or counties. Since there have been no requests for additional allotment for reclamation or other new areas coming into wheat production in recent years, this reserve will be used primarily for counties or areas affected by plant disease or sustained loss of markets where alternative crops are no longer profitable.

(3) A special reserve acreage of not in excess of 1 million acres is also provided for in addition to the national acreage reserve. Such special acreage reserve shall be made available to the States to make additional allotments to counties on the basis of relative need of counties, as determined by the Secretary, for additional allotments to make adjustments in the allotments on old wheat farms (i.e., farms on which wheat has been seeded or regarding as seeded to one or more of the three crops immediately preceding the crop for which the allotment is established) on which the ratio of wheat acreage allotment to cropland on the farms is less than one-half the average ratio of wheat acreage allotment to cropland on old wheat farms in the county. Such adjustments shall not provide an allotment for any farm which would result in an allotment-cropland ratio for the farm in excess of one-half of such county average ratio and the total of such adjustments in any county shall not exceed the acreage made available therefor in the county. Such apportionment from the special acreage reserve shall be made only to counties where wheat is a major income-producing crop, only to farms on which there is limited opportunity for the production of an alternative income-producing crop, and only if an efficient farming operation on the farm requires the allotment of additional acreage from the special acreage reserve. For the purpose of making adjustments from the special acreage reserve, the cropland on the farm shall not include any land developed as cropland subsequent to the 1963 crop year. In determining the amount of the reserve, consideration was given to the acreage required for making such adjustments for past programs. The acreage apportioned to farms for the 1966 program was 23,255. The acreage apportioned for 1967 was 20,562; for 1968, 16,420, and for 1969, 12,142. Accordingly, it is determined that 12,000 acres will be adequate for the purpose of this special reserve for the 1970 crop.

(4) The 1970 national wheat allotment was apportioned among the various States as follows:

(i) To each 1969 State wheat allotment determined under section 334(a) of the act, as amended, and published in the FEDERAL REGISTER of July 2, 1968 (33 F.R. 9584), was added the sum of 1969 allotment acreage allocated to counties in each State from the national and special national acreage reserve to increase allotments on eligible farms in designated counties. The resulting preliminary apportionment bases for each State were (*a*) adjusted to reflect the net plus or minus change in 1969 wheat allotment resulting from the transfer of farms to other States for administrative purposes, and (*b*) were adjusted downward to the extent of the sum of 1969 wheat allotments removed from farms going out of agricultural production. Adjustment in State preliminary apportionment bases for established crop rotation practices were determined to be necessary only in the States of Colorado, Oregon, and Washington. Because history loss in 1964 and prior years is already reflected in each 1969 State allotment and section 334(a) of the act, as amended by the Agriculture Act of 1964, provided for full preservation of history in 1965 and under provisions of section 377 of the act has the effect of preserving history in 1966 and 1967, no adjustment of State preliminary apportionment bases was made because of history loss. The national wheat allotment of 45.5 million acres, less the national reserve and the special reserve, was distributed pro rata to States on the basis of each State's apportionment base determined in accordance with the foregoing.

(g) Section 334(a) of the act provides that if the acreage allotment for any State for any crop of wheat is 25,000 acres or less, the Secretary may designate such State as outside the commercial wheat-producing area for the marketing year for such crop in order to promote efficient administration of the act and the Agricultural Act of 1949. From the standpoint of efficient and equitable administration of the marketing allocation program for the 1970–71 marketing year, it is considered desirable that wheat marketing certificates be made available to wheat producers in all States on precisely the same basis. Therefore, no State for which a State acreage allotment was determined will be designated outside the commercial wheat-producing area for the 1970–71 marketing year.

(h) The findings and determinations by the Secretary contained in §§ 728.352 through 728.355 have been made on the basis of the latest available statistics of the Federal Government as required by section 301(c) of the act.

(i) Since farmers need to know their 1970 farm acreage allotments as soon as possible in order to plan their 1970 seeding operations, and since farm acreage allotments cannot be determined until the national acreage allotment is determined and apportioned among States and counties, it is necessary that this document become effective as soon as possible. Moreover, since farm marketing quotas will not be in effect on the 1970 crop of wheat, this document relates only to loans, grants, and benefits, and is exempted from the notice, public procedure, and effective date provisions of 5 U.S.C. 553. Accordingly, the apportionment and determinations herein shall become effective upon the date of the filing of this document with the Director, Office of the Federal Register.

§ 728.352 National marketing quota for wheat for 1970–71 marketing year.

(a) A national marketing quota for wheat shall not be in effect for the 1970–71 marketing year. In order that a national acreage allotment may be determined for the 1970 crop of wheat, it is necessary to determine the amount of the national wheat marketing quota which would have been determined if one had been proclaimed for the 1970–71 marketing year.

(b) Based upon (1) estimated human consumption in the United States, during the 1970–71 marketing year of 530 million bushels for food, food products, and beverages, composed wholly or partly of wheat, (2) estimated use for seed in the United States during such marketing year of 55 million bushels, (3) estimated exports of wheat and wheat products during such marketing year of 625 million bushels, and (4) the estimated amount which will be utilized during such marketing year as livestock (including poultry) feed, excluding the estimated quantity of wheat which will be utilized for such purpose as a result of the substitution of wheat for feed grains under section 328 of the Food and Agriculture Act of 1962, of 101 million bushels; less estimated imports into the United States during such marketing year of 1 million bushels, the amount of the national marketing quota for wheat for the 1970–71 marketing year would be 1,310 million bushels. However, it is determined that stocks of wheat owned by the Commodity Credit Corporation are excessive and a reduction of 55 million bushels in such stocks is necessary to achieve the policy of the Act. Therefore, the national quota for the 1970–71 marketing year is determined to be 1,255 million bushels. It is also determined that the total stocks of wheat in the Nation are sufficient to assure an adequate carryover for the 1970–71 marketing year.

§ 728.353 1970 national acreage allotment for wheat.

Based upon the projected national yield of wheat of 28.9 bushels per acre which is hereby determined, and expected underplantings, the 1970 national acreage allotment which will make available a supply of wheat equal to the national marketing quota is determined to be 45.5 million acres, and a 1970 national acreage allotment in that amount is hereby proclaimed.

§ 728.354 Apportionment of the 1970 national acreage allotment of wheat among the several States.

The national acreage allotment, less a national reserve of 8,000 acres and a special acreage reserve of 12,000 acres for additional allotments to counties, is hereby apportioned among the several States as follows:

State	*Acreage allotment*
Alabama	54,953
Arizona	34,570
Arkansas	118,333
California	324,230
Colorado	2,064,208
Connecticut	280
Delaware	22,829
Florida	14,936
Georgia	109,147
Idaho	954,373
Illinois	1,429,548
Indiana	1,099,634
Iowa	121,665
Kansas	8,526,307
Kentucky	180,191
Louisiana	33,651
Maine	219
Maryland	138,269
Massachusetts	160
Michigan	950,232
Minnesota	820,981
Mississippi	47,159

State	Acreage allotment
Missouri	1,336,500
Montana	3,137,675
Nebraska	2,541,105
Nevada	13,553
New Jersey	40,602
New Mexico	377,664
New York	264,900
North Carolina	346,292
North Dakota	5,845,690
Ohio	1,300,867
Oklahoma	3,929,888
Oregon	677,341
Pennsylvania	470,186
Rhode Island	141
South Carolina	156,070
South Dakota	2,210,664
Tennessee	166,035
Texas	3,265,386
Utah	237,559
Vermont	395
Virginia	236,724
Washington	1,588,484
West Virginia	24,255
Wisconsin	46,656
Wyoming	219,493
Total	45,480,000
Special Reserve	12,000
National reserve	8,000
National allotment	45,500,000

§ 728.355 Designation of States outside the commercial wheat-producing area for the 1970–71 marketing year.

No State for which a State acreage allotment was determined is designated as outside the commercial wheat-producing area for the 1970–71 marketing year. Accordingly, the commercial wheat-producing area for the 1970–71 marketing year shall consist of all States in the United States except New Hampshire, Alaska and Hawaii.

Effective date: Upon filing with the Director, Office of Federal Register.

Signed at Washington, D.C., this 11th day of August 1969.

CLIFFORD M. HARDIN,
Secretary of Agriculture.

[F.R. Doc. 69-9722; Filed, Aug. 15, 1969; 8:49 a.m.]

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

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

[Sugar Reg. 811, Amdt. 6]

PART 811—CONTINENTAL SUGAR REQUIREMENTS AND AREA QUOTAS

Requirements, Quotas, and Quota Deficits for 1969

Basis and purposes and bases and considerations. This amendment is issued pursuant to the authority vested in the Secretary of Agriculture by the Sugar Act of 1948, as amended (61 Stat. 922, as amended), hereinafter referred to as the "Act". The purpose of this amendment to Sugar Regulation 811 (33 F.R. 19245), as amended, is to determine and prorate or allocate additional deficits in quotas established pursuant to the Act and to reallocate deficits previously prorated.

Section 204(a) of the Act provides that the Secretary shall from time to time determine whether any area or country will be unable to fill its quota or the proration of a deficit. On the basis of the quota established for Puerto Rico for the calendar year 1969 findings were heretofore made (34 F.R. 5425, 6469, 7325, 9119) that Puerto Rico was unable to fill its quota by 800,000 short tons, raw value, and accordingly quota deficits were determined for Puerto Rico totaling 800,000 tons. On the basis of the latest available information it is herein found that Puerto Rico will be able to supply 15,000 short tons, raw value, more sugar than previously estimated. Therefore, the total deficit in the 1969 quota for Puerto Rico previously determined to be 800,000 short tons, raw value, is herein reduced by 15,000 tons and herein determined to be 785,000 short tons, raw value. If production exceeds the present estimates for Puerto Rico, the marketing opportunities for that area within the total mainland quota for that area will not be limited as a result of the deficit determination and proration provided herein.

The government of Peru informed the Department prior to August 1, 1969, that it will be able to supply only 300,000 short tons, raw value, of sugar to the United States during 1969. Therefore, it is hereby found that Peru will be unable to fill deficit prorations previously allocated to it of 77,461 tons plus 65,425 tons of its quota proration under section 202 of the Act and will be unable to supply any additional deficit that may be available for proration to it during 1969. Accordingly, a total deficit is hereby determined in the quota for Peru of 142,886 short tons, raw value. The government of Panama informed the Department prior to August 1, 1969, that it will be able to supply only 44,440 short tons, raw value, of sugar to the United States during 1969. Therefore, it is hereby found that Panama will be unable to fill deficit prorations previously allocated to it of 817 tons, and will be unable to supply any additional deficit that may be available for proration to it during 1969. Accordingly, a deficit is herein determined in the quota for Panama of 817 short tons, raw value.

The deficits determined in the sugar quotas for Peru and Panama of 142,886 and 817 short tons, raw value, respectively, totaling 143,703 short tons, raw value, minus the 15,000 short tons, raw value, by which the Puerto Rican quota deficit was reduced, results in a net deficit determination of 128,703 short tons, raw value, herein prorated to Western Hemisphere countries listed in section 202(c)(3)(A) of the Act which are able to supply additional sugar on the basis of published quotas most recently in effect. On the basis of information available to the Department it is herein determined that Nicaragua will be unable to fill their statutory share of any additional deficit from other areas during the calendar year 1969. Therefore, none of the deficit herein determined is prorated to Nicaragua nor is any prorated to the Republic of the Philippines and Haiti since the Department previously determined that they will be unable to supply during 1969 any sugar in excess of their quotas currently in effect.

It is hereby determined that if Panama supplies sufficient sugar to fill the adjusted quota of 44,440 short tons, raw value, herein established for Panama, such quantity will be in excess of 115 percent of its 1968 final quota and accordingly, pursuant to section 202(d)(4), the quota for future years will not be subject to reduction by reason of 817 tons shortfall herein determined. In the absence of a finding under section 202(d)(4) that such shortfall was due to crop disaster or other force majeure and pursuant to section 204(b) of the Act, Panama is entitled to fill its unadjusted quota of 45,257 short tons, raw value.

The investigation surrounding a cargo of sugar shipped in late 1968 from Central America has been completed and the finding made on December 20, 1968, that the deficit in the 1968 quota for Nicaragua was the result of crop disaster or other force majeure is hereby affirmed.

By virtue of the authority vested in the Secretary of Agriculture by the Act, Part 811 of this chapter is hereby amended by amending §§ 811.71, 811.72, and 811.73 as follows:

1. Section 811.71 is amended by amending paragraph (a)(2) to read as follows:

§ 811.71 Quotas for domestic areas.

(a) * * *

(2) It is hereby determined pursuant to section 204(a) of the Act that for the calendar year 1969 Puerto Rico and the Virgin Islands will be unable by 785,000 and 15,000 short tons, raw value, respectively, to fill the quotas established for such areas in subparagraph (1) of this paragraph. Pursuant to section 204(b) of the Act the determination of such deficits shall not affect the quotas established in subparagraph (1) of this paragraph.

* * * * *

2. Section 811.72 is amended by adding a new paragraph (a)(5) to read as follows:

§ 811.72 Proration and allocation of deficits and quotas in effect.

(a) * * *

(5) The deficits in the quotas of Peru and Panama totaling 143,703 short tons, raw value, minus the 15,000 short tons, raw value, reduction in the deficit in the Puerto Rican quota, resulting in a net deficit determination of 128,703 short tons, raw value, are herein prorated to Western Hemisphere countries named in section 202(c)(3)(A) of the Act, which are able to supply such additional sugar, on the basis of published quotas most recently in effect.

* * * * *

3. Section 811.73 is amended by amending paragraph (c) to read as follows:

§ 811.73 Quotas for foreign countries.

* * * * *

(c) For the calendar year 1969, the prorations to individual foreign countries pursuant to section 202 of the Act are shown in columns (1) and (2) of the following table. Deficit prorations and allocations previously established are shown in column (3). In column (4) the deficit in the quotas of Peru and Panama as adjusted to reflect the decreased deficit in the Puerto Rican quota is herein prorated pursuant to paragraph (a)(5) of § 811.72.

Countries	Basic quotas	Temporary quotas and prorations pursuant to sec. 202(d)[1]	Previous deficit prorations	New deficit prorations and allocation	Total quotas and prorations
	(1)	(2)	(3)	(4)	(5)
	(Short tons, raw value)				
Mexico	236,331	242,117	156,239	30,357	655,044
Dominican Republic	221,353	236,793	202,803	32,119	693,068
Brazil	221,353	236,793	152,803	29,689	640,638
Peru	170,556	188,869	77,461	−142,886	300,000
British West Indies	88,424	73,900	54,590	10,541	227,455
Ecuador	32,208	34,454	22,234	4,320	93,216
French West Indies	27,816	23,246	17,172	3,316	71,550
Argentina	27,230	29,130	18,797	3,652	78,809
Costa Rica	26,059	27,877	17,989	3,495	75,420
Nicaragua	26,059	27,877	17,989	0	71,925
Colombia	23,424	25,057	16,169	3,142	67,792
Guatemala	21,960	23,491	15,160	2,946	63,557
Panama	16,397	17,541	11,319	−817	44,440
El Salvador	16,104	17,228	11,117	2,160	46,609
Haiti	12,297	13,155	7,864	0	33,316
Venezuela	11,126	11,902	7,680	1,492	32,200
British Honduras	6,441	5,383	3,976	768	16,568
Bolivia	2,635	2,818	1,819	353	7,625
Honduras	2,635	2,818	1,819	353	7,625
Australia	105,407	87,530			192,937
Republic of China	43,919	36,471			80,390
India	42,163	35,012			77,175
South Africa	31,036	25,772			56,808
Fiji Islands	23,131	19,208			42,339
Thailand	9,662	8,024			17,686
Mauritius	9,662	8,024			17,686
Malagasy Republic	4,978	4,133			9,111
Swaziland	3,806	3,161			6,967
Ireland	5,351	0			5,351
Bahamas	10,000	0			10,000
Total	1,475,523	1,467,784	815,000	−15,000	3,743,307

[1] Proration of the quotas withheld from Cuba and Southern Rhodesia.

* * * * *

(Secs. 201, 202, 204, 207, 403; 61 Stat. 923, as amended, 924, as amended, 925, as amended, 927, as amended, 932; 7 U.S.C. 1111, 1112, 1114, 1117, 1153)

Effective date. This action establishes net deficits in quotas totaling 128,703 short tons, raw value, and prorates such quantity to Western Hemisphere countries with sugar quotas in effect that are able to supply additional sugar. To permit such countries for which larger quotas or prorations are hereby established to plan and to market in an orderly manner the larger quantity of sugar, it is essential at this time that all persons selling and purchasing sugar for consumption in the continental United States be promptly informed of the changes in marketing opportunities. Therefore, it is hereby determined and found that compliance with the notice, procedure, and effective date requirements of 5 U.S.C. 553 is unnecessary, impracticable and contrary to the public interest and this amendment shall be effective when filed for public inspection in the Office of the Federal Register.

Signed at Washington, D.C., on August 11, 1969.

CLARENCE D. PALMBY,
Assistant Secretary.

[F.R. Doc. 69-9635; Filed, Aug. 15, 1969; 8:45 a.m.]

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

PART 980—VEGETABLES; IMPORT REGULATIONS

Onions

Notice of rulemaking regarding proposed restrictions on the importation of onions into the United States to be made effective under section 8e-1 of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 608e-1), was published in the August 9, 1969, FEDERAL REGISTER (34 F.R. 12950).

The notice afforded interested persons an opportunity to file data, views, or arguments in regard thereto not later than the fifth day after publication. None was filed.

Section 8e-1 of the act provides that whenever a Federal marketing order is in effect for onions, the importation of onions shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of such order. The provisions hereinafter set forth comply with those which become effective August 18, 1969, under Marketing Order No. 958 for onions grown in Idaho and Malheur County, Oreg. It is not contemplated that any other marketing order will have concurrent grade, size, quality, and maturity provisions in effect regulating onions until the spring of 1970.

Findings. (a) After consideration of all relevant matters, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found that the proposal as published in the notice should be issued and that such restrictions on the importation of onions, as hereinafter provided, comply with the grade, size, quality, and maturity requirements applicable to onions produced in the United States, and effective under Marketing Order No. 958, as amended (7 CFR Part 958) regulating the handling of onions grown in designated counties of Idaho and Malheur County, Oregon. This regulation is subject to amendment with adequate notice as domestic regulations are changed.

(b) It is hereby further found that good cause exists for not postponing the effective date of this regulation beyond the time specified (5 U.S.C. 553) in that (1) the requirements established by this regulation are mandatory under section 8e-1 of the act; (2) all known onion importers were notified of the proposed regulation; and (3) notice hereof was published in the August 9, 1969, FEDERAL REGISTER (34 F.R. 12950), and such notice is determined to be reasonable.

§ 980.108 Onion import regulation.

Except as otherwise provided, during the period August 18, 1969, through June 15, 1970, no person may import dry onions of the yellow or white varieties unless such onions are inspected and meet the requirements of this section.

(a) *Minimum grade and size requirements*—(1) *Yellow varieties*—(i) *Grade.* U.S. No. 2 or better grade.

(ii) *Size.* 2-inch minimum diameter.

(2) *White varieties*—(i) *Grade.* U.S. No. 2 or better grade.

(ii) *Size.* 1-inch minimum diameter.

(b) *Condition.* Due consideration shall be given to the time required for transportation and entry of onions into the United States. Onions with transit time from country of origin to entry into the United States of 10 or more days may be entered if they meet an average tolerance for decay of not more than 5 percent, provided they also meet the other requirements of this section.

(c) *Minimum quantity.* Any importation which in the aggregate does not exceed 100 pounds in any day, may be imported without regard to the provisions of this section.

(d) *Plant quarantine.* Provisions of this section shall not supersede the restrictions or prohibitions on onions under the Plant Quarantine Act of 1912.

(e) *Designation of governmental inspection service.* The Federal or the Federal-State Inspection Service, Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture, and the Fruit and Vegetable Division, Production and Marketing Branch, Canada Department of Agriculture, are designated as governmental inspection services for certifying the grade, size, quality, and maturity of

onions that are imported into the United States under the provisions of section 8e–1 of the act.

(f) *Inspection and official inspection certificates.* (1) An official inspection certificate certifying the onions meet the United States import requirements for onions under section 8e–1 (7 U.S.C. 608e–1), issued by a designated governmental inspection service and applicable to a specific lot is required on all imports of onions.

(2) Inspection and certification by the Federal or Federal-State Inspection Service will be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables and other products (Part 51 of this title). Each lot shall be made available and accessible for inspection as provided therein. Cost of inspection and certification shall be borne by the applicant.

(3) Since inspectors may not be stationed in the immediate vicinity of some smaller ports of entry, importers of onions should make advance arrangements for inspection by ascertaining whether or not there is an inspector located at their particular port of entry. For all ports of entry where an inspection office is not located, each importer must give the specified advance notice to the applicable office listed below prior to the time the onions will be imported.

Ports	Office	Advance notice
All Texas points.	W. T. McNabb, Post Office Box 310, Austin, Tex. 78767 (Phone—512–476–4789).	1 day.
All Arizona points.	B. O. Morgan, Post Office Box 1614, Nogales, Ariz. 85621 (Phone—602–Atwater 7–2902).	Do.
All California points.	D. P. Thompson, 294 Wholesale Terminal Bldg., 784 South Central Ave., Los Angeles, Calif. 90021 (Phone—213–622–8756).	3 days.
All Hawaii points.	Stevenson Ching, 1428 South King St., Honolulu, Hawaii 96814 (Phone—941–3071 Ext. 146).	1 day.
New York City.	Edward J. Beller, Room 28A, Hunts Point Market, Bronx, N.Y. 10474 (Phone—212–991–7060–7068).	Do.
New Orleans...	Pascal J. Lamarca, 5027 Federal Office Bldg., 701 Loyola Ave., New Orleans, La. 70113 (Phone—504–527–6741–6742).	Do.
All other points.	D. S. Matheson, Fruit and Vegetable Division, Consumer and Marketing Service, Washington, D.C. 20250 (Phone—202–Dudley 8–5870).	3 days.

(4) Inspection certificates shall cover only the quantity of onions that is being imported at a particular port of entry by a particular importer.

(5) In the event the required inspection is performed prior to the arrival of the onions at the port of entry, the inspection certificate that is issued must show that the inspection was performed at the time of loading such onions for direct transportation to the United States; and if transportation is by water, the certificate must show that the inspection was performed at the time of loading onto the vessel.

(6) Each inspection certificate issued with respect to any onions to be imported into the United States shall set forth, among other things:

(i) The date and place of inspection;

(ii) The name of the shipper, or applicant;

(iii) The commodity inspected;

(iv) The quantity of the commodity covered by the certificate;

(v) The principal identifying marks on the containers;

(vi) The railroad car initials and number, the truck and trailer license number, the name of the vessel, or other identification of the shipment; and

(vii) The following statement, if the facts warrant: "Meets U.S. Import requirements under section 8e–1 of the Agricultural Marketing Agreement Act."

(g) *Reconditioning prior to importation.* Nothing contained in this part shall be deemed to preclude any importer from reconditioning prior to importation any shipment of onions for the purpose of making it eligible for importation.

(h) *Definitions.* For the purpose of this section, "Onions" means all varieties of Allium cepa marketed dry, except dehydrated, canned and frozen onions, onion sets, green onions, and pickling onions. Onions commonly referred to as "braided," that is, with tops, may be imported if they meet the grade and size requirements except for top length. The term "U.S. No. 2" shall have the same meaning as set forth in the U.S. Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Types), §§ 51.2830—51.2854, and in the U.S. Standards for Grades of Bermuda-Granex-Grano Type Onions, §§ 51.3195—51.3209, both of this title. Tolerances for size shall be those in the U.S. Standards. Onions meeting the requirements of Canada No. 2 grade shall be deemed to comply with the requirements of U.S. No. 2 grade. "Importation" means release from custody of the U.S. Bureau of Customs.

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

Dated August 15, 1969, to become effective August 18, 1969.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69–9795; Filed, Aug. 15, 1969; 9:50 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 7—Agency for International Development, Department of State

[AIDPR]

PART 7–1—GENERAL

Subpart 7–1.6—Debarred, Suspended, and Ineligible Bidders

MISCELLANEOUS AMENDMENTS

Subpart 7–1.6 of Chapter 7, Title 41 of the Code of Federal Regulations is amended as follows:

The following new sections are added:

§ 7–1.604–1(a)–1 Notice received.

Notice of proposed debarment shall be deemed to have been received by an affected person if the notice was properly mailed to the last known address of such person.

§ 7–1.604–1(b)–1 Debarment without a hearing.

A.I.D. may debar a firm, individual or an affiliate thereof without a hearing if:

(a) No hearing is requested within the period indicated in the notice described in § 7–1.604–1(a)–1; or

(b) There are no disputed questions of fact relevant to the debarment issue; or

(c) The Administrator determines that the security interests of the United States override the interest of the supplier in an adversary hearing.

§ 7–1.604–1(b)–2 Date of the hearing.

Unless the Administrator determines that for good cause shown additional time should be granted, a hearing shall be instituted within 20 days after receipt of a request from an affected person for a hearing in response to the notice described in FPR 1–1.604–1(a).

§ 7–1.604–1(b)–3 Hearing Examiner.

(a) The hearing shall be conducted before an impartial hearing examiner designated by the Administrator.

(b) The Administrator shall not be limited in the choice of a hearing examiner to persons employed by A.I.D. or by any other agency of the U.S. Government.

§ 7–1.604–1(b)–4 Report to the Administrator.

The hearing examiner shall submit to the Administrator written findings of fact based upon the record established during the hearing and recommendations concerning the proposed debarment based upon these findings.

§ 7–1.604–1(b)–5 Findings.

(a) Findings of fact adequate to establish a cause for debarment shall be based upon substantial evidence. Standards of proof necessary for criminal conviction shall not apply.

(b) Evidence of criminal intent shall not be necessary to establish a cause for debarment.

(c) Findings shall not be circumscribed by technical rules of evidence.

§ 7–1.604–1(b)–6 Recommendations.

The Administrator may approve or disapprove the recommendations of the hearing examiner in whole or in part.

The foregoing amendments shall become effective upon filing with the FEDERAL REGISTER.

Dated: August 14, 1969.

LANE DWINELL,
Assistant Administrator.

[F.R. Doc. 69–9777; Filed, Aug. 14, 1969; 3:56 p.m.]

Chapter 14—Department of the Interior

PART 14–2—PROCUREMENT BY FORMAL ADVERTISING

Protests Against Award

Pursuant to the authority of the Secretary of the Interior, contained in 5 U.S.C. 301, Part 14–2 of Chapter 14, Title 41 of the Code of Federal Regulations is hereby approved as set forth below.

It is the general policy of the Department of the Interior to allow time for interested parties to take part in the public rule-making process. However, because this part is largely a general statement of Departmental policy and internal procedure the rule-making process will be waived and this part will become effective upon publication in the FEDERAL REGISTER.

WALTER J. HICKEL,
Secretary of the Interior.

AUGUST 12, 1969.

This section is effective upon publication in the FEDERAL REGISTER.

The table of contents for Part 14–2 is amended to add the following new entry:

Subpart 14–2.4—Opening of Bids and Award of Contract

Sec.
14–2.407–8 Protests against award.

Subpart 14–2.4—Opening of Bids and Award of Contract

Section 14–2.407–8 is added to require that reports on protests received by the General Accounting Office shall include a statement of the extent to which delay in award may result in significant performance difficulties.

§ 14–2.407–8 Protests against award.

(a) Reports to the General Accounting Office (GAO) on Interior cases involving protests received by GAO and requiring reports shall be prepared by the bureau or office concerned and shall be submitted for concurrence to the Director of Survey and Review prior to signature by the Assistant Secretary for Administration. Before concurring, the Director of Survey and Review shall review the decision to delay or to proceed with an award as reflected in the statement to be furnished in accordance with paragraph (c) of this section.

(b) When preparing supporting information on protests for submission to the Director of Survey and Review contracting officers shall ascertain the extent to which a delay in award may result in significant performance difficulties or expense.

(c) A statement dealing with the urgency of need, prepared by the contracting officer and signed as appropriate by the head of the bureau or office or his designee shall be included with the information submitted to the Director of Survey and Review.

(1) If award is not urgent, the statement shall include an estimate of the length of time an award may be delayed without significant difficulties in performance or expense.

(2) If the need is urgent, the statement shall set forth the factual basis for that conclusion.

(3) Where the urgency is so great as not to admit of the delay involved in the preparation of a formal report to GAO, telephonic clearance shall be obtained from the Office of Survey and Review.

(d) A determination to make an award under § 1–2.407–8(b)(3) of this title must before being effective be approved by the head of the bureau or office and a notice of the determination to make such award shall be furnished to the Comptroller General. Prior to making the award, the contracting officer shall request the Office of Survey and Review to obtain advice from the GAO concerning the current status of the matter in GAO. Also, the contracting officer shall document the file to justify an immediate award and shall give written notice of the decision to proceed to the protestant and as appropriate, to others concerned.

(e) In the case of a protest received after award, the procedure set forth in paragraph (a) of this section shall be followed.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

[F.R. Doc. 69–9676; Filed, Aug. 15, 1969; 8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

[9 CFR Parts 101, 108, 109, 114, 116, 117, 118, 119, 120, 121]

VIRUSES, SERUMS, TOXINS, AND ANALOGOUS PRODUCTS

Notice of Proposed Rule Making

Notice is hereby given in accordance with the provisions contained in section 533(b) of title 5, United States Code (1966), that it is proposed to amend certain of the regulations relating to viruses, serums, toxins, and analogous products in Title 9, Code of Federal Regulations, issued pursuant to the provisions of the Virus-Serum-Toxin Act of March 4, 1913 (21 U.S.C. 151–158).

The proposed amendments to § 101.1 would eliminate the designation of Division inspectors as biologics veterinarians and biologics field agents and change the definition of "inspection" accordingly; would define "distributor" in paragraph (m); would eliminate the special reference to batch of anti-hog-cholera serum in paragraph (y); would revoke the definition of "sterility" in paragraph (ll); and would eliminate the two classes of approved feed lots in paragraph (ww).

The proposed amendments to Part 108 would provide for prevention of cross contamination through proper construction.

The proposed amendments to § 109.1 eliminates prior approval by the inspector in charge before boiling of instruments may be substituted for steam sterilization.

The proposed amendments to Part 114 removes obsolete requirements; substitutes "inspector" in § 114.5 for biologics veterinarian and biologics field agent, and extends the outline requirements to include anti-hog-cholera serum.

Proposed amendments to Part 116 makes uniform record requirements for all biological products and deemphasizes recordkeeping for hog cholera products.

Proposed amendments to Part 117 deemphasizes the handling of animals for hog cholera products and prescribes requirements for all animals used at a licensed establishment. The use of virulent hog cholera virus for routine plant vaccination is eliminated.

Proposed amendments to Chapter I of Title 9, of the Code of Federal Regulations deletes from the regulation detailed methods and procedures for producing anti-hog-cholera serum and hog cholera virus.

Proposed amendments to Part 120 eliminates the two classes of approved feed lots as a result of progress made in Hog-Cholera Eradication Program. Controls of vaccinated pigs are tightened in cooperation with the program.

Proposed amendments to Part 121 would correct present reference to the regulations by changing Part 122 to Part 121.

1. Section 101.1 is amended by revising paragraphs (l), (m), (n), (y), (ll), and (ww) to read:

§ 101.1 Definitions.

* * * * *

(l) *Inspection.* An examination made by an inspector to determine the fitness of animals, establishments, facilities, and procedures used in connection with the preparation, testing, and distribution of biological products under the regulations in Parts 101 through 121 of this subchapter and the examination or testing of biological products by the Division.

(m) *Distributor.* A person engaged in the sale, shipment, or other disposition of biological products.

(n) [Reserved]

* * * * *

(y) *Batch.* A quantity of properly identified biological product which may be incorporated in whole or in part into a serial.

* * * * *

(ll) [Reserved]

* * * * *

(ww) *Approved feed lot.* A feed lot approved by the Director for the raising of immune hogs for anti-hog-cholera serum production by a person who, under an agreement or contract, furnishes such hogs to a plant producing anti-hog-cholera serum.

* * * * *

2. Section 108.12 is revised to read:

§ 108.12 Rooms and equipment.

(a) All rooms, compartments, and other places used in connection with the preparation, handling, or storing of any biological product at licensed establishments shall be so constructed and arranged as to prevent cross contamination of biological products. Such rooms, compartments, and other places shall be of such material, construction, and design as can be readily and thoroughly cleaned.

(b) All containers, instruments and other apparatus and equipment used for preparing, handling, or storing biological products shall not be used for handling, preparing, or storing other forms of biological products until such containers, instruments and other apparatus and equipment have been cleaned and sterilized and so handled thereafter as to prevent contamination.

3. Section 109.1 is amended by revising paragraph (b) to read:

§ 109.1 Equipment and the like.

* * * * *

(b) Instruments which are found to be damaged by exposure to the degree of heat prescribed in this section, after having been thoroughly cleaned, may be sterilized by boiling for not less than 15 minutes.

§§ 114.6, 114.10, 114.15, 114.16, 114.17, 114.19 [Deleted]

4. Part 114 is amended by deleting §§ 114.6, 114.10, 114.15, 114.16, 114.17 and 114.19.

§ 114.5 [Amended]

5. In paragraphs (a) and (b) of § 114.5, the words "Biologics Veterinarian or Biologics Field Agent" are changed to read "inspector."

6. Section 114.8 is amended by revising paragraph (b) to read:

§ 114.8 Methods.

* * * * *

(b) An outline, describing fully the entire process of preparing, handling, storing, marking, treating, and testing each biological product shall be submitted by each licensee to the Division. Tests that are applicable and necessary to prevent the marketing of an unsatisfactory product shall be made by the licensee and the tests shall be included in the outline for the product. Such tests shall establish the purity, safety, and potency of the product. Each outline shall clearly state a definite expiration date for the product and on what it is based.

* * * * *

7. Part 116 is revised to read:

PART 116—RECORDS AND REPORTS

Sec.
116.1 Preparation of records.
116.2 Completion and retention of records.
116.3 Reports.

§ 116.1 Preparation of records.

(a) Detailed production records, including reports of all tests for purity, safety, and potency shall be prepared for each serial of biological product manufactured in or offered for importation into the United States; such records shall be prepared by the licensee or the foreign manufacturer, respectively.

(b) Detailed disposition records, in a form satisfactory to the Director, shall be maintained by each licensee, each distributor, and each importer, showing the sale, shipment, or other disposition made of the bilogical products handled by such person.

§ 116.2 Completion and retention of records.

All records (other than disposition records) required by this part shall be completed by the licensee or the foreign manufacturer, as the case may be, before any portion of a serial of any product

may be marketed in the United States or exported. Such records shall be retained for a period of 2 years after the expiration date of the product involved and for such longer period as may be required by the Director in specific cases.

§ 116.3 Reports.

Reports containing accurate information of production activities in each establishment by the licensee or the foreign manufacturer whose products are either being offered for importation or being imported into the United States, as the case may be, shall be prepared and forwarded to the Division in such form and manner as may be required by the Director.

§ 117.1 [Amended]

3. In § 117.1 the words "Parts 101 to 122" are changed to read "Parts 101 to 121."

§ 117.5 [Amended]

9. In paragraph (d) of § 117.5 the words "and the inspector in charge" are deleted from the second sentence.

10. Section 117.6 is revised to read:

§ 117.6 Certificates.

(a) All cattle, hogs, sheep, and goats admitted to the premises of any licensed establishment which procures no animals from public stockyards, abattoir pens, or similar places need not be held in contact with contact calves if the licensee has a certificate as provided for in paragraph (b) of this section prepared and signed by the supplier for each group of animals admitted. Such certificates shall become a part of the records for each serial or subserial of a biological product the animals are used to produce or test.

(b) Each certificate prepared in accordance with paragraph (a) of this section shall be in the following form:

---------- , 19--

This is to certify that ----------

(Specify number and kind of animals) which are offered for admission to the licensed establishment of the ---------- Co. are from the farm or premises of ----------, in the State of ----------, County of ----------, Township of ----------, and to the best of our knowledge and belief were on said farm or premises at least 21 days prior to this date, and were not exposed to any infectious, contagious, or communicable disease, and no new stock was brought onto said farm or premises during that time. The said animals have not been in or transported through any public stockyards, abattoir pens, or similar places, nor have they been exposed to any infectious, contagious, or communicable disease since their removal from said farm or premises.

(Signed) ---------- Co.,
Per ----------

11. Section 117.7 is revised to read:

§ 117.7 Examination and identification.

(a) All animals admitted to the premises of licensed establishments shall be examined by the licensee as soon as practicable after they are received to determine their physical condition. No animals shall be used for production purposes which show any clinical signs of disease.

(b) All animals admitted to the premises of a licensed establishment and permitted to enter the holding pens of the establishment shall be permanently identified by the licensee with tags, marks, or other means acceptable to the Director.

(c) All animals used for test purposes shall be identified either collectively or individually in a manner conducive to an accurate interpretation of the results of the test.

12. Section 117.8 is amended by revising paragraph (b) to read:

§ 117.8 Treatment.

* * * * *

(b) Contact calves shall not be immunized against diseases to which they are susceptible except pasteurellosis. Such calves may be treated with pasteurella bacterin or anti-corynepasteurella serum.

§ 117.9 [Amended]

13. In paragraph (b) of § 117.9, the words "Parts 101 to 122" are changed to read "Parts 101 to 121."

14. Section 117.10 is revised to read:

§ 117.10 Removal of Animals.

Animals may be removed from the premises of licensed establishments; provided, such removal is accomplished in a manner as will preclude the dissemination of disease and in accordance with the following conditions:

(a) Animals which received a viable microorganism within 30 days shall not be removed;

(b) Establishments producing or testing hog-cholera products shall not remove swine from the premises except:

(1) To an approved feed lot in which case the licensee shall obtain a certificate from the consignee of the animals showing their receipt; or

(2) For immediate slaughter in an abattoir operated in accordance with the Federal Meat Inspection Act (21 U.S.C. 601 et seq.);

(3) By truck which shall be cleaned and disinfected as provided in § 117.12(c).

(c) Calves that are in a healthy condition may be removed from licensed establishments after disinfection as described in § 117.12(a). When removed to an abattoir without passing through stockyards or over public highways which are not traversed by animals from public stockyards or similar places, the animals need not be so disinfected.

(d) Other animals that are injured or otherwise unhealthy, except when affected with a communicable disease, may be removed for immediate slaughter to an abattoir operated in accordance with the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) or the Poultry Products Inspection Act, as amended (21 U.S.C. 451 et seq.); provided, they are properly marked for identification and the inspector in charge of slaughter operations is given due notice in advance.

(e) All animals on the premises shall be disposed of in accordance with the provisions of the regulations in this part and where specific provision is not made therefor shall be disposed of as required by the Director.

15. Section 117.11 is revised to read:

§ 117.11 Swine; treatment prior to removal.

All swine which require treatment or vaccination against hog cholera shall be treated with modified live virus vaccine alone or with modified live virus vaccine in conjunction with anti-hog-cholera serum, both of which shall have been prepared at a licensed establishment. After vaccination, those animals which have received modified live virus vaccine shall be held on the premises for a period of not less than 30 days.

16. Parts 118 and 119 of Chapter I of Title 9, of the Code of Federal Regulations are revoked.

17. Part 120 is amended by revising §§ 120.2, 120.3, 120.4, 120.5, 120.8, 120.10, and 120.11. Part 120, as amended, reads as follows:

PART 120—APPROVED FEED LOTS

Sec.

AUTHORITY: The provisions of this Part 120 issued under 37 Stat. 832–833; 21 U.S.C. 151–158.

§ 120.1 Approval required.

In order to be designated as an approved feed lot, a feed lot shall meet the requirements set forth in this part and be approved by the Director, Veterinary Biologics Division. Prior to final determination, the Director shall obtain the recommendations of the appropriate official of the State in which such feed lot is located. Any person desiring to have his feed lot designated as an approved feed lot shall make written application for such designation to the Director in accordance with the provisions of § 120.2.

§ 120.2 Application for approval.

The application for approval of a feed lot shall contain the following information: The name of the owner of the feed lot, the name of the person responsible for its operations, the location of the premises, the types of operations of the premises and adjoining premises, the approximate number of animals to be maintained on the premises, whether animals are fed grain, or cooked garbage, method used for identifying animals, the percentage of animals sold to anti-hog-cholera serum producers with names of such producers, the name and location of abattoirs to which hogs not sold to such producers are sent; and a

justification or reasons why such feed lot operations will not endanger other swine or impair the Hog-Cholera Eradication Program.

§ 120.3 Feed lot approval.

Before a feed lot is approved by the Director, an inspection shall be made to determine whether such lot meets the requirements of this part. A feed lot shall not be approved unless, in the opinion of the Director, its location and method of operation will not endanger other swine or impair the Hog-Cholera Eradication Program. The volume of swine handled for anti-hog-cholera serum producers must be sufficient to warrant approval as an approved feed lot.

§ 120.4 Listing of approved feed lots.

The Director shall compile a list of approved feed lots, copies of which will be available to all licensed establishments, operators of approved feed lots, and officials of the State in which such approved feed lots are located.

§ 120.5 Deletion from list of approved feed lots.

(a) An approved feed lot will be deleted from the list of approved feed lots upon a request from the operator thereof.

(b) The Director shall delete an approved feed lot from such list when he finds that the handling of swine in the lot is no longer adequate to effectuate the purposes of the regulations of this part, or the lot's location or method of operation endangers other swine or impairs the Hog-Cholera Eradication Program or is not operated in accordance with the provisions of this part. In the event of the deletion of a feed lot, all animals remaining in the lot shall be disposed of in accordance with § 120.10.

§ 120.6 Admitting pigs to premises.

Pigs for feeding purposes may be purchased vaccinated or unvaccinated from any source. Upon receipt, such pigs shall be vaccinated or revaccinated and identified. If pigs are received from a licensed establishment they need not be revaccinated.

§ 120.7 Method of identification.

All tags or other methods used for identification of animals shall be applied in such a manner that identification may be maintained. Tags, if used, shall be of a distinctive design or color so as to differentiate them from identification used for official vaccinates under the Hog-Cholera Eradication Program.

§ 120.8 Vaccination in approved feed lots.

Vaccination on the premises of an approved feed lot shall be with modified live virus vaccine alone or in conjunction with anti-hog-cholera serum or hog-cholera-antibody concentrate.

§ 120.9 Records of vaccination and disposition.

(a) Records of vaccination and disposition of all animals shall be maintained by each operator of an approved feed lot on forms approved by the Department and made available to such operators. A copy of such records shall be furnished to the inspector.

(b) An inventory of animals showing the daily admission to and removal from the premises of all animals shall be maintained by the operator of an approved feed lot.

(c) Records described in paragraphs (a) and (b) of this section shall be retained for a period of 1 year.

§ 120.10 Removal of animals.

(a) Swine shall not be removed from an approved feed lot without a permit in response to a written application therefor. Removal of animals shall be permitted by the Director under the following conditions provided such removal is accomplished in a manner as to preclude the dissemination of disease:

(1) Swine are in a healthy condition as determined by veterinary inspection.

(2) Swine are transported directly to an abattoir for immediate slaughter or to an establishment producing anti-hog-cholera serum. Such transportation shall be by truck.

(3) Swine are removed not earlier than 30 days after vaccination.

(b) A certificate of receipt from the consignee of such animals shall be furnished to the operator of the feed lot.

§ 120.11 Dead animals, removal.

Dead animals to be removed from an approved feed lot shall be removed only to a rendering plant. Trucks used for this purpose shall have watertight bodies and be covered by a suitable covering to prevent flies from reaching the carcasses.

§§ 121.1, 121.2, 121.3, 121.4. [Amended]

Part 121 is amended by revising each reference to the regulations in §§ 121.1, 121.2, 121.3, and 121.4 to read "Parts 101 to 121 of this subchapter."

Interested persons are invited to submit written data, views or arguments regarding the proposed regulations to the Veterinary Biologics Division, Federal Center Building, Hyattsville, Md. 20782, within 60 days after date of publication of this notice in the FEDERAL REGISTER.

All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

Done at Washington, D.C., this 12th day of August 1969.

GEORGE W. IRVING, Jr.,
Administrator,
Agricultural Research Service.

[F.R. Doc. 69-9690; Filed, Aug. 15, 1969; 8:47 a.m.]

Consumer and Marketing Service

[7 CFR Part 1060]

[Docket No. AO-360-A3]

MILK IN MINNESOTA-NORTH DAKOTA MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Minnesota-North Dakota marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 15th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Fargo, N. Dak., on May 14, 1969, pursuant to notice thereof which was issued April 17, 1969 (34 F.R. 6738).

The material issues on the record of the hearing relate to:

1. Marketing area.
2. Diverted milk.
3. Pooling qualifications.
4. Class I price.
5. Plants subject to other Federal orders.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Marketing area.* No change should be made in the size of the marketing area.

A cooperative which is the major distributor in the county proposed that Pope County, Minn., be included in the marketing area. Pope County borders the southeastern corner of the marketing area.

When the order was promulgated in November 1967, proponent's fluid milk sales in Pope County represented about 55 percent of the total fluid sales made there. The remaining sales were made

by unregulated handlers, the two largest of whom were primarily associated with other markets.

By April 1969, proponent's sales in the county represented about 62 percent of the total. The two largest previously unregulated plants are now fully regulated under the Minneapolis-St. Paul milk order.

At the present time, well over 90 percent of the sales in Pope County are made by handlers regulated under either the Minnesota-North Dakota or Minneapolis-St. Paul order, with about 68 percent of the total originating at plants regulated under the Minnesota-North Dakota order.

If Pope County were included in the marketing area, only one additional plant would be made subject to regulation. This plant, which is located at Starbuck, Minn. (in Pope County), accounts for about 10 percent of the fluid milk sales in the county.

The unregulated plant buys milk from only three producers, and a very substantial portion of its fluid milk disposition is purchased from a plant at Alexandria, Minn., which is fully regulated by the order. No competitive problem between regulated handlers and the unregulated plant or other conditions of disorder were described on the record. It may not be concluded from the evidence that the marketing situation in Pope County is having adverse effect on producer returns or on the regulatory program. The proposal therefore is denied.

The counties of Walsh, Pembina, and Cavalier, N. Dak., should remain a part of the marketing area.

Eight producers supplying a regulated handler at Grafton, N. Dak. (in Walsh County) proposed that Walsh, Pembina, and Cavalier Counties be removed from the marketing area. The proposal was opposed by four cooperatives, including one with route distribution in these counties.

In 1968 the Class I utilization of such regulated handler represented about 97 percent of his Grade A receipts, while only 40 percent of all producer milk under the order was used in Class I. Proponents stated that in 1968 such handler paid in excess of $30,000 into the producer-settlement fund. By having the three counties removed from the marketing area, proponents expect to receive a higher price for their milk relative to the marketwide uniform price, based on the high Class I utilization of such handler.

In order to maintain its relatively high utilization, the plant regularly purchases supplemental milk in the fall and winter months from other regulated handlers. Thus, other producers on the market carry the reserve supplies which make possible a high Class I utilization at the plant in all months.

There is heavy competition among regulated handlers selling there. At least three other regulated handlers sell fluid milk products in the three counties. The largest distributes over 140,000 pounds of Class I milk therein, or about 65 percent of the total fluid sales in such counties.

Also, the plant supplied by proponents distributes packaged milk to a military base located in another part of the marketing area. This distribution, which represents between 15 percent and 20 percent of the plant's Grade A receipts, is sufficient in itself to continue pool plant status for the plant even if Walsh, Pembina, and Cavalier Counties were removed from the marketing area.

The extensive distribution in the three counties by all such handlers, which justified inclusion of the counties in the marketing area when the order was established, has not changed materially since the inception of the order. Accordingly, the proposal to exclude the three counties from the marketing area is denied.

2. *Diverted milk.* The number of days on which a producer's milk must be received at a pool plant during each month to qualify his milk for diversion to a nonpool plant should not be changed.

A cooperative proposed that the number of days of the month for which delivery to a pool plant is required should be increased from 3 days to 5 days. As published in the hearing notice, the proposed change would apply during the months of July through February. At the hearing, however, proponent modified the proposal so as to apply in all months. The proposal also was supported by another cooperative.

Proponent contended that unlimited diversion enables the diverting handler to pool unlimited quantities of milk, thereby reducing uniform prices to producers. Proponent wants to assure as high a blend price as possible. No proposal was made, however, to change the order provision that deals directly with the percentage of milk that may be diverted.

The proposal was opposed by three other cooperatives supplying the market and by three proprietary handlers. The chief objections of those who were opposed to the proposal were that (1) it would require additional hauling to continue to qualify as producers those dairy farmers who regularly supply the market, (2) it would not necessarily reduce the quantity of Grade A milk associated with the pool, (3) the present provisions have not resulted in the association of additional producers with the market to the detriment of the uniform price, and (4) those producers who have had a long time association with the market should be permitted to continue to share in the marketwide pool without having their hauling costs increased substantially.

The provision that a producer must have his milk received at a pool plant on 3 days during the months of July through February to qualify it for diversion to a nonpool plant during the month serves primarily to identify the producer as a regular supplier of the fluid milk needs of the market during the months when it is needed most. During the months of seasonally high production, the seasonally lower uniform price does not afford the same incentive to associate additional producers with the market.

Many of the producers now on the market are located close to manufacturing plants and at a considerable distance from any pool plant. When their milk is not needed for fluid use it is most practical to divert it directly to the manufacturing plants. To continue their status as producers, the proposal would make it necessary in some instances that a larger proportion of their milk be hauled to a pool plant where it would be received, reloaded on a tank truck and then hauled back to a manufacturing plant close to the farm of origin. An increase in the number of days their milk must be received at a pool plant would result in some additional hauling cost to producers.

Since most producers' milk is picked up at the farm on an every-other-day schedule, the present 3-day delivery requirement, in most cases, means that at least 6 days' production must be delivered to a pool plant each month. Increasing the delivery requirement to 5 days would mean that producers would be required to ship 10 days' production to a pool plant to retain producer status. Such a requirement would tend to impede the efficiency which has been attained by the cooperative associations in handling the supply for the market.

Market statistics do not indicate that the present diversion privileges have been abused. In March and April 1968, there were 1,529 and 1,509 producers, respectively, on the market. For March and April 1969, the corresponding figures were 1,505 and 1,507. There has been a slight increase in the pounds of milk diverted, but this reflects some increase in production per farm, partly as a result of increased production per cow. The percentage of total receipts diverted has remained relatively constant. In March 1969, 51.23 percent of the total producer receipts were diverted, an increase of 0.25 percent over the 50.98 percent diverted in March 1968. In April 1969, the percentage diverted was 53.27 a decline of 0.36 percent from the 53.68 percent diverted in April 1968.

It is concluded that no change be made at this time in the provisions of the order as they apply to diversion of producer milk. The present requirement that the milk of a producer must be received at a pool plant for at least 3 days during each of the months of July through February as a qualification for diversion gives handlers and cooperatives the flexibility needed to supply the market with milk for Class I use. It also aids them in disposing of reserve supplies in an efficient manner. At the same time, it provides sufficient market affiliation by producers in these months to insure that their milk is available for Class I when needed.

3. *Pooling qualifications.* The provisions for qualifying a distributing plant for pooling should not be changed.

A cooperative association proposed that one of the provisions for qualifying a distributing plant for pooling be changed. As proposed, a distributing plant would be pooled for any month during which a volume of Class I milk not less than 35 percent of its Grade A receipts is disposed of during the month on routes by Class

I transfer to another plant. At the present time, the minimum requirement is 20 percent during the months of March through June, and 25 percent during all other months. The proposal was opposed by three other cooperative associations representing a substantial portion of the producers supplying the market and by three proprietary handlers.

Proponent's chief arguments for making the change were that (1) the present percentages are low compared to those in other Federal orders, (2) the present qualifications are being abused in that there has been a substantial increase in the volume of milk diverted to nonpool plants for manufacturing since the inception of the order, and (3) if the proposal is not adopted, plants with manufacturing facilities could take on additional producers to the point that the uniform price would be lowered substantially.

The principal purpose of the distributing plant qualifications for pooling is to assure that a plant and its milk supply are associated with the market in a significant way and in a regular manner. Otherwise, dairy farmers who have no regular affiliation with the market could casually or incidentally associate themselves with the market when it is to their advantage to do so, but without accepting any responsibility for providing it with a dependable supply.

When the order was established, it was recognized that the distributing plants that would be pooled under the order are located in a region of heavy milk production in relation to population. Many of them are combination plants with manufacturing operations where the reserve supplies of the market are handled. The qualifying standards were fixed at levels which would insure pool plant status to those plants which are the main and regular sources of Class I milk for the marketing area.

Prior to the inception of the order the marketwide Class I utilization was determined to be approximately 40 percent annually, but to decrease as low as 30 percent in the months of flush production. While some of the proprietary plants have a Class I utilization in excess of 90 percent throughout the year, many of the cooperative association plants, which also serve as sources of milk for proprietary plants, have a Class I utilization substantially below the market average.

There is no indication that substantial quantities of milk have been added to the pool simply for manufacturing purpose. In 1968, market utilization was virtually identical to that which existed before the order became effective. The annual average Class I utilization in 1968 was exactly 40 percent. Monthly, the percentages varied from 30 percent in June to 52 percent in October. In both March and April 1968, the Class I utilization was 33 percent. In March and April of 1969, Class I utilization was 33 and 34 percent, respectively.

The above figures do not bear out the contention of proponents that there has been abuse in that increasing quantities of milk have been associated with the market for manufacturing use. As noted earlier, there has been some increase in production per producer. This has resulted in a slight increase in the volume of milk diverted, although the percentage of total milk receipts diverted has not increased.

An increase in the minimum pool plant standards such as proposed would tend to disrupt marketing conditions. It would work severe hardship on those cooperative association plants that would be unable to meet the proposed standards without reducing the number of member producers from whom they receive milk, or otherwise limiting their milk supplies. Either alternative would adversely affect many producers and thus encourage a disorderly marketing condition.

It is concluded that the present pooling qualifications for distributing plants are operating as intended and should not be changed at this time.

4. *Class I price.* The Class I differential should be increased 24 cents per hundredweight to $1.30 ($1.10 plus an additional 20 cents) over the basic formula price for the preceding month. The order now provides a Class I differential of $1.06 ($0.86 plus an additional 20 cents) over the basic formula price for the preceding month.

The change was proposed by one of the principal cooperatives supplying milk to the market. It was supported by three other cooperatives, the members of which also supply a substantial portion of the producer milk for the market. Two other cooperatives proposed that the Class I price be increased 52 cents per hundredweight, but presented no evidence to support the proposal. The proposal to increase the Class I price 52 cents per hundredweight therefore is denied.

When the order was promulgated, an appropriate Class I price alignment with the Minneapolis-St. Paul market was a major consideration. The principal population centers are located along the Red River which forms the boundary between Minnesota and North Dakota, midway between the heavy milk production area of central Minnesota and the deficit production area of North Dakota. It was deemed necessary to establish a Class I price which would compensate producers not only for the costs of producing Grade A milk but also would insure its continued movement to the principal population areas. It was concluded further that the price should not be so high as to encourage a substantial shift of milk from the Minneapolis-St. Paul market and thus result in displacement of the supply which has been associated with the market prior to the issuance of the order.

Fargo and Grand Forks, N. Dak., and Moorhead, Minn., are among the principal cities in the market. The adjoining cities of Fargo-Moorhead are about 240 miles from Minneapolis-St. Paul. Grand Forks is about 312 miles from Minneapolis-St. Paul. In the decision on the issuance of the original order for the Minnesota-North Dakota order (32 F.R. 12516), of which official notice is taken, the Class I price for the Minnesota-North Dakota order was established at a level 24 cents per hundredweight higher than the Class I price under the Minneapolis-St. Paul order.

This alignment was based on the Minneapolis-St. Paul Class I price at a time when it was reduced 24 cents per hundredweight by a supply-demand adjustment. The adjustment had been effective for a considerable period of time prior to the issuance of the Minnesota-North Dakota order. The differential in price of 24 cents per hundredweight remained in effect until July 1, 1968, when the supply-demand for the Minneapolis-St. Paul order was suspended and later discontinued by amendment of the order effective August 1, 1968. This resulted in identical Class I prices in both orders. The intermarket Class I price relationship between the two orders, which the Secretary found to be appropriate at the issuance of the Minnesota-North Dakota order, should be restored. Such alignment will reflect the approximate cost of transporting milk from the Minneapolis-St. Paul area to plants in the base zone of the Minnesota-North Dakota area.

There is need also to modify the Class I price alignment between the Minnesota-North Dakota order and the Eastern South Dakota order. As a result of elimination of the supply-demand adjustor in the Minneapolis-St. Paul order, the Class I price in Eastern South Dakota was increased 13.5 cents. This resulted in a difference of 44 cents in the respective Class I prices of Eastern South Dakota and Minnesota-North Dakota. Such a disparity in prices is unwarranted in view of the fact that the marketing areas are contiguous and their milksheds overlap. Increasing the Class I differential 24 cents in the Minnesota-North Dakota order reduces this difference to 20 cents, a reasonable difference in consideration of the distance from the Fargo-Moorhead area, the basic price zone for the Minnesota-North Dakota market, to Sioux Falls, S. Dak., the principal population center of the Eastern South Dakota marketing area.

The proposed level of Class I price also will improve substantially the relationship between uniform prices to producers at pool supply plants and the prices paid by manufacturing plants in the supply area. Prices paid by manufacturing plants in Minnesota have increased substantially in recent months. At least a part of this increase may be attributed to an effort by manufacturing plants to induce dairy farmers against converting to Grade A production and shifting their deliveries to fluid milk plants, particularly Minneapolis-St. Paul plants.

Pool plants in central and south central Minnesota compete directly with manufacturing plants for supplies. At all these pool plants location differentials are applicable. The differential between uniform prices and prices paid by the manufacturing plants has narrowed.

Prices paid to producers for Grade A milk at pool plants at Alexandria and Brainerd, Minn., for January 1969 were $4.58 and $4.55 per hundredweight,

respectively. The price paid for manufacturing grade milk at the same locations was $4.33 per hundredweight, a difference of 25 cents and 22 cents respectively. By April 1969, the difference between the prices paid for the two grades of milk at these locations had narrowed to 19 cents and 16 cents per hundredweight, respectively.

Strong possibility exists that a number of producers may not be willing to continue meeting the added expense of producing Grade A milk when they can receive essentially the same net return by shipping to a manufacturing plant. As a result of the present relationship of the uniform price to manufacturing prices in the Minnesota-North Dakota milkshed, the supply of milk for fluid milk plants in the Minnesota-North Dakota market could be affected adversely unless the proposed action is taken.

The only testimony directly opposing the proposal came from two handlers with pool distributing plants located at the southeastern edge of the marketing area. Their plants are subject to a minus location differential under the order. Their objection to the proposal was that they compete with two handlers regulated by the Minneapolis-St. Paul order whose plants have a minus location differential under that order.

With the Class I price alignment herein proposed, the difference in Class I prices among the four handlers would range between 22 cents and 28 cents per hundredweight. However, the Minneapolis-St. Paul handlers who have the advantage of the lower prices are located between 70 and 130 miles from the area where they compete with the Minnesota-North Dakota handlers. Such handlers incur transportation costs in moving packaged fluid milk products that distance, and these costs tend largely to offset the differences in minimum Class I prices.

Even with adoption of the proposed price, the Minnesota–North Dakota handlers who were opposed to the proposal would be in a better position in competing with these Minneapolis-St. Paul handlers than they were at the time of the issuance of the Minnesota–North Dakota order. The two Minneapolis-St. Paul handlers were not regulated prior to May 1, 1969. As unregulated handlers they did not purchase milk on a utilization basis. Consequently, they paid substantially less for their fluid milk requirements as unregulated handlers than they now pay as regulated handlers.

5. *Plants subject to other Federal orders.* The order should be amended to specify that a supply plant meeting the pooling requirements of more than one order should be subject to that regulating the area to which the greater volume of its milk is shipped.

In September 1968, it was necessary to suspend a provision of the Minnesota-North Dakota order to prevent a supply plant from being pooled under two orders in the same month. Such a situation would be untenable since it could result in the plant's being required to make payments to the producer-settlement fund under both orders. A cooperative association handler proposed to incorporate into the order a specific provision dealing with this problem.

The disposition of fluid milk to distributing plants in both the Minnesota-North Dakota and Minneapolis-St. Paul markets from at least two supply plants is such that it is entirely possible for the supply plants to meet the qualifications of fully regulated supply plants under both orders during a particular month. To prevent double regulation, it is concluded that the order should be amended as proposed herein.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

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

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order amending the order. The following order amending the order as amended regulating the handling of milk in the Minnesota-North Dakota marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

1. In § 1060.51, paragraph (a) is revised to read as follows:

§ 1060.51 Class prices.

* * * * *

(a) *Class I price.* The price for Class I milk shall be the basic formula price for the preceding month plus $1.10, and plus 20 cents.

* * * * *

2. Section 1060.61 is revised to read as follows:

§ 1060.61 Plants subject to other Federal orders.

The provisions of this order shall not apply with respect to a plant of a handler specified in paragraph (a), (b), or (c) of this section except that such handler shall, with respect to his total receipts and disposition of skim milk and butterfat, make reports to the market administrator at such time and in such manner as the market administrator may require and shall allow verification of such reports by the market administrator:

(a) A distributing plant from which the Secretary determines a greater portion of fluid milk products is disposed of on routes in another marketing area regulated by another order issued pursuant to the Act and such plant is fully subject to regulation of such other order: *Provided,* That a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition on routes is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated by such other order;

(b) A distributing plant which meets the requirements set forth in § 1060.23 (a) which also meets the requirements of another marketing order on the basis of its distribution in such other marketing area and from which the Secretary determines a greater quantity of milk is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is nevertheless fully regulated under such other marketing order; and

(c) A supply plant from which the Secretary determines a greater portion of its Grade A receipts is shipped during the month to plants which are regulated by another order issued pursuant to the Act if such shipments qualify it as a pool plant under such other order.

Signed at Washington, D.C., on August 12, 1969.

ROY W. LENNARTSON,
Administrator.

[F.R. Doc. 69-9723; Filed, Aug. 15, 1969; 8:49 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 21, 91]

[Docket No. 9749; Notice 69-35]

FOREIGN MANUFACTURERS USING AIRCRAFT FOR MARKET SURVEYS OR SALES DEMONSTRATIONS IN THE UNITED STATES

Proposed Limitations and Conditions

The Federal Aviation Administration is considering amending Part 91 of the Federal Aviation Regulations as to the limitations and conditions under which special authorizations are issued for foreign civil aircraft operated in the United States for purposes of sales or market surveys. In addition, it is proposed to amend Part 21 by deleting the requirement that U.S. aircraft engine manufacturers use only type certificated engines in type certificated aircraft when operated solely for market surveys, sales demonstrations, or customer crew training.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket GC-24, 800 Independence Avenue SW., Washington, D.C. 20590. All communications received on or before November 17, 1969, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

There is a variation between the limitations and conditions under which U.S. aircraft and aircraft engine manufacturers may operate aircraft in the United States for purposes of market surveys and sales demonstrations and those imposed for the same purposes on operators of aircraft of foreign registration. Section 21.195(c) requires that U.S. aircraft manufacturers comply with § 21.193 for an experimental certificate, and establish an inspection and maintenance program to ensure the continued airworthiness of the aircraft. They must also demonstrate that the aircraft to be used has been flown for at least 50 hours, or 5 hours if the aircraft is a modification of one previously type certificated.

On the other hand, any foreign operator may be issued a special flight authorization to conduct market surveys, sales or testing, with nonstandard aircraft, under the provisions of § 91.28(b)(5), which imposes no limitations and conditions such as those set for U.S. manufacturers. The regulations applicable to foreign-registered aircraft may be used by any operator, whereas the regulations as to nonstandard U.S.-registered aircraft restrict such operations to aircraft and aircraft engine manufacturers. The requirements for operations conducted with nonstandard aircraft should be no less stringent for foreign operators than those imposed on U.S. operators, and the proposed amendments would remedy this disparity.

The limitations imposed by § 21.195 are based on FAA experience with U.S. aircraft and aircraft engine manufacturers, and are considered appropriate to insure safe operation. This experience is based on years of dealing with the issuance of provisional, type and airworthiness certificates to the U.S. manufacturers who have developed their products to the stage that they are ready for market sales or surveys, have already made application for a type certificate, have established a maintenance and inspection program, and have tested the product for at least 50 hours. The FAA is of the view that similar conditions, including the establishment of operating limitations, should apply to authorizations for foreign aircraft manufacturers conducting similar operations in the United States.

The rule requiring U.S. aircraft engine manufacturers to use only type certificated engines in type certificated aircraft for market surveys appears to be discriminatory. Section 21.195(a) permits aircraft manufacturers to conduct market surveys with an aircraft having a noncertificated engine, while an engine manufacturer may use only a type certificated engine in a similar aircraft. Based on FAA experience, we believe a type certificated aircraft with a nontype certificated engine can be operated safely by either an aircraft manufacturer, or an aircraft engine manufacturer, and § 21.195(b) should be amended accordingly.

In consideration of the foregoing, it is proposed to amend the Federal Aviation Regulations as follows:

§ 21.195 [Amended]

1. In § 21.195(b) of Part 21, by deleting the words "type certificated" between the words "different," and "engines."

2. In § 91.28(b)(5) of Part 91, by adding a sentence to read as follows:

§ 91.28 Special flight authorizations for foreign civil aircraft.

* * * * *

(b) * * *

(5) * * * However, for market sales or surveys, the applicant must at a minimum show that:

(i) The applicant is the manufacturer of the aircraft;

(ii) The applicant has applied for a U.S. type certificate or U.S. supplemental type certificate;

(iii) The aircraft has flown for 50 hours, or for at least 5 hours if it is a U.S. type certificated aircraft which has been modified;

(iv) The applicant has established operating limitations in an appropriate document and certifies that the aircraft will be operated within such limitations; and

(v) The applicant has established an inspection and maintenance program for the continued airworthiness of the aircraft.

* * * * *

These amendments are proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on August 11, 1969.

JAMES F. RUDOLPH,
Director, Flight Standards Service.

[F.R. Doc. 69-9695; Filed, Aug. 15, 1969; 8:47 a.m.]

[14 CFR Part 61]

[Docket No. 9748; Notice 69-34]

RECENT EXPERIENCE CREDIT FOR PROFICIENCY CHECKS

Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending Part 61 of the Federal Aviation Regulations to allow the use of instrument proficiency checks required under Parts 121, 123, 127, and 135 to meet the recent instrument experience requirements of § 61.47.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Rules Docket GC-24, 800 Independence Avenue SW., Washington, D.C. 20590. All communications received on or before November 17, 1969, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Paragraphs (d) and (e) of § 61.47 prescribe recent instrument experience requirements for pilots, including pilots operating aircraft under Parts 121, 123, 127, and 135. Section 61.47(g) provides that a pilot who successfully passes a flight test required for a category, class, type, or instrument rating is considered to meet the recency of experience requirement of the paragraph of § 61.47 that is appropriate to the flight test. However, the section does not presently give credit for proficiency checks conducted under Parts 121, 123, 127, and 135. Because credit is not given for proficiency checks in § 61.47, a pilot operating under Part 121, 123, 127, or 135 must have the recent instrument experience required by § 61.47 (d) or (e), as appropriate, in addition to the instrument portion of the proficiency checks required by the applicable part.

The purpose of the recent instrument experience requirements is to assure continuing instrument proficiency. The instrument portion of the proficiency check under Parts 121, 123, 127, and the instrument check under Part 135 are essentially equivalent to the instrument flight test for which credit is presently given under § 61.47(g). The FAA considers that this instrument proficiency check fulfills the stated purpose of the recency of experience requirements. This proposal would amend paragraph (g) of § 61.47 to give credit for instrument checks and the instrument portion of proficiency checks.

The proposal with respect to instrument proficiency checks under Part 127 needs further explanation. That part presently has no helicopter instrument check. However, the Administrator has authorized some air carriers to conduct IFR operation and, for those carriers, as provided in § 127.243, instrument check procedures are specified in the air carrier's operations specifications. Therefore, this proposed amendment would give credit in § 61.47(g) for instrument checks required by those operations specifications.

In consideration of the foregoing, it is proposed to amend § 61.47(g) of the Federal Aviation Regulations to read as follows:

§ 61.47 Recent flight experience.

* * * * *

(g) *Credit given for flight tests or proficiency checks.* A pilot who successfully passes one of the following flight tests or proficiency checks is considered to meet the recency of experience requirement as follows:

(1) A flight test required for a category, class, type, or instrument rating is considered to meet the recency of experience requirement of the paragraph of this section that is appropriate to the flight test.

(2) An instrument proficiency check required by § 121.441(b), § 123.27(j), or § 135.131 of this chapter, or by the procedures specified in operations specifications of the air carrier under § 127.243 of this chapter, is considered to meet the instrument experience requirements of paragraph (d) of this section.

(3) An instrument proficiency check required by § 121.441(b) or § 123.27(j) of this chapter, or by the procedures specified in the operations specifications of an air carrier under § 127.243 of this chapter, is considered to meet the instrument experience requirements of paragraph (e) of this section.

* * * * *

These amendments are proposed under the authority of sections 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1424), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on August 11, 1969.

EDWARD C. HODSON,
Acting Director,
Flight Standards Service.

[F.R. Doc. 69-9696; Filed, Aug. 15, 1969; 8:47 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 68-CE-81]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration; Supplemental Notice

In a notice of proposed rule making published in the FEDERAL REGISTER on October 19, 1968 (33 F.R. 15557, 15558, F.R. Doc. 68-12735), the Federal Aviation Administration proposed to alter the Olathe, Kans., control zone and the Grandview, Mo., transition area.

Subsequent to publication of the notice, the VOR which was to be used as the approach navigational aid for the Johnson County Airport was relocated. In addition, the criteria for designation of controlled airspace have changed. Therefore, it is necessary to issue a supplemental notice of proposed rule making altering the Grandview, Mo., control zone and transition area and the Olathe, Kans., control zone which will provide adequate protection for aircraft executing the relocated instrument approach procedure and to effect compliance with the new controlled airspace criteria.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 45 days after publication of this supplemental notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with the Federal Aviation Administration officials may be made by contracting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with the supplemental notice in order to become part of the record for consideration. The proposal contained in this supplemental notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations by altering the Olathe, Kans., control zone and the Grandview, Mo., control zone and transition area, as hereinafter set forth:

(1) In § 71.171 (34 F.R. 4557), the following control zones are amended to read:

GRANDVIEW, MO.

Within a 5-mile radius of Richards-Gebaur AFB (latitude 38°50'50" N., longitude 94°33'-20" W.); within 2½ miles each side of the Richards-Gebaur AFB ILS localizer south course, extending from the 5-mile radius zone to 1 mile south of the OM; and within 2½ miles each side of the Richards-Gebaur AFB TACAN 195° radial, extending from the 5-mile radius zone to 5½ miles south of the TACAN excluding the area north of latitude 58°52'30" N., and west of longitude 94°35'-50" W.

OLATHE, KANS.

Within a 5-mile radius of NAS Olathe (latitude 38°49'40" N., longitude 94°53'15" W.); within a 5-mile radius of Johnson County Airport (latitude 38°51'00" N., longitude 94°44'15" W.); within 2½ miles each side of the 180° bearing from the NAS Olathe RBN, extending from the 5-mile radius zone to 17½ miles south of the RBN; within 3 miles each side of the NAS Olathe TACAN 186° radial, extending from the 5-mile radius zone to 8 miles south of the TACAN; within 3 miles each side of the NAS Olathe TACAN 233° radial, extending from the 5-mile radius zone to 8 miles southwest of the TACAN; within 2½ miles each side of the NAS Olathe TACAN 350° radial, extending from the 5-mile radius zone to 6½ miles north of the TACAN; within 3 miles each side of the NAS Olathe TACAN 040° radial, extending from the 5-mile radii zone to 8 miles northeast of the TACAN; and within 3 miles each side of the 188° bearing from Johnson County Airport, extending from the 5-mile radius zone to 8 miles south of the airport.

(2) In § 71.181 (34 F.R. 4637), the following transition area is amended to read:

GRANDVIEW, MO.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Richards-Gebaur AFB (latitude 38°50'50" N., longitude 94°33'20" W.); within a 6-mile radius of Johnson County Airport (latitude 38°51'00" N., longitude 94°44'15" W.); within an 8-mile radius of NAS Olathe (latitude 38°49'40" N., longitude 94°53'15" W.); and within 3½ miles each side of the 180° bearing from the NAS Olathe RBN, extending from the 8-mile radius area to 20 miles south of the RBN; and that airspace extending upward from 1,200 feet above the surface within the area bounded on the south by latitude 38°00'00" N., on the west by the west edge of V-12, on the north by the arc of a 10-mile radius circle centered on the Kansas City, Mo., Municipal Airport (latitude 39°07'20" N., longitude 94°35'30" W.), and on the east by the west edge of V-159 excluding the portion which overlies the Emporia, Kans., and Wichita, Kans., transition areas.

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Mo., on July 31, 1969.

EDWARD C. MARSH,
Director, Central Region.

[F.R. Doc. 69-9697; Filed, Aug. 15, 1969; 8:47 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 69-CE-65]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the

Federal Aviation Regulations so as to alter the control zone and transition area at Indianapolis, Ind.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106.

Since designation of controlled airspace in the Indianapolis, Ind., terminal area, some of the instrument approach procedures for Indianapolis Municipal (Weir-Cook) Airport have been altered and a new instrument approach procedure has been developed for the Eagle Creek Airpark which is just a few miles north of the Indianapolis Municipal Airport. In addition, the criteria for the designation of control zones and transition areas have changed. Accordingly, it is necessary to alter the Indianapolis, Ind., control zone and transition area to adequately protect aircraft executing the modified and new approach procedures and to comply with the new control zone and transition area criteria.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

(1) In § 71.171 (34 F.R. 4557), the following control zone is amended to read:

INDIANAPOLIS, IND.

Within a 5-mile radius of Indianapolis Municipal (Weir-Cook) Airport (latitude 39°43'35" N., longitude 86°17'05" W.); within 2½ miles each side of the Indianapolis runway 13R ILS localizer northwest course, extending from the 5-mile radius zone to 14½ miles northwest of the OM; within 2 miles each side of the Indianapolis runway 4L ILS localizer southwest course, extending from the 5-mile radius zone to 1 mile northeast of the OM; within 2 miles each side of the Indianapolis runway 31L ILS localizer southeast course, extending from the 5-mile radius zone to 1 mile northwest of the OM; and within 2½ miles each side of the Indianapolis runway 22R ILS localizer northeast course, extending from the 5-mile radius zone to 14½ miles northeast of the OM.

(2) In § 17.181 (34 F.R. 4637), the following transition area is amended to read:

INDIANAPOLIS, IND.

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Indianapolis Municipal (Weir-Cook) Airport (latitude 39°43'35" N., longitude 86°17'05" W.); within a 5½-mile radius of Bob Shank Airport (latitude 39°49'15" N., longitude 86°14'30" W.); and within a 5½-mile radius of Eagle Creek Airpark (latitude 39°49'45" N., longitude 86°17'45" W.); and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at latitude 40°07'00" N., longitude 87°23'00" W.; to latitude 40°07'00" N., longitude 86°00'00" W.; to latitude 40°00'00" N., longitude 86°00'00" W.; to latitude 40°00'00" N., longitude 85°30'00" W., to altitude 39°30'00" N., longitude 85°30'00" W., to latitude 39°30'00" N., longitude 86°06'00" W.; to latitude 38°57'00" N., longitude 86°06'00" N., longitude 85°30'00" W., to latitude 88°00'00" W.; north along longitude 88°00'00" W., to the north edge of V-50; thence to the point of beginning.

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Mo., on August 1, 1969.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 69-9698; Filed, Aug. 15, 1969; 8:47 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 69-CE-64]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Anderson, Ind.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the 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 proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106.

Since designation of the Anderson, Ind., transition area, a public use instrument approach procedure has been developed for the Anderson Municipal Airport utilizing the Muncie, Ind., VOR as a navigational aid. In addition, the criteria for the designation of transition areas have changed. Accordingly, it is necessary to alter the Anderson transition area to adequately protect aircraft executing the new approach procedure and to comply with the new transition area criteria.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (34 F.R. 4637), the following transition area is amended to read:

ANDERSON, IND.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Anderson Municipal Airport (latitude 40°06'35" N., longitude 86°36'50" W.); and within 3 miles each side of the 298° bearing from Anderson Municipal Airport, extending from the 8-mile radius area to 12½ miles northwest of the airport.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Mo., on July 29, 1969.

EDWARD C. MARSH,
Director, Central Region.

[F.R. Doc. 69-9699; Filed, Aug. 15, 1969; 8:47 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 69-CE-63]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Michigan City, Ind.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the 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 proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal building, 601 East 12th Street, Kansas City, Mo. 64106.

A new public use instrument approach procedure has been developed for the Michigan City, Ind., Municipal Airport. In addition, the criteria for designation of transition areas have changed. Accordingly, it is necessary to alter the Michigan City, Ind., transition area to adequately protect aircraft executing the new approach procedure and to comply with the new transition area criteria.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (34 F.R. 4637), the following transition area is amended to read:

MICHIGAN CITY, IND.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Michigan City Airport (latitude 41°42'10" N., longitude 86°49'20" W.); and within a 6½ mile radius of Michigan City Municipal Airport (latitude 41°40'15" N., longitude 86°53'20" W.).

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Mo., on August 1, 1969.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 69-9700; Filed, Aug. 15, 1969; 8:47 a.m.]

FEDERAL MARITIME COMMISSION

[46 CFR Part 514]

[Docket No. 67-57]

SIGNIFICANT VESSEL OPERATING COMMON CARRIERS IN DOMESTIC OFFSHORE TRADE; REPORTS OF RATE BASE AND INCOME ACCOUNT

Order on Appeal From Examiner's Ruling Quashing Subpoenas

By ruling served April 8, 1969, the Presiding Examiner quashed and invalidated certain subpoenas ad testificandum directed to staff personnel of the Federal Maritime Commission.

Thereafter, several parties [1] moved for leave to appeal the ruling to the Commission, which motion has been granted. Appellants request oral argument.

The appeal is based on Rule 10(a) of the Commission's rules of practice and procedure which states, in pertinent part that "The Commission may call informal public hearings, not required by statute * * * for the purpose of rule making * * * and may require the attendance of witnesses and the production of evidence." The Examiner has concluded that section 27(a) of the Shipping Act, 1916 (the Act), limits the Commission's subpoena powers to proceedings instituted pursuant to section 22 respecting violations of the Act.

We agree. This proceeding was instituted pursuant to section 4 of the Administrative Procedure Act and various applicable sections of the Intercoastal Shipping Act, 1933, and the Shipping Act, 1916, not including section 22. There was no intention, either stated or otherwise, to investigate violations of the shipping statutes. This being so, compulsory processes are not available. To the extent that Rule 10(a) would indicate otherwise, that rule is invalid.[2]

We are of the further opinion that oral argument would not contribute materially to consideration of the appeal.

In view of the foregoing:

It is ordered, That

(1) The ruling of the Presiding Examiner of June 19, 1969, is upheld; and

(2) The request for oral argument is denied.

By the Commission.

[SEAL] THOMAS LISI,
Secretary.

[F.R. Doc. 69-9710; Filed, Aug. 15, 1969; 8:48 a.m.]

[1] American President Lines, Lykes Bros. Steamship Co., Pacific Far East Line, Puget Sound Tug and Barge Co., and States Steamship Co.

[2] The Presiding Examiner has also opined that Rule 18 (a) and (f) may be subject to the same infirmity. The validity of those rules is neither relevant nor controlling here.

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T.D. 69-188]

MURRAY-ALLEN

Notice of Recordation of Trade Name

AUGUST 11, 1969.

On June 21, 1969, there was published in the FEDERAL REGISTER (34 F.R. 9721) a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124) of the trade name "Murray-Allen" used by Murray-Allen Imports, Inc., a New York corporation. The notice advised that prior to final action on the application, filed pursuant to § 11.16, Customs Regulations (19 CFR 11.16), consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice. No responses were received in opposition to the application.

The name "Murray-Allen" is hereby recorded as the trade name of Murray-Allen Imports, Inc., a corporation organized under the laws of the State of New York, located at 30 Pine Street, New Rochelle, N.Y. 10801, when applied to confectionery, chocolates, biscuits, baked goods, jams, preserves, and snack items, manufactured in Italy, France, Poland, England, Holland, Argentina, Denmark, Belgium, Ireland, Germany, Finland, Central America, Israel, and Canada.

[SEAL] MYLES J. AMBROSE,
Commissioner of Customs.

[F.R. Doc. 69-9713; Filed, Aug. 15, 1969; 8:48 a.m.]

Office of the Secretary

[Treasury Dept. Order 183 (Rev. 5)]

GENERAL COUNSEL ET AL.

Order of Succession To Act as Secretary

1. Pursuant to Executive Order 10941, dated May 15, 1961, in the case of the death, resignation, absence, or sickness of the Secretary, the Under Secretary, and the Under Secretary for Monetary Affairs, the following officers shall, in the order of succession indicated, act as Secretary of the Treasury until a successor is appointed or until the absence or sickness shall cease:

(a) General Counsel.

(b) Assistant Secretaries, appointed by the President with Senate confirmation, in the order in which they took the oath of office as Assistant Secretary.

2. Under the authority of Reorganization Plan No. 26 of 1950, the order of succession stated in paragraph 1 above is hereby extended to include the following, after the Assistant Secretaries appointed by the President with Senate confirmation:

(a) Other Executive Pay Act officials in the Office of the Secretary, first in the order of Executive Pay Act levels, then in the order in which they took the oath of office in their present positions.

(b) Executive Pay Act officials in Treasury Bureaus, first in the order of Executive Pay Act levels, then in the order in which they took the oath of office in their present positions.

(c) The Assistants and Special Assistants to the Secretary at GS-18 in the order of the dates of their appointments.

(d) Other GS-18 officials in the Office of the Secretary in the order in which they took the oath of office.

3. Under the authority of Reorganization Plan No. 26 of 1950, the senior official of GS-15 rank or above from the Office of the Secretary, and in the absence of such an official, the senior Treasury Bureau Headquarters official of GS-15 rank or above present at the Treasury Emergency Relocation Site, is authorized to perform as Acting Secretary of the Treasury all the duties of the Secretary of the Treasury whenever, to the best of his knowledge, the Secretary of the Treasury and all officers authorized under paragraphs 1, 2, and 3 above to act as Secretary are unable to take action. Seniority shall be determined by rank and salary level and length of service therein.

4. Under the authority of Reorganization Plan No. 26 of 1950, in the event all the officers designated in paragraphs 1, 2, and 3 above are unavailable or unable to take action, the following officers shall, in the order of succession indicated, act as Secretary of the Treasury as required:

(a) Regional Commissioners, Internal Revenue Service, in the order in which they were appointed as Regional Commissioners.

(b) Regional Commissioners, Bureau of Customs, in the order in which they were appointed as Regional Commissioners.

Dated: August 11, 1969.

[SEAL] DAVID M. KENNEDY,
Secretary of the Treasury.

[F.R. Doc. 69-9714; Filed, Aug. 15, 1969; 8:48 a.m.]

[Treasury Dept. Order 191 (Rev. 4)]

UNDER SECRETARY FOR MONETARY AFFAIRS ET AL.

Designation of Deputies

1. In addition to other assignments, the principal assistant to each of the following officials is designated to serve, at the pleasure of the Secretary, as the deputy of the principal involved:

PRINCIPAL
Under Secretary for Monetary Affairs.
General Counsel.
Assistant Secretary (International Affairs).
Assistant Secretary (Tax Policy).
Assistant Secretary (Enforcement and Operations).
Assistant Secretary (Economic Policy).
Fiscal Assistant Secretary.
Assistant Secretary for Administration.
Assistant to the Secretary.
Special Assistant to the Secretary (Public Affairs).
Special Assistant to the Secretary (Congressional Relations).
Special Assistant to the Secretary (National Security Affairs).
Commissioner of Internal Revenue Service.
Comptroller of the Currency.
Commissioner of Customs.
Director, U.S. Secret Service.
Director, Bureau of Engraving and Printing.
Director, Bureau of the Mint.
Commissioner, Bureau of Accounts.
Commissioner, Bureau of the Public Debt.
Treasurer of the United States.
Director, U.S. Savings Bonds Division.

2. Each deputy shall have authority to perform, during the absence of his principal, any function his principal is authorized to perform, consistent with Treasury Order No. 190 Revised.

3. Principals and deputies shall avoid simultaneous absences. Exceptions may be requested through the Executive Secretariat in case of emergency or exceptional circumstances.

4. Treasury Department Order No. 191 (Revision 3) is rescinded.

Dated: August 11, 1969.

[SEAL] DAVID M. KENNEDY,
Secretary.

[F.R. Doc. 69-9715; Filed, Aug. 15, 1969; 8:48 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial No. I-3169]

IDAHO

Notice of Proposed Withdrawal and Reservation of Lands

AUGUST 11, 1969.

The Geological Survey has filed an application, Serial No. I-3169 for the withdrawal for powersite classification purposes of the lands described below, from all forms of appropriation under the public land laws, except mining locations, mineral leasing and material sales, subject to valid existing rights.

The classification is to protect the potential value of reservoir sites which may be developed along the Snake River between Palisades Dam and Henrys Fork.

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, Room 334, Federal Building, 550 West Fort Street, Boise, Idaho 83702.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

He will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the Geological Survey.

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

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

The lands involved in the application are:

POWERSITE CLASSIFICATION NO. 461

BOISE MERIDIAN, IDAHO

T. 3 N., R. 41 E.,
Sec. 8, lots 9, 13, and 14;
Sec. 9, lots 5 to 7, inclusive;
Sec. 10, lot 3;
Sec. 11, lots 6 and 7;
Sec. 14, lots 6 to 11, inclusive;
Sec. 15, lots 9 to 19, inclusive;
Sec. 16, lots 7 to 11, inclusive.

The area described aggregates 345.05 acres in Bonneville County, Idaho.

ORVAL G. HADLEY,
Manager, Land Office.

[F.R. Doc. 69-9719; Filed, Aug. 15, 1969; 8:49 a.m.]

[New Mexico 435]

NEW MEXICO

Notice of Proposed Classification of Public Lands for Multiple-Use Management; Correction

AUGUST 11, 1969.

In F.R. Doc. 69-3622 appearing on page 5748 of the FEDERAL REGISTER issue of Thursday, March 27, 1969 (34 F.R. 5748), the following corrections should be made:

In "Organ Mountain Recreation Area," T. 22 S., R. 4 E., sec. 6, change "lots 17, 62, and 64 to 76, inclusive;" to "lots 17, and 62 to 76, inclusive;"

In "Baylor Pass Picnic Site," change "T. 21 S., R. 3 E.," to "T. 22 S., R. 3 E.,".

MICHAEL T. SOLAN,
Acting State Director.

[F.R. Doc. 69-9668; Filed, Aug. 15, 1969; 8:45 a.m.]

NEVADA

Notice of Filing of Plat of Survey and Order Providing for Opening of Lands

Correction

In F.R. Doc. 69-9501 appearing at page 13116 in the issue for Wednesday, August 13, 1969, in the second line of paragraph 2, the reference to "T. 16" should read "T. 10".

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

LICENSED DEALERS UNDER LABORATORY ANIMAL WELFARE ACT

List of Persons

Correction

In F.R. Doc. 69-8920 appearing at page 12454 in the issue of Wednesday, July 30, 1969, the third entry under the State of Tennessee should read as follows:

Terrell Fisher, Route 1, Greenbrier 37073

Office of the Secretary

ARKANSAS

Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the State of Arkansas, natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

ARKANSAS

Bradley. Calhoun.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after June 30, 1970, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 12th day of August 1969.

J. PHIL CAMPBELL,
Acting Secretary.

[F.R. Doc. 69-9691; Filed, Aug. 15, 1969; 8:47 a.m.]

DEPARTMENT OF COMMERCE

Business and Defense Services Administration

RESEARCH & EDUCATION FOUNDATION

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69-00599-33-39400. Applicant: Research & Education Foundation, Orange County Medical Center, 101 South Manchester Avenue, Orange, Calif. 92668. Article: Illuminator, Model A 87110. Manufacturer: Drapier Instruments, France. Intended use of article: The article will be used to study the microcirculation of the stomach in the living animal. A fiberoptic light carrier, which is attached to the light source, is introduced into the rat stomach to transilluminate its wall. This method permits the study of the vessel and blood flow through the microscope. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used is being manufactured in the United States. Reasons: For its purposes, the applicant institution requires a high-intensity light source for visual internal examination of living organs which also provides the required intensity while maintaining a sufficiently low temperature to prevent damage to the organ being examined. The capability of providing an adequate light source combined with adequate cooling is considered to be pertinent to the applicant's research program in which the foreign article is intended to be used. We are advised by the Department of Health, Education, and Welfare (memorandum dated June 25, 1969) that it knows of no light source being manufactured in the United States, which provides this characteristic.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69-9660; Filed, Aug. 15, 1969; 8:45 a.m.]

SAN JOAQUIN DELTA COLLEGE ET AL.

Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Scientific Instrument Evaluation Division, Business and Defense Services Administration, Washington, D.C. 20230, within 20 calendar days after date on which this notice of application is published in the FEDERAL REGISTER.

Regulations issued under cited Act, published in the February 4, 1967, issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

A copy of each comment filed with the Director of the Scientific Instrument Evaluation Division must also be mailed or delivered to the applicant, or its authorized agent, if any, to whose application the comment pertains; and the comment filed with the Director must certify that such copy has been mailed or delivered to the applicant.

Docket No. 70–00001–00–46040. Applicant: San Joaquin Delta College, 3301 Kensington Way, Stockton, Calif. 95204. Article: Gauge for fore vacuum measurement (accessory for Siemens electron microscope). Manufacturer: Siemens, West Germany. Intended use of article: The article will be used to measure fore vacuum on an existing electron microscope. Application received by Commissioner of Customs: July 1, 1969.

Docket No. 70–00002–88–23600. Applicant: Glaciological Institute, Michigan State University, East Lansing, Mich. 48823. Article: Ice drill for measuring depth of glacier. Manufacturer: University of Oslo, Norway. Intended use of article: The article will be used for measuring the depth of glaciers in connection with research and instruction on glaciers. Application received by Commissioner of Customs: July 2, 1969.

Docket No. 70–00003–33–46040. Applicant: Harvard University, Purchasing Department, 75 Mount Auburn Street, Cambridge, Mass. 02138. Article: Electron microscope, Model EM 9S. Manufacturer: Carl Zeiss, Inc., West Germany. Intended use of article: The article will be used primarily for teaching fundamental techniques of electron microscopy to graduate students, post doctoral fellows and interested staff members whose basic training has been in either physiology or chemistry. These students will apply electron microscopy to problems encountered in continuing research programs, such as structural and functional organization of nervous systems of vertebrates, mechanisms involved in the establishment of connections in the developing nervous system, neuronal plasticity, and modes of cell interaction. Application received by Commissioner of Customs: July 2, 1969.

Docket No. 70–00004–33–46040. Applicant: University of California, Lawrence Radiation Laboratory, East End of Hearst Avenue, Berkeley, Calif. 94720. Article: Electron microscope, Model EM6–G8 and accessories. Manufacturer: Associated Electrical Industries, U.K. Intended use of article: The article will be used for materials research which includes crystalline amino acids, proteins, viruses, nucleic acids, lipids and cell membranes. Properties to be investigated include structure-analysis, sensitivity to damage in the electron beam and sensitivity to damage by specimen-preparation techniques. Objectives include high resolution structure information to be obtained both by electron diffraction and direct electron microscopy. Application received by Commissioner of Customs: July 2, 1969.

Docket No. 70–00005–33–46040. Applicant: University of Virginia, School of Medicine, Charlottesville, Va. 22903. Article: Electron microscope, Model EM 300 and accessories. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended use of article: The article will be used initially for the study of fine structural differences between cancer cells and their normal counterparts, both growing and nongrowing and fine structural abnormalities that occur in rat hepatocytes during the chemical induction of liver tumors. The materials to be used in these proposed investigations consist of tumor cells derived from a variety of normal cell types, both in animals and humans and hepatocytes from rats sacrificed during continuous administration of hepatic carcinogen diethylnitrosamines until the appearance of liver tumors. Application received by Commissioner of Customs: July 2, 1969.

Docket No. 70–00007–33–11000. Applicant: National Institute of Mental Health, Laboratory of Preclinical Pharmacology, William A. White Building, St. Elizabeths Hospital, Washington, D.C. 20032. Article: Gas chromatograph-mass spectrometer, Model LKB 9000. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used for studies concerning the quantitative estimation of turnover rates of acetylcholine and its precursor, choline, in the central and peripheral nervous systems. Additional intended purposes include similar studies as those described for acetylcholine, with other potential and known neurotransmitters and studies of the effects of various cholinergic and other drugs upon turnover rates of acetylcholine. It will also be used for investigation of drug metabolites in man, as well as in experimental animals. Application received by Commissioner of Customs: July 2, 1969.

Docket No. 70–00008–33–46040. Applicant: University of California, San Francisco Medical Center, Third and Parnassus, San Francisco, Calif. 94122. Article: Electron microscope, Model HS–8. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article will be used to introduce medical and graduate students to the techniques of electron microscopy. The techniques employed during electron microscopic examinations of tissue sections become increasingly important to many types of investigations. Therefore, it is necessary to introduce medical and graduate students to the potentialities and limitations of these techniques to receive academic credits for courses titled Anatomy 199 and Anatomy 214 which are offered fall, winter and spring. Application received by Commissioner of Customs: July 3, 1969.

Docket No. 70–00013–00–61800. Applicant: Science Center of Pinellas County, Inc., 7701 22d Avenue North, St. Petersburg, Fla. 33710. Article: Hemispherical reinforced plastic asembly, Type 14. Manufacturer: Sailcraft Ltd., Canada. Intended use of article: The article will be used as an accessory to an Apollo model planetarium and projector ordered by the applicant from the Goto Optical Co. Application received by Commissioner of Customs: July 7, 1969.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69–9661; Filed, Aug. 15, 1969; 8:45 a.m.]

STATE UNIVERSITY OF NEW YORK AT BUFFALO

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69–00379–33–10595. Applicant: State University of New York at Buffalo, 1803 Elmwood Avenue, Buffalo, N.Y. 14207. Article: Recycling chromatography equipment as follows:

Selector valves; peristaltic pump; flow analyzer, Uvicord II; recorder; and separation column.

Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used for the purification of human enzymes from individuals with inherited variation. Using this particular apparatus, purified crystals of enzyme

can be purified from approximately one pint of blood, whereas most techniques require up to 10 or even more units of blood. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which the foreign article is intended to be used is being manufactured in the United States. Reasons: The foreign article is an integrated recycling chromatographic system of several components specifically designed for the purification of enzymes from human blood which shows inherited variations. We are advised by the Department of Health, Education, and Welfare (HEW) in a memorandum dated April 9, 1969, that the capabilities such as the reliability of a developed system, conservation of human blood, and the unique design system are pertinent to the purposes for which the foreign article is intended to be used. HEW further advises that it knows of no instrument or apparatus being manufactured in the United States which provides these pertinent characteristics.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69-9662; Filed, Aug. 15, 1969; 8:45 a.m.]

TEXAS A&M UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69-00446-01-11000. Applicant: Texas A&M University, Department of Biology, College Station, Tex. 77843. Article: Gas Chromatograph-Mass Spectrometer, Model LKB 9000. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used in connection with a research program dealing with the biology, chemistry, and biochemistry of two classes of compounds; hormones and pheromones of insects. An integral part of this program is the structural identification of the hormones and pheromones, their precursors and metabolites. A second aspect consists of the synthesis of the hormones, pheromones, and their analogues. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is a functionally integrated instrument which combines a gas chromatograph unit with a mass spectrometer unit. An essential component of the combination is the interface or separator which connects the two units. The primary function of the interface is to separate the fractions of the substance undergoing investigation from the carrier gas by which the sample was conducted through the gas chromatograph, before the sample enters the mass spectrometer unit. We note that three such functionally integrated instruments are being manufactured in the United States—the Model 1015 manufactured by Finnigan Instrument Corp. (Finnigan); the GC/MS-66 system manufactured by Varian Associates (Varian); and the Model 270 GC-DF manufactured by Perkin-Elmer Corp. (P-E). A comparison of the Finnigan Model 1015 with the foreign article shows that this domestic instrument has a specified sensitivity of 100 nanograms of cholesterol injected into the gas chromatograph column, whereas the foreign article has a specified sensitivity of 10 nanograms of cholesterol injected into the gas chromatograph column. This indicates that the foreign article can produce a meaningful spectrum with a sample of one-tenth of that required to produce a meaningful spectrum with the Finnigan Model 1015 and that the sensitivity of the foreign article exceeds that of this domestic instrument by a factor of 10. It is also noted that the foreign article can achieve this sensitivity with a corresponding resolution of 750 at a 10 percent valley definition, whereas the Finnigan Model 1015 has a maximum specified resolution that is equivalent to 500 at the 10 percent valley definition.

In regard to the Varien GC/MS-66 system, the specified sensitivity of the foreign article also exceeds the specified sensitivity of this domestic instrument by a factor of 10. The quoted specification for the sensitivity of the P-E Model 270 GC-DF is "less than 3×10^{-9} gram/second of methyl stearate will produce spectrum with a signal-to-noise ratio substantially greater than 1 at parent mass peak, for a 1-second/decade scan rate." The corresponding quoted specification for the foreign article is "6×10^{-12} gram/second methyl stearate will produce a spectrum with a signal-to-noise ratio substantially greater than 1 at parent mass peak, for 1 second/decade scan rate." On the basis of these specifications, the sensitivity of the foreign article exceeds that of the P-E Model 270 GC-DF by a factor of 500. Since the applicant's research program involves the investigation of many compounds which are available only in minute quantities, the greater sensitivity of the foreign article is a pertinent characteristic.

For this reason, we find that none of the three domestic instruments cited above is of equivalent scientific value to the foreign article for such purposes as this article is intended to be used. We note that the Consolidated Electrodynamics Corp. (CEC) offers to furnish a mass spectrometer of its own manufacture, plus a newly developed separator for interfacing with a gas chromatograph, but did not offer to furnish a functionally integrated instrument.

We note further that § 602.1(e) of the above-cited regulations provides:

> The determination of scientific equivalency between a foreign instrument and a domestic instrument shall be based on comparisons of the pertinent characteristics and pertinent specifications of the foreign instrument with the similar pertinent characteristics and pertinent specifications of the domestic instrument. If such comparisons show that at least one domestic instrument or a reasonable combination of domestic instruments does possess all of the pertinent characteristics and specifications of the foreign instrument, the Administrator shall find that scientific equivalency does exist.

The phrase, "reasonable combination of domestic instruments", was intended to be construed in a reasonably narrow manner to include only combinations which would under normal commercial practice and usage generally be considered as a unit. The phrase is narrowly construed because the operative language of the statute and the explanatory language of the Committee Reports both speak in terms of comparisons of single instruments with other single instruments. Thus, item 851.60 of Schedule 8, part 4 of the Tariff Schedules prescribes that the test "if no domestic instrument or apparatus of equivalent scientific value * * * is being manufactured in the United States." Similarly, the Committee Reports speak in terms of "a" domestic article and "a" domestic instrument or apparatus. (H. Rept. No. 1779, House Committee on Ways and Means, 89th Cong., second session, p. 18, and S. Rept. No. 1678, 89th Cong., second session, p. 12.) The CEC offer relates only to a mass spectrometer and interface, without reference to a gas chromatograph. There is nothing in this offer which indicates that CEC will also furnish the gas chromatograph, functionally combine the three units and test the combination as a single instrument in order to establish the operating parameters of the combination. We note further that the specification for the sensitivity of the CEC 21-491 mass spectrometer, when functioning as a mass spectrometer, is given as "3×10^{-9} gram/second of methyl stearate will give a recognizable pattern at 1 second/decade scan speed, using the wide slits." This is considerably below the sensitivity specified for the foreign article. For the foregoing reasons, we find that none of the domestic instruments cited above is of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used.

Furthermore, the Department of Commerce knows of no other combination of instruments being manufactured in the United States and being offered as a functionally integrated single instrument, which is of equivalent scientific value to the foreign article for the purposes for which this article is intended to be used.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69-9663; Filed, Aug. 15, 1969; 8:45 a.m.]

WASHINGTON UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69-00534-33-46040. Applicant: Washington University, Department of Biology, St. Louis, Mo. 63130. Article: Electron microscope, Model Elmiskop 1A. Manufacturer: Siemens AG, West Germany. Intended use of article: The article will be used primarily for high resolution studies of cell utlrastructure in conjunction with thin sectioning, negative staining, and shadowing techniques. Studies include the ultrastructure of sperm flagella and correlating differences in ultrastructure with differences in locomotory patterns. Resolving the substructure of sperm flagella, necessary for these analyses, requires an instrument which is capable of extremely high resolution. The article will also be used for studies concerning meiotic cell division in the fungus gnat Sciara. Comments: No comments have been received with respect to this application. Decision: Application approved. No instruments or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article has a guaranteed resolving capability of 3.5 angstroms. The most closely comparable domestic electron microscope is the Model EMU-4B, manufactured by the Radio Corp. of America (RCA), which has a guaranteed resolving capability of 5 angstroms. (The lower the numerical rating in terms of Angstrom units, the better the resolving capability.) We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated July 2, 1969, that for the purposes for which the foreign article is intended to be used, the difference between 3.5 and 5 angstroms is significant.

We therefore find that the RCA Model EMU-4B electron microscope is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69-9664; Filed, Aug. 15, 1969; 8:45 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

CITRUS CENTRAL, INC.

Frozen Concentrate for Manufacturing Soft Frozen Orange Juice Deviating From Identity Standard; Temporary Permit for Market Testing

Pursuant to § 10.5 (21 CFR 10.5) concerning temporary permits to facilitate market testing of foods deviating from the requirements of standards of identity promulgated pursuant to section 401 (21 U.S.C. 341) of the Federal Food, Drug, and Cosmetic Act, notice is given that a temporary permit has been issued to Citrus Central, Inc., Post Office Box 475, Plymouth, Fla. 32768. This permit covers interstate marketing tests of frozen concentrate for manufacturing soft frozen orange juice and of its end product, soft frozen orange juice from concentrate, both with added calcium cyclamate, methylcellulose, and U.S. certified food color, ingredients not provided for by the standards of identity for frozen concentrated orange juice (21 CFR 27.109) or orange juice from concentrate (21 CFR 27.111).

Labels on the containers of concentrate are to name the ingredients on each principal panel as "calcium cyclamate, a nonnutritive sweetener, methylcellulose, and artificial color."

Labels on the containers in which the end product, the soft frozen orange juice from concentrate, is dispensed shall name the ingredients on each principal panel as "calcium cyclamate, a nonnutritive sweetener, methylcellulose, and artificial color".

At such time that an order ruling on the proposal to set forth the conditions for safe use of cyclamic acid and its salts (34 F.R. 6194) becomes effective, any provisions of that order pertaining to the foods distributed under this temporary permit will apply.

The products market tested under this permit are not intended as foods for special dietary use.

This permit expires August 8, 1970.

Dated: August 8, 1969.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 69-9674; Filed, Aug. 15, 1969; 8:46 a.m.]

METHYL PARATHION

Notice of Establishment of Temporary Tolerance for Pesticide Chemical

Notice is given that at the request of the American Cyanamid Co., Agricultural Division, Post Office Box 400, Princeton, N.J. 08540, a temporary tolerance of 0.05 part per million is established for negligible residues of the insecticide methyl parathion (*O,O*-dimethyl *O*-*p*-nitrophenyl thiophosphate) in or on the raw agricultural commodity cottonseed. The Commissioner of Food and Drugs has determined that this temporary tolerance will protect the public health.

A condition under which this temporary tolerance is established is that the insecticide will be used in accordance with the temporary permit issued by the U.S. Department of Agriculture. Distribution will be under the American Cyanamid Co. name.

This temporary tolerance will expire August 7, 1970.

This action is taken pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(j), 68 Stat. 516; 21 U.S.C. 346a(j)) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: August 7, 1969.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 69-9675; Filed, Aug. 15, 1969; 8:46 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 17160, etc.; Order 69-8-64]

ASSEMBLY AND DISTRIBUTION SERVICE RULES

Order Regarding Modifications

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 11th day of August 1969.

In the matter of modifications of assembly and distribution service rules; Agreements CAB 19850 and 19891-A3; Dockets 17160, 17167, and 18070.

By agreement CAB 19850, 22 air carriers propose to modify their rules governing assembly service in the following respects:

1. Establish a calendar-day assembly period in lieu of a "floating" 24-hour period;

2. Restrict assembly service on one shipment to a single airport of origin;

3. Establish separate cube measurement (determination of dimensional weight), and separate assumed declared value/excess value declaration on each "part" of an assembly shipment, as opposed to the aggregate cube/value of all parts;

4. Provide that charges on all assembly service shipments shall be collected from the consignee; and

5. Provide that the foregoing practices shall be subject to the enforcement machinery of the Air Transport Association.

By a further agreement filing on June 25, 1968 (Agreement CAB 19891A3) all domestic airlines propose a minor and nonsubstantive revision of the definition of assembly and distribution service for the purposes of clarification.[1] The carriers do not propose any changes with respect to distribution service rules, nor do they have any other major agreements in force on distribution rules and practices.[2]

Following the Board's decision establishing minimum rates in 1948,[3] the Board investigated the practices of the carriers relating to accumulation, assembly, and distribution services, and prescribed model rules for these services,[4] including minimum charges for the services. Although the Board subsequently revoked the outstanding minimum rate orders,[5] which included prescribed minimum charges for assembly and distribution service, the model rules for assembly and distribution service are still in effect. While the Board has made certain modifications to the model rules,[6] it has denied requests to relax the requirement that assembly shipments be delivered at one time in one lot to one consignee.[7] Concurrent with denial of petitions cited above for "early-release," the Board invited comments as to whether the model rules relating to assembly and distribution service should be amended.[8] Responses were received from various direct and indirect air carriers and shippers, with the majority advocating early-release and/or some form of distribution at destination of portions of assembly shipments. Subsequently, inter-carrier discussions of accessorial cargo services, including assembly and distribution rules, were authorized by the Board subject to certain conditions,[9] and the instant agreements result from such discussions.[10]

Carrier participation in the proposed assembly service agreement No. 19850 is limited to the following: [11]

Airlift International, Inc. (Airlift).
Allegheny Airlines, Inc (Allegheny).
American Airlines, Inc. (American).
Braniff Airways, Inc.
Continental Air Lines, Inc.
Eastern Air Lines, Inc. (Eastern).
The Flying Tiger Line Inc. (Flying Tiger).
Frontier Airlines, Inc.
Lake Central Airlines, Inc.[12] (Lake Central).
Mohawk Airlines, Inc.
National Airlines, Inc.
North Central Airlines, Inc.
Northeast Airlines, Inc.
Northwest Airlines, Inc. (Northwest).
Ozark Air Lines, Inc.
Pacific Air Lines, Inc.[12] (Pacific).
Piedmont Aviation, Inc.
Southern Airways, Inc.
Trans-Texas Airways, Inc.[12] (Trans-Texas).
United Air Lines, Inc. (United).
West Coast Airlines, Inc.[12] (West Coast).
Western Air Lines, Inc. (Western).

In support of their agreement, the carriers state that they have attempted to resolve the assembly service problems by industry agreement, rather than by individual carrier action, because of the generally recognized need for uniformity of practice within an industry which serves a large number and variety of individual shippers; that the subject matter of the agreement involves practices which can by their nature be burdensome and costly to the carriers and should, therefore, be provided without restriction only when there is a genuine shipper need for them and when substantially all shippers benefit equally therefrom; that to the extent such services are required by only a relatively few shippers, the services provided would inevitably be at the expense of the majority of shippers who do not receive them; and that since these services do involve benefits to some, competitive considerations obviously make it difficult, if not impossible, for individual carriers to refuse to provide such services while other carriers with which they are in direct competition continue to do so.

The carriers further state that policies and procedures with respect to incidental services of this sort are most appropriately established through inter-carrier agreement than through the exercise of the Board's general rulemaking powers; that the Board still can maintain its regulatory control over these agreements by virtue of its powers under section 412 of the Act, while, at the same time, permitting a greater degree of carrier flexibility to meet new developments in the dynamic and constantly changing field of air freight transportation; that rulemaking of general applicability cannot effectively deal with the variety of detailed and specific provisions needed to produce sound and uniform practices and procedures in this area, and, even if the Board should exercise its rulemaking prerogatives in these areas, industry agreements certainly would still be necessary to fill in the details of the general rules and to provide for workable and uniform practices and procedures; and that a further advantage to resolution of these matters by industry agreement is that it enables self-policing by the industry through its own self-enforcement machinery.

Objections to the proposed modifications of assembly service rules have been filed by the Air Freight Forwarders Association (AFFA), on behalf of its members, stating that the requirement that all assembly shipments be accepted and originated at a single-airport-of-origin would be a further deterrent to the use of the assembly rule at the three co-terminal airports in New York; that although the forwarders do not oppose a uniform fixed 24-hour period, the calendar-day basis of the agreement as filed

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[1] The agreement consists of the addition of the following quoted words to the Board's model rules:

A part of a shipment, for the purpose of this rule, shall consist of one package, piece or bundle, or two or more packages, pieces or bundles, accepted by the carrier as a group or unit "at origin, or delivered by the carrier as a group or unit at distribution point."

[2] The form and content of the shipper-prepared distribution manifest, showing the breakdown of shipment-parts to the multiple consignees, is specified in a Board-approved agreement.

[3] Air Freight Rate Investigation, 9 CAB 340 (1948).

[4] 12 CAB 337, 345 (1950).

[5] 34 CAB 269 (1961).

[6] Pursuant to petitions by the carriers, the Board has modified the model rules to permit break-bulk of distribution shipments at destination, the on-forwarding of one or more portions thereof to points beyond such destination, and withdrawal at destination of portions of assembly shipments with a corresponding rerating of the withdrawn portion and with the remainder of the assembly shipment rated as a separate shipment.

[7] Order E-23425 dated Mar. 28, 1966, in Docket 16973 denied a petition for amendment of the rules to permit early-release at destination of portions of assembly shipments.

[8] Order E-23426 dated Mar. 28, 1966, in Docket 17160; responses received from American, Delta, Eastern, Flying Tiger, Pan American, TWA, United, Honolulu Air Cargo doing business as Aero Forwarding, Pacific Air Freight, Inc., Aerospace Airfreight Association, Inc., and Hewlett-Packard Co.; see also United's petition in Docket 18070.

[9] Order E-24599 dated Jan. 3, 1967; Order E-24729, dated Feb. 8, 1967; and Order E-25146 dated May 15, 1967, in Docket 17167. See also Order 69-1-54 dated Jan. 13, 1969, approving a series of carrier agreements on accessorial cargo services.

[10] As required by the Board in authorizing the discussions, the airlines advised interested shippers in advance of final deliberation as to proposals under consideration, such shippers were given opportunity to comment upon the proposals, both in writing and in person, and airline-shipper meetings (including forwarders) were held in 1967. Meeting notices and minutes on all airline meetings have been provided to shippers and filed with the Board.

[11] In signing the agreement, Northwest and Flying Tiger excepted the paragraph which provides that all assembly shipments must be accepted and originated at a single-airport-of-origin.

Flying Tiger further conditioned its signature to the agreement that it shall not be binding until counterparts have been executed and are effective for American, Northwest, Trans World Airlines, Inc. (TWA), and United. Consequently, due to TWA's nonparticipation, Flying Tiger's participation appears to be voided, and Northwest's participation excludes the single-airport-at-origin paragraph of the proposed agreement.

Western conditioned its approval to the agreement "with the understanding that all major carriers which are competitive with Western have indicated that they will also execute these agreements."

[12] Lake Central is now merged with Allegheny; Pacific and West Coast into Air West, Inc. Trans-Texas is now called Texas International Airlines, Inc.

is operationally unsuitable for the air freight forwarders, and that if a fixed period is to be adopted, a 24-hour period beginning at 2:01 a.m. and ending at 1:59 a.m. would be more practicable. The forwarders do not believe that the current assembly service rules or the proposed modifications meet the present and future requirements of the airlines for more traffic, the need of the forwarder for round-the-clock deliveries to the airlines, and the desires of the shipping public for improved rate and service advantages.

The forwarders recommend that the present assembly and distribution rules be left as they are, that the Board defer action on the proposed modification to the existing model rules and issue a show cause order or a notice of proposed rule making providing for a form of "early-release" rule. The forwarders would have such rule put into effect for an experimental period of at least 12 months in order to determine its effect upon the direct air carriers, the indirect air carriers and the shipping public, with provisions for detailed traffic records to be submitted by the carriers and the forwarders on the operation of the proposal during the temporary period. A draft form of an "early-release" rule has been proposed by the forwarders.

In their reply to the forwarder protest, the direct air carriers state that the 24-hour rule has resulted in a situation which is difficult, if not impossible, to properly administer and police, and that the proposed calendar-day rule, as well as the proposed single airport-at-origin rule, are not inconsistent with the Board's model rules on assembly and distribution service. The direct carriers also oppose the forwarder proposal for the Board to defer action on the airlines' agreement pending initiation of Board action aimed at revision of the model rules to permit early release of parts of assembly shipments.

Calendar-day vs. 24-hour day. Although the Board previously established a "floating" 24-hour day for the receipt of parts of an assembly shipment (12 CAB 337, 345), it is apparent that the airlines have found the current rule difficult to administer, and that it tends toward abuses. In these circumstances, the restriction of the 24-hour period to a calendar day does not appear unreasonable.

Single airport-of-origin. The airlines' proposal to limit assembly service to a single airport-of-origin is apparently designed to stop the practice of assembly at multiairports serving the same city or metropolitan area, for example, La Guardia, Kennedy International, and Newark Municipal serving New York, and O'Hare International and Midway serving Chicago. It does not appear that reference to "point of origin" in the model rules was intended to encompass acceptance or delivery by the carrier of assembly or distribution shipment parts at more than a single receiving or delivery point. Moreover, the restriction proposed by the carriers is consistent with the concept that traffic involved in a single shipment have a single origin.

Separate cubing of the parts of an assembly service shipment. Most of the carriers[13] at present consider the entirety of an assembly shipment for purposes of applying cubic dimensional weight, i.e., cube weight computed at 250 cubic inches per pound (6.9 pounds per cubic foot) as a shipment minimum weight. By aggregating the dimensions of all assembly shipment parts, a not-so-dense part can easily be absorbed into the average cube-weight of all parts, and such light part will then not be assessed cube-weight. The impractical feature of the present rule, according to the airlines, is that it presumes all parts of the shipment are either (1) separately measured and weighed, with the data recorded for subsequent aggregating and averaging, or (2), at some one point in time, available for weighing and measuring as a single shipment.

Since most parts of assembly shipments may move on the next available flight following receipt, the carriers may not, as a practical matter, be able to effectively compute the cube of the total shipment at origin, nor, because of the pressures of delivery, can total shipment cube be determined at destination because of the impracticability of stacking and measuring the total shipment in one place at one time. No objection has been filed with the Board as to this provision.

Separate valuation of the parts of an assembly shipment. Similar to the treatment of cube-weight, the carriers also propose to treat separately each part of an assembly shipment for purposes of establishing the carriers' assumed liability, typical 50 cents per pound or $50 per shipment, whichever is greater, and as the base for shippers' declaration of additional valuation in excess of the foregoing. The latter is typically assessed 10 cents per $100, or fraction thereof, by which such declaration exceeds the carrier's assumed liability.

The present practice of the carriers is to base liability and excess valuation on the aggregate weight of all parts. Thus, under the carriers' proposal, loss or damage of a number of "parts" to some small assembly shipments would give a shipper the benefit of separate $50 allowances on each part, as opposed to a total limitation of $50 on the aggregate shipment. On the other hand, a loss of a particular part of a large assembly shipment will now limit the recovery to the higher of $50 per part or 50 cents a pound on the lost part, instead of 50 cents per pound based on the aggregate weight of the entire shipment. No protest has been lodged with the Board on this provision.

It does not appear adverse to the public interest for the carriers to apply the liability rule to the separate parts of assembly shipments. Our action in approving this portion of the agreement is without prejudice to a final determination of the reasonableness of the liability rule, which is now under review in the liability rules inquiry in Docket 19923.

Payment of charges. The carrier agreement requires that charges be collected from the consignee on an assembly shipment. The Board has previously required that payment be made by the consignee where there is more than one consignor, and has noted that there may be difficulties in apportioning charges among the parties liable therefor.[13] It is the Board's understanding that the carriers make this proposed change primarily (1) because portions of the total charges on the shipment are not known until delivery is completed at destination, and (2) to simplify central billing arrangements with forwarders who are the most substantial users of assembly service. This requirement does not appear unduly restrictive, or in conflict with the Board's model rules. No protest has been voiced against this feature of the agreement.

Enforcement. The carriers propose to subject their agreement or assembly service to their own enforcement machinery, as on other accessorial services. The Board has previously approved other carrier agreements concerning enforcement of cargo practices.[14]

The airfreight forwarders, while not objecting to all elements of the instant agreement, request the Board to defer action on it, thus leaving the present assembly and distribution rules in effect, and to initiate proceedings to institute a provision for "early-release" of assembly shipments. On the basis of our review of the agreement before us, together with the considerations advanced by the forwarders, we have concluded that the agreement is not adverse to the public interest. There is, therefore, no basis to defer action on it or to do other than approve it. With respect to the absence of an "early-release" provision from the agreement, the carriers in their discussions considered the matter but no agreement to so modify the rules was reached. To the contrary, the carriers, in consideration of a need for improved revenue yield, concluded that the assembly rules should be tightened. It appears that an "early-release" rule would principally benefit assembly shipments from a single consignor to a single consignee. While some commercial or industrial shippers, such as large mail order firms, might also fit within the suggested single-consignor/consignee limitation on "early-release," and be benefited accordingly, numerous other shippers or consignees would be denied the rate concession with respect to traffic receiving essentially the same transportation service. Consequently, we will deny the forwarders' request that the Board initiate procedures to modify the assembly rules to permit early release. The order herein will also dismiss proceedings in this and other dockets involving comments or requests for modifications of the rules.

Accordingly, pursuant to the provisions of the Federal Aviation Act of 1958,

[13] Airlift, Delta Air Lines, Inc., Eastern, and National currently apply separate cubing to each part of an assembly shipment.

[13] 12 CAB 337, 345 (1950).

[14] Order 68-10-105 dated Oct. 18, 1968.

and particularly sections 204(a), 412, and 414 thereof:

It is ordered, That:

1. Agreements CAB 19850 and 19891–A3 are approved.

2. Petitions and reponses in Dockets 17160, and 17167, and 18070, and the complaint of the Air Freight Forwarders Association on Agreement CAB 19850 in Docket 17167, are hereby dismissed.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 69-9716; Filed, Aug. 15, 1969; 8:48 a.m.]

[Docket No. 21221]

CITY INVESTING CO. AND CAPITOL INTERNATIONAL AIRWAYS, INC.

Notice of Prehearing Conference

Joint application of City Investing Co., and Capitol International Airways, Inc., for approval of acquisition of control under section 408 of the Federal Aviation Act of 1958, as amended.

Notice is hereby given that a prehearing conference on the above-entitled application is assigned to be held on September 9, 1969, at 10 a.m., e.d.s.t., in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Robert M. Johnson.

Dated at Washington, D.C., August 12, 1969.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[F.R. Doc. 69-9717; Filed, Aug. 15, 1969; 8:48 a.m.]

[Docket No. 20420]

TWIN CITIES-DES MOINES-ST. LOUIS PROCEEDING

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled matter is assigned to be held on September 18, 1969, at 10 a.m., e.d.s.t., in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Thomas P. Sheehan.

The Bureau of Operating Rights will participate in this proceeding, and accordingly, the Bureau may file exhibits on or before August 29, 1969. Rebuttal exhibits, if any, to the Bureau's exhibits may be filed on or before September 10, 1969.

Dated at Washington, D.C., August 12, 1969.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[F.R. Doc. 69-9718; Filed, Aug. 15, 1969; 8:48 a.m.]

CIVIL SERVICE COMMISSION

DEPARTMENT OF JUSTICE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorized the Department of Justice to fill by noncareer executive assignment in the excepted service the position of Associate Deputy Attorney General for Legislation, Office of the Deputy Attorney General.

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

[F.R. Doc. 69-9703; Filed, Aug. 15, 1969; 8:48 a.m.]

DEPARTMENT OF LABOR

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under the authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Labor to fill by noncareer executive assignment in the excepted service the positions of Associate Manpower Administrator, U.S. Training and Employment Service; and Director, Intergovernmental and Interagency Relations Staff.

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

[F.R. Doc. 69-9704; Filed, Aug. 15, 1969; 8:48 a.m.]

DEPARTMENT OF LABOR

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under the authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Labor to fill by noncareer executive assignment in the excepted service the position of Deputy Manpower Administrator for Employment Security.

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

[F.R. Doc. 69-9705; Filed, Aug. 15, 1969; 8:48 a.m.]

POST OFFICE DEPARTMENT

Notice of Title Change in Noncareer Executive Assignment

The notice of November 17, 1967, by the Civil Service Commission authorizing the Post Office Department to fill the position of Special Assistant to the Postmaster General for International Organizations, Office of the Postmaster General by noncareer executive assignment in the excepted service is hereby amended to show that the position is retitled, Special Assistant to the Postmaster General for International Postal Affairs.

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

[F.R. Doc. 69-9706; Filed, Aug. 15, 1969; 8:48 a.m.]

DEPARTMENT OF TRANSPORTATION

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Transportation to fill by non-career executive assignment in the excepted service the position of Chief Counsel, Urban Mass Transportation Administration.

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

[F.R. Doc. 69-9707; Filed, Aug. 15, 1969; 8:48 a.m.]

DEPARTMENT OF TRANSPORTATION

Notice of Title Change in Noncareer Executive Assignment

By notice of November 17, 1967, F.R. Doc. 67-13608, the Civil Service Commission authorized the departments and agencies to fill by noncareer executive assignment, certain positions removed from Schedule C of Civil Service Rule VI by 5 CFR 213.3301a on November 17, 1967. This is notice that the title of one such position so authorized to be filled by noncareer executive assignment in the Federal Aviation Administration has been changed from Director of Information Services to Assistant Administrator for Public Affairs.

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

[F.R. Doc. 69-9708; Filed, Aug. 15, 1969; 8:48 a.m.]

UNITED STATES INFORMATION AGENCY

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the U.S. Information Agency to fill by noncareer

executive assignment in the excepted service the position of Deputy General Counsel, Office of the General Counsel.

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

[F.R. Doc. 69-9709; Filed, Aug. 15, 1969; 8:48 a.m.]

FEDERAL MARITIME COMMISSION

STEAMSHIP OPERATORS INTERMODAL COMMITTEE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed by:

Mr. Edward H. Kotun, Secretary, Steamship Operators Intermodal Committee, Farrell Lines, Inc., 1 Whitehall Street, New York, N.Y. 10004.

Agreement No. 9735-1, between the member lines of the Steamship Operators Intermodal Committee, modifies Article 7 of the basic agreement to establish a membership fee of $100, which shall be returned to the members upon their resignation or upon dissolution of the agreement, provided that said fee may be applied to any outstanding indebtedness incurred under the agreement.

Dated: August 13, 1969.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 69-9711; Filed, Aug. 15, 1969; 8:48 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-3891, etc.]

D. B. McCONNELL ET AL.

Findings and Order; Correction

AUGUST 7, 1969.

D. B. McConnell (Operator), et al. and other Applicants listed herein, Dockets Nos. G-3891 et al.; Whittington Oil Co., Inc. (Operator) et al., Docket No. CI69-1052.

In the findings and order after statutory hearing issuing certificates of public convenience and necessity, amending orders issuing certificates, permitting and approving abandonment of service, terminating certificates, substituting respondents, making successors co-respondents, redesignating proceedings, making rate change effective, accepting agreement and undertaking and surety bond for filing, requiring filing of agreements and undertakings, and accepting related rate schedules and supplements for filing, issued July 25, 1969 and published in the FEDERAL REGISTER August 2, 1969 (34 F.R. 12646), on page 12649, 5th column: Change FPC Gas Rate Schedule "No 1" to read FPC Gas Rate Schedule "No. 4" related to Docket No. CI69-1052.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 69-9665; Filed, Aug. 15, 1969; 8:45 a.m.]

[Docket No. RP69-41]

TEXAS GAS TRANSMISSION CORP.

Order Providing for Hearing, Suspending Proposed Alternate Revised Tariff Sheets, and Denying Motion To Reject Rate Filing

AUGUST 11, 1969.

Pipeline rates—suspension of proposed increased rates—motion to reject rate filing denied.

On June 27, 1969, Texas Gas Transmission Corp. (Texas Gas) tendered for filing proposed changes in its FPC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, to become effective on August 12, 1969.[1] The proposed rate changes would increase charges for jurisdictional sales and transportation services by $36,813,407 annually, based on sales for the 12-month period ended March 31, 1969, as adjusted. Rates would be increased under all sales rate schedules and under transportation rate schedules X-21 and X-29. The filing also proposes a modification of the billing demand ratchet provision under Rate Schedules G-1, G-2, G-3, and G-4 from the existing 90 percent of contract demand to 95 percent of contract demand, and a modification of the measurement provisions in the General Terms and Conditions.

Texas Gas' filing consists of two alternate sets of revised tariff sheets, the first of which contains a proposed new section, to be included in the General Terms and Conditions of the tariff, providing for monthly billing adjustments to reflect current changes in Texas Gas' unit cost of purchased gas.[2] Texas Gas requests that, if the Commission finds that the proposed purchased gas adjustment provision is prohibited by § 154.38(d)(3) of the Commission's regulations under the Natural Gas Act and does not waive the terms of that section for purposes of Texas Gas' filing, the Commission accept for filing the alternate set of revised tariff sheets, which does not contain a purchased gas adjustment provision.

Texas Gas states that the principal reasons for the proposed rate increases are: (1) Increases in its cost of purchased gas; (2) costs of transportation by others of new offshore gas supplies and costs related to new underground storage facilities; (3) the proposed reversion from liberalized depreciation to straight line depreciation for tax purposes; (4) salary and wage increases; and (5) the need for an 8.5 percent rate of return.

Memphis Light, Gas, and Water Division of the city of Memphis, Tenn. (Memphis), on July 14, 1969, filed a motion to reject Texas Gas' rate filing. As grounds for its motion Memphis contends that the proposed tariff changes (1) include a purchase gas adjustment provision which is prohibited by § 154.38(d)(3) of the Commission's regulations under the Natural Gas Act and (2) are based upon the use of straight line tax depreciation instead of liberalized depreciation for tax purposes which Memphis says is contrary to our Opinion No. 497,497-A.[3] Texas Gas on July 24, 1969, filed its answer to Memphis' motion.[4]

Memphis' contentions raise substantive issues which should be heard in formal proceedings. Memphis' first contention is disposed of by our rejection herein of Texas Gas' revised tariff sheets containing the purchased gas adjustment provision. The objection to the use of straight line tax depreciation goes to the merits of the filing rather than to the question of compliance with our filing requirements with respect to which failure to comply would prompt our rejection of the filing.[5]

[1] The tariff sheets (described by Texas Gas as "alternate proposed tariff sheets") hereinafter suspended are as follows: First Revised Sheet Nos. 6, 12, 18, 24, 84, 85, and 86; Ninth Revised Sheet No. 68-I; 10th Revised Sheet Nos. 60-A, 68-BB, and 70-A; 11th Revised Sheet Nos. 13, 15, and 68-C; 12th Revised Sheet Nos. 7, 9, 19, 21, 25, 27, and 71; 15th Revised Sheet Nos. 68-G, 68-H, 68-K, and 68-I; 18th Revised Sheet Nos. 68-A, 68-B, 68-E, and 68-F; 19th Revised Sheet Nos. 45, 47, 51, 79-I, and 79-J; 20th Revised Sheet Nos. 5, 11, 23, 29, 33, 41, 49, 53, 55, 59, 61, 63, 67, 69, 70, 73 and 74; 21st Revised Sheet Nos. 17, 31, 35, 37, 43, 57, and 65; and 22d Revised Sheet No. 39 of Second Revised Volume No. 1; and Sixth Revised Sheet No. 254 and Third Revised Sheet No. 332 of Original Volume No. 2.

[2] The tariff sheets setting forth Texas Gas' proposed purchased gas adjustment provision are Original Sheets Nos. 102-B, 102-C, 102-D and 102-E.

[3] Midwestern Gas Transmission Company, 36 FPC 61, 36 FPC 599 (1966), affirmed sub. nom. Midwestern Gas Transmission Company v. FPC, 388 F. 2d 444 (CA 7, 1968).

[4] On Aug. 1, 1969, Texas Gas, in order to comply with § 154.63(e)(1) of the Commission's regulations under the Natural Gas Act, filed additional working papers showing the computation of its claim for Federal income taxes, for the test period, reflecting the flow through of liberalized depreciation in accordance with the order issued Nov. 8, 1966, in Docket No. RP67-10.

[5] Mississippi River Fuel Corp. v. FPC, 202 F.2d 899 (CA 3, 1953).

The reasonableness of including a purchased gas adjustment provision in Texas Gas' tariff has not been tested in any evidentiary proceeding. If accepted at this time, this provision would become operative after suspension. The purchased gas adjustment provision raises a number of substantive issues which should be fully explored and resolved before the rates and charges to Texas Gas' customers are subjected to changes by application of this proposed adjustment provision. Accordingly, we deem it inappropriate at this time to waive the provisions of § 154.38(d)(3) of the Commission's regulations under the Natural Gas Act to permit the filing of Texas Gas' set of revised tariff sheets containing a purchased gas adjustment provision. During the pendency of this proceeding, and prior to the determination of this issue, however, Texas Gas will not be precluded from requesting permission to track supplier rate increases which increase the purchased gas costs filed by Texas Gas in this proceeding.

Review of the filing indicates that certain issues are raised which require development in evidentiary proceedings. The proposed increased rates and charges have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

We contemplate that some of the issues involved in this proceeding may be susceptible of hearing and decision within the 5 months suspension period or shortly thereafter. In order that the collection and refunding of any possible excess charges may be avoided or limited, we are authorizing the Presiding Examiner to determine which issues, if any, may be tried in an initial phase of the hearing.

Twenty-one of Texas Gas' customers have filed petitions for leave to intervene in this proceeding. Notices of Intervention by municipal and State bodies having jurisdiction over the regulation of rates and charges for the sale of natural gas have been filed by city of Cincinnati, city of Columbus, and city of Toledo, all of Ohio, Public Service Commission of Kentucky, Public Service Commission of the State of New York, and Tennessee Public Service Commission.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in Texas Gas' FPC Gas Tariff, as proposed to be amended herein, and that the proposed tariff sheets listed in footnote (1) above be suspended, and the use thereof be deferred as herein provided.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the disposition of this proceeding be expedited in accordance with the procedures set forth below.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held commencing on September 25, 1969, 10 a.m., e.d.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C. 20426, concerning the lawfulness of the rates, charges, classifications, and services contained in Texas Gas' FPC Gas Tariff, as proposed to be amended herein.

(B) Pending such hearing and decision thereon, Texas Gas' revised tariff sheets listed in footnote (1) above are hereby suspended and the use thereof is deferred until January 12, 1970, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Texas Gas' revised tariff sheets proposing a purchased gas adjustment provision are hereby rejected for filing. These proposed tariff sheets may be made a part of the record herein, to be considered along with any modifications thereof or alternative provisions submitted by the parties or the Commission Staff, as a proposed purchased gas adjustment provision to be included in Texas Gas' tariff.

(D) At the hearing on September 25, 1969, Texas Gas' prepared testimony (Statement P), filed and served on July 14, 1969, together with its entire rate filing as submitted and served on June 27, 1969, as supplemented on August 1, 1969, be admitted to the record as Texas Gas' complete case-in-chief as provided by § 154.63(e)(1) of the Commission's regulations under the Natural Gas Act, and Order No. 254, 28 FPC 495, subject to appropriate motions, if any, by parties to the proceeding.

(E) Following admission of Texas Gas' complete case-in-chief, the parties shall present their views and the Presiding Examiner, in the exercise of his discretion, shall determine which issues, if any, shall be heard in an initial phase hearing; fix dates for service of Staff's and Interveners' evidence on such issues and service of Texas Gas' rebuttal testimony; fix dates for witnesses to appear for adoption of their testimony and to stand cross-examination thereon; and proceed with such hearing as expeditiously as feasible. The Examiner shall thereafter fix dates for service of testimony and cross-examination on all issues not being heard in the first phase hearing.

(F) Presiding Examiner Walter T. Southworth, or any other designated by the Chief Examiner for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding; shall prescribe relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in § 2.59 of the Commission's rules of practice and procedure.

(G) The motion to reject rate filing of Memphis Light, Gas, and Water Division of the city of Memphis, Tenn., is denied.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Acting Secretary.*

[F.R. Doc. 69-9667; Filed, Aug. 15, 1969; 8:45 a.m.]

[Docket No. G-3620, etc.]

J. R. WELCH ET AL.

Findings and Order; Correction

AUGUST 7, 1969.

J. R. Welch (successor to Carl D. and Edith Rhyne Jackson doing business as Jackson Brothers) and other Applicants listed herein, Docket Nos. G-3620, et al.; Pan American Petroleum Corp., Docket No. CI69-822 (G-14224).

In the findings and order after statutory hearing issuing certificates of public convenience and necessity, canceling docket numbers, amending orders issuing certificates, permitting and approving abandonment of service, terminating certificates, terminating proceedings, making successors corespondents, redesignating proceedings, requiring filing of agreement and undertaking, and accepting related rate schedules and supplements for filing, issued May 7, 1969 and published in the FEDERAL REGISTER May 17, 1969 (34 F.R. 7877), on page 7881, 3d column: Change location to read "Barber County, Kansas" in lieu of "Barber County, Oklahoma" related to Docket No. CI69-822.

KENNETH F. PLUMB, *Acting Secretary.*

[F.R. Doc. 69-9666; Filed, Aug. 15, 1969; 8:45 a.m.]

FEDERAL RESERVE SYSTEM

CHARTER NEW YORK CORP.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made to the Board of Governors of the Federal Reserve System pursuant to section 3(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)), by Charter New York Corp., which is a bank holding company located in New York, N.Y., for the prior approval of the Board of the acquisition by Applicant of all the voting shares of The Citizens Central Bank, Arcade, N.Y.

Section 3(c) of the Act provides that the Board shall not approve (1) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or (2) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may

be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of New York.

Dated at Washington, D.C., this 5th day of August 1969.

By order of the Board of Governors.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 69-9672; Filed, Aug. 15, 1969; 8:45 a.m.]

[Regs. G, T, U]

OTC MARGIN STOCKS

List

In accordance with § 207.2(f)(2) of Regulation G, "Securities Credit by Persons Other than Banks, Brokers, or Dealers", § 220.2(e)(2) of Regulation T, "Credit by Brokers and Dealers", and § 221.3(d)(2) of Regulation U, "Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks", there is set forth below the list of stocks traded over the counter, current as of August 11, 1969, that the Board of Governors has determined (in accordance with the criteria set forth in the Supplements to those regulations) to have the degree of national investor interest, the depth and breadth of market, the availability of information respecting the stock and its issuer, and the character and permanence of the issuer to warrant subjecting such stock to the requirements of such regulations.

Stocks appearing on the list have not been approved, in any way, by the Board and representation by any person that their appearance on the list indicates approval by the Board or any Government agency is unlawful.

Dated at Washington, D.C., the 11th day of August 1969.

Board of Governors of the Federal Reserve System.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

OTC MARGIN STOCKS

A. C. Nielsen Co., See Nielsen, A. C. Co.
Acushnet Co., $1 par value, common.
Addison Wesley Publishing Co., Inc., Class B, no par value, common.
Advance Ross Corp., common stock, $0.10 par value.
Alexander and Baldwin, Inc., common capital stock without par value.
Allegheny Beverage Corp., common stock, par value $1.
Alpine Geophysical Associates, Inc., $0.10 par value, common.
American District Telegraph Co., full paid and nonassessable par value $1 each, common.
American Express, $1.66⅔ par common.
American Fidelity Life Insurance Co. (Florida), common, $1 par.
American Furniture Co., Inc., $1 par value, common.
American Greetings Corp., Class A, par value $1.
American Heritage Life Insurance Co. (Florida), common, $1 par value.
American Maize-Products Co., without par or face value, common.
American National Insurance Co. (Texas), $1 par value, common.
American Nuclear Corp., $0.04 par value, common.
American Pipe and Construction Co., common, par value $5.
American Presidents Life Insurance Co., $1 par value, common.
American Re-Insurance Co., capital stock, $5 par value.
American Security and Trust Co., (Unit) (Washington, D.C.), $3.33⅓ par value, capital.
American Welding & Manufacturing Co., common, no par value.
Anadite, Inc., no par value, common.
Anchor Corp., Class B, nonvoting, common.
Anheuser-Busch, Inc., $1 par value, common.
Applebaums Food Markets, Inc., $1 par value, common.
Arden-Mayfair, Inc., common.
Arkansas-Missouri Power Co., $2.50 par common.
Arkansas Western Gas Co., $2.50 par value, common.
Arvida Corp., common.
Associated Cola-Cola Bottling Co., Inc., $1 par common.
Atlanta Gas Light Co., $5 par common.
Baird-Atomic, Inc., common, $1 par value.
Bangor Hydro-Electric Co., $5 par common.
Bankamerica Corp., common capital stock.
The Bank of California, N.A., $10 par value common capital.
The Bank of New York Co., $15 par common.
Barber-Greene Co., $5 par common.
Baystate Corp., common.
Beecham, Inc., $1 par common.
Betz Laboratories, Inc., 10 cents par common.
Bibb Manufacturing Co., common.
Bio-Dynamics, Inc., no par value common capital.
Bma Corp., $2 par common.
Bolt, Beranek, and Newman, Inc., common, no par value.
Brenco, Inc., $1 par common.
Browning Arms Co., capital, $1 par value.
The Brush Beryllium Co., $1 par common.
Buckbee-Mears Co., common, par value $0.10.
California-Western States Life Insurance Co., $2.50 par common capital.
Capital Holding Co. (Ky.), $1 par common.
Capitol International Airways, Inc., $1 par value, common.
Carson Pirie Scott & Co., common shares.
Cascade Natural Gas Corp., $1 par value, common.
Central Vermont Public Service Corp., common $6 par value.
Chesapeake Instrument Corp., $1 par common.
The Citizens and Southern National Bank of Georgia, common, $5 par value.
Citizens Utilities Co., $1 par common, Series A, $1 par common, Series B.
The Cleveland Trust Co., capital.
Clinton Oil Co., $0.10 par common.
Coastal States Life Insurance Co., common capital, $1 par value.
Cognitronics Corp., common stock $0.20 par value.
Colonial Stores Inc., common stock $2.50 par value.
Combined Insurance Co. of America, $1 par value, common.
Commonwealth Telephone Co., $6.66⅔ par value, common.
Computer Usage Co., Inc., common $25 par value.
Connecticut General Insurance Corp., $2.50 par common.
Continental Bank and Trust Co. (Pennsylvania), $5 par common.
Continental Computer Associates, Inc., No par value, common.
Contran Corp., $0.50 par value, common.
Cooper Laboratories, Inc., common.
The Cornelius Co., common, $0.20 par value.
Crocker-Citizens National Bank, capital.
The Cross Co., common, $5 par value.
D.P.A., Inc., common, $1 par value.
Dallas Airmotive, Inc., $1 par common.
Dalto Electronics Corp., common, $0.50 par value.
Dayton Corp., common, $1 par value.
Delhi Australian Petroleum, Ltd., $0.10 par common.
De Luxe Check Printers, Inc., $1 par common.
The Detroit Bank and Trust Co., capital, $10 par value.
Diamond Crystal Salt Co., $2.50 par value, common.
Disc, Inc., Class A common, par value $1.
The Downtowner Corp., common, par value $1.
Drew National Corp., $1 par common.
The Duriron Co., Inc., $1.25 par value, common.
Eastern Shopping Centers, Inc., $5 par common.
Edgcomb Steel Co., common, $5 par value.
Eli Lilly and Co., See Lilly, Eli and Co.
El Paso Electric Co., common, no par value.
Empire Life Insurance Co. of America (Texas), $1 par value, common.
Energy Resources Corp., common.
Epsco Inc., common, without par value.
Erie Technological Products, Inc., $2.50 par value, common.
Fabri-Tek, Inc., common.
Farmers New World Life Insurance Co., $1 par common.
Farrington Manufacturing Co., common, no par value.
The Federal Co., $12 par value, common.
The Fidelity Corporation of Pennsylvania, $1 par value, common.
Fidelity Corp. (Virginia), $1 par value, common.
Fidelity Union Life Ins. Co. (Texas), $1.25 par value, common.
Fidelity Union Trust Co. (New Jersey), $5 par value, capital.
First and Merchants Corp. (Virginia), $10 par value, common.
First Bank System, Inc. (Minnesota), $5 par value, common.
First Merchants National Bank, Asbury Park, $2.50 par value, common capital.
First Mortgage Investors (Massachusetts), shares of beneficial interest.
First National Life Ins. Co. (Alabama), $1 par, common (Class A).
The First National Bank of Boston, capital, $12.50 par value.
The First National Bank of Chicago, $20 par capital.
First National Bank in Dallas, $10 par common.

First National Holding Corp.—Memphis, $10 par common.
The First Pennsylvania Corp., $5 par common.
First Virginia Bankshares Corp., common.
Florida Telephone Corp., Class A, common.
Food Fair Properties, Inc., common, 1 cent par value.
The Franklin Life Insurance Co. (Illinois), $2 par common.
Franklin National Bank (New York), $5 par capital.
The Gas Service Co., common, $5 par value.
Gelman Instrument Co., no par common.
General Aircraft Corp., $1 par value, common.
Georgia International Corp., $1 par value, common.
Gino's Inc., Class A, common.
Girard Co., $1 par common.
Gleason Works, common.
Government Employees Insurance Co., $4 par value, common.
Government Employees Life Ins. Co., $1.50 par value, common.
Graphic Controls Corp., $1 par common.
Great Commonwealth Life Ins. Co., $1 par common.
Green Mountain Power Corp., $3.33⅓ par value, common.
Grinnell Corp., no par value, common.
Gulf Life Holding Co., capital.
Gyrodyne Company of America, Inc., common, $1 par value.
The Hanover Insurance Co., $10 par capital.
Hardee's Food System, Inc., no par, stated value $1, common.
Hartford Fire Insurance Co., common, par $2.50.
Hawaiian Airlines, Inc., $3 par common.
Heath Tecna Corp., common, no par value, $0.25 stated value.
Herff Jones Co., common, no par value.
Honolulu Gas Co., Ltd., common, $10 par value.
The Hoover Co., $2.50 common.
Horizon Corp., $0.01 par value, common.
Independent Life & Accident Insurance Co. (Florida), nonvoting, common.
Indiana Gas Co., Inc., common, without par value.
Integon Corp., common.
Interfinancial Inc., $1 par common.
International Book Corp., $0.02 par value, common.
International Milling Co., Inc., common, $1 par value.
Interstate Life and Accident Insurance Co. (Tennessee), $1 par value, common.
Intext Inc., no par value, common.
Iowa Southern Utilities Co., common, $10 par value.
ISI Corp., no par value, common.
Jamesbury Corp., $1 par value, common.
Jet Avion Corp., $0.10 par value, common.
Kaiser Steel Corp., common, 66⅔ cents par value.
Kaman Corp., Class A, common, nonvoting.
Kearney & Trecker Corp., common, $2 par value.
Kentucky Central Life Insurance Co., $1 par value, common, Class A, nonvoting.
Keyes Fibre Co., $1 par, common.
Keystone Custodian Funds, Inc., Class A.
King Resources Co., $1 par value, common.
Landa Industries, Inc., common, par value $0.10.
Liberty Equities Corp., common, $1 par value.
Liberty National Life Insurance Co. (Texas), common capital, par value $2.
Life Insurance Company of Kentucky, $1 par value, common.
Lilly, Eli and Co., common, $2.50 par value.
Lin Broadcasting Corp., common, $2 par value.
Lincoln National Corp., common, $2.50 par value.
Lomas and Nettleton Financial Corp., $2 par common.
Louisiana & Southern Life Insurance Co., $1 par value, common.
M.P.B. Corp., $2 par common.
Magnetics, Inc., $1 par common.
Maine Sugar Industries, Inc., common, $1.25 par value.
Major Realty Corp., common, $0.01 par value.
Mallinckrodt Chemical Works, Class A nonvoting, common.
Management Assistance, Inc., $0.10 par value, common.
Manufacturers and Traders Trust Co. (New York), $5 par capital.
Manufacturers National Bank of Detroit, $10 par common.
Mellon National Bank & Trust Co., $10 par common.
Midas International Corp., Class A, $1 par value, common.
Millipore Corp., $0.33⅓ par value, common.
The Mohawk Rubber Co., $1 par value, common.
Monarch Capital Corp., $1 par value, common.
Monmouth County National Bank, common capital.
Monumental Corp., $5 par value, common.
Murphy Pacific Marine Salvage Co., no par common.
Narragansett Capital Corp., $1 par common.
National Bank of Detroit, $12.50 par value, common.
The National City Bank of Cleveland, $8 par value, common.
The National Life Insurance Company of Florida, $1 par value, common.
National Newark and Essex Bank, capital, $10 par value.
National Semiconductor Corp., common.
National Western Life Ins. Co. (Texas), $1 par common, Class A.
Nationwide Corp., Class A, $2.50 par value.
New England Gas and Electric Association, $4 par, common shares.
New Jersey National Bank & Trust Co., $2 par value, common.
Nicholson File Co., $1 par value, capital.
Nielsen, A. C. and Co., $1 par value, common, Class A.
North American Life & Casualty Co. (Minnesota), $1 par common.
North Carolina Natural Gas Corp., $2.50 par common.
North Central Airlines, Inc., $0.20 par value, common.
Northwest Natural Gas Co. (Oregon), $3⅛ par value, common.
Northwestern National Life Insurance Co. (Minnesota), $2.50 par value, common.
O. M. Scott and Sons, see Scott, O. M. and Sons.
Ocean Drilling & Exploration Co., common, $0.50 par value.
The Ohio Casualty Insurance Co., capital.
The Oil Shale Corp., $0.15 par value, common.
The Old Line Life Insurance Co. of America, capital.
Ormont Drug & Chemical Co., Inc., $0.10 par value, common.
Otter Tail Power Co., common shares.
Ozite Corp., $1 par value, common.
Pabst Brewing Co., common without par value.
Panoil Co., $0.10 par common.
Parkview-Gem, Inc., common, par value $1.
Pauley Petroleum Inc., common, par value $1.
Pay'n Save Corp., common without par value.
Pennsylvania Engineering Corp., common.
Pennsylvania Gas & Water Co., no par value, common (stated value $10).
Perini Corp., common, par value $1.
Pettibone Corp., $10 par value.
Philadelphia Life Insurance Co., common, par value $1.
The Philadelphia National Bank, capital.
Philadelphia Suburban Water Co., $3.75 par value, common.
Photon, Inc., $1 par value, common.
Piedmont Aviation, Inc., $1 par value, common.
Piedmont Natural Gas Co., Inc., common.
Pittsburgh National Corp., $10 par value, common.
Provident National Bank (Pennsylvania), $12 par value, capital.
Public Service Co. of North Carolina, Inc., $1 par value, common.
Public Service Co. of New Hampshire, $5 par value, common.
Public Service Co. of New Mexico, $5 par value, Common.
Publishers Co., Inc., $0.40 par value, common.
Ransburg Electro-Coating Corp., common, $0.15 par value.
Recognition Equipment Inc., common.
Republic National Bank of Dallas, capital, $12 par value.
Republic National Life Insurance Co. (Texas), $1 par value, common.
Rival Manufacturing Co., common, par value $1.
Roberts Co., $1 par value, common.
Ross, Will Inc., see Will Ross, Inc.
Safeco Corp., $5 par value, common.
The Saint Paul Companies, Inc., capital.
Scientific Control Corp., $0.20 par value, common.
Scott O. M. and Sons Co., Class A, par value $1.
Scripto, Inc., Class A, common.
Seattle-First National Bank, $10 par value, capital.
Security Pacific National Bank, common.
The Seven-Up Co., $1 par value, common.
Shawmut Association Inc., $5 stated value, common.
Shop Rite Foods, Inc., $3.33⅓ par value, common.
Simon & Schuster Inc., common, par value $0.50.
Southern Industries Corp., no par value, common.
Southern New England Telephone Co., $25 par value, common.
Southern Union Gas Co., $1 par value, common.
The Southland Corp., $0.01 par value, common.
Southwest Gas Corp., $1 par value, common.
Southwest Gas Producing Co., Inc., common, par value $1.
Sovereign Industries, Inc., $0.04 par value, common.
The Standard Register Co., $0.50 par value, common.
State Street Bank & Trust Co., $10 par value, capital.
The Superior Electric Co., common, par value $1.
The Ti Corp. (of California), common, $1 par value.
Tampax Inc., par value $1 per share.
Taylor Wine Co., Inc., $2 par value, common.
Texas American Oil Corp., $0.10 par value, common.
Texas International Airlines Inc., $2 par value, common.
Tidewater Marine Service, Inc., $1 par value, common.
Tiffany & Co., par value $1, common.
Titan Group, Inc., $1 par value, common.
Tracor Inc., common.
Transcontinental Gas Pipe Line Corp., common, par value $0.50.
The Travelodge Corp., no par value, common.
Trico Products Corp., no par value, common.
The Trust Company of New Jersey, common capital.
Unicoa Corp., $2.50 par value, capital.
United Convalescent Hospitals, Inc., $1 par value, common.
The United Illuminating Co., no par value, common.
United Life and Accident Ins. Co. (New Hampshire), capital.

United Services Life Insurance Co. (Washington, D.C.), common.
United States Banknote Corp., common, $1 par value.
United States Fidelity and Guaranty Co. (Maryland), capital, $5 par value.
United Virginia Bankshares Inc., $10 par value, common.
University Computing Co., no par value, common.
The Valley National Bank of Arizona, common capital.
Variable Annuity Life Insurance Co. of America, $1 par value, common.
Virginia Commonwealth Bankshares, common, par value $5.
Virginia National Bank, $5 par value, capital.
Wachovia Corp., $5 par value, common.
Wallace Business Forms Inc., $5 par value, common.
Washington Natural Gas Co., $5 par value, common.
Webb Resources, Inc., common.
Wells Fargo Bank, N. A., capital, $10 par value.
Western Publishing Co., Inc., $1 par value, $2.50 stated value, common.
Will Ross, Inc., common, $1 par value.
Wisconsin Power & Light Co., $5 par value, common.
WPNB Corp., $5 par common.

[F.R. Doc. 69-9684; Filed, Aug. 15, 1969; 8:46 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-3909]

BSF CO.

Order Suspending Trading

AUGUST 12, 1969.

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 August 13, 1969, through August 22, 1969, both dates inclusive.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 69-9686; Filed, Aug. 15, 1969; 8:47 a.m.]

CAPITOL HOLDING CORP.

Order Suspending Trading

AUGUST 12, 1969.

It appearing to the Securities and Exchange Commission that the summary suspension of trading otherwise than on a national securities exchange in the common stock and all other securities of Capitol Holding Corp. 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 August 13, 1969, through August 22, 1969, both dates inclusive.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 69-9687; Filed, Aug. 15, 1969; 8:47 a.m.]

[812-2561]

STANDARD RESOURCES CORP.

Notice of Filing of Application for Order Exempting Proposed Transaction and Permitting Proposed Transaction

AUGUST 12, 1969.

Notice is hereby given that Standard Resources Corp. ("Standard"), 1355 Marconi Boulevard, Copiague, N.Y., a New York corporation registered as a closed-end management investment company under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 17(b) and (d) of the Act with respect to certain transactions incident to a proposed merger between Standard and Micro Semiconductor Corp. ("Micro"). The Application requests an order pursuant to section 17(b) of the Act exempting from section 17(a) of the Act the proposed transaction under which Standard would be merged into Micro, which as the surviving Delaware corporation would be renamed Standard Resources Corp. The application also requests an order granting said application pursuant to section 17(d) and Rule 17d-1 thereunder with respect to the proposed participation by certain shareholders and officers and directors of Standard in said transactions. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein which are summarized below.

On December 31, 1968, the total net assets of Standard were $662,978, and those of Micro were $671,727. Under the terms of the plan and agreement of merger, heretofore approved by the boards of directors of Standard and Micro, and which will be submitted to shareholders thereof for approval, upon the consummation of the merger each share of Standard then outstanding (there were 237,840 shares outstanding on Dec. 31, 1968) would be converted into one share of common stock of the surviving corporation, and a total of 237,840 shares of common stock of the surviving corporation will be issued in exchange for Micro's presently outstanding 10,000 common shares at the rate of 23.784 shares of the surviving corporation for each share of Micro. As the surviving corporation, Micro would succeed to the assets and business and assume the liabilities of Standard. The Agreement provides that the certificate of incorporation of the surviving corporation will be Micro's certificate of incorporation, as amended and restated under Delaware law. In the event that shareholders of Standard authorize a cessation of its status as an investment company and the proposed merger is consummated, the surviving corporation would sell the major part of its portfolio securities from time to time so that its assets would be available for investment in operating assets or the securities of operating subsidiaries.

As of May 31, 1969, Jemkap, Inc., was the beneficial owner of 37.7 percent of the issued and outstanding common shares of Standard, and would be the owner of 18.9 percent of the surviving corporation's shares. Jemkap, Inc., is controlled by Mr. J. M. Kaplan, who has informed the management of Standard that he intends to use his best efforts to have the shares owned beneficially by Jemkap, Inc., voted in favor of the proposed merger.

As of May 31, 1968, the principal shareholders of Micro were Mr. Arthur Feldon, who owned about 31 percent of its issued and outstanding shares, Mr. Steve Manning, who owned an equal interest, and Mr. Thomas C. Hall who owned 10 percent.

Geiger & Fialkov, a limited partnership organized under New York law, has as general and limited partners certain persons, including Mr. Richard Geiger, president and a director of Standard, Mr. Herman Fialkov, a director of Standard, and a trust with an interest of 2.8 percent of the profits and losses of the partnership for which Mr. J. M. Kaplan serves as trustee, who are, in their individual capacities "affiliated persons" of Standard within the meaning of section 2(a)(3) of the Act, which section defines "affiliated person" to include any officer or director, any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of another person and any person, 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by another person.

As consideration for a loan by Geiger & Fialkov to Messrs. Feldon and Manning pursuant to an agreement dated October 16, 1968, the partnership received a 6 percent promissory note (maturity July 31, 1969, unless extended) in the amount of $448,000, which is convertible at the option of Geiger & Fialkov (a) into 21.16 percent of the outstanding shares of Micro and (b) a 3-year 6 percent promissory note in the amount of

$224,000. The agreement provides the partnership with an irrevocable proxy to vote all of the shares of Micro held of record by Messrs. Feldon and Manning at any meeting of shareholders during the period when either of these notes is outstanding. In the event the partnership exercises its option and the merger between Standard and Micro is effected on the proposed terms, Geiger & Fialkov would own 50,330 shares, or 10.58 percent of the outstanding shares of the surviving corporation, for a total cost of $224,000.

The market price of Standard reached a high of approximately 19 asked in October 1968, after public announcement of the proposed merger, and was approximately 8 asked on August 1, 1969. The net asset value per share of Standard on December 31, 1968 was $2.79 and on June 30, 1969 was $2.62.

Standard states in its application that objecting shareholders have the right to demand and receive payment of an amount equal to the fair value of their stock; that the terms of the proposed merger are reasonable and fair and do not involve overreaching on the part of any affiliated person of Standard; that the proposed merger would be consistent with the policy of Standard as such policy would be amended at the meeting of shareholders called to act upon the plan and agreement of merger; that the proposed merger is consistent with the general purposes of the Act; and that the terms of the merger for the shareholders of Standard are not less advantageous to them than the terms of the participation of the above-named affiliated persons of Standard.

Section 17(a) of the Act prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling to or purchasing from such registered company any securities or other property, and thus would prohibit the proposed transaction unless the Commission upon application under section 17(b) of the Act grants an exemption from such prohibition. Section 17(b) states that the Commission shall grant such application and issue an order of exemption if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; if the proposed transaction is consistent with the policies of Applicant as recited in its registration statement and reports filed under the Act; and if the proposed transaction is consistent with the general purposes of the Act.

Section 17(d) of the Act and Rule 17d–1 thereunder provide, among other things, that it shall be unlawful for an affiliated person of a registered investment company or an affiliated person of such a person, acting as principal, to effect any transaction in which such registered company or a company controlled by such registered company is a joint and several participant with such person unless an application regarding such transaction pursuant to Rule 17d–1 has been granted by the Commission. In passing upon such applications, the Commission will consider whether the participation of such registered or controlled company in such joint enterprise, joint arrangement or profit-sharing plan on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Notice is further given that any interested person may, not later than September 2, 1969, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by the statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Standard at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements, thereof.

For the Commission (pursuant to delegated authority).

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 69–9685; Filed, Aug. 15, 1969; 8:46 a.m.]

TELSTAR, INC.

Order Suspending Trading

AUGUST 12, 1969.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock and all other securities of Telstar, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period August 13, 1969, through August 22, 1969, both dates inclusive.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 69–9688; Filed, Aug. 15, 1969; 8:47 a.m.]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 30; Cleveland Disaster 1]

MANAGER OF DISASTER BRANCH OFFICE, CLEVELAND

Delegations of Authority Regarding Financial Assistance Functions

I. Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30, 33 F.R. 10669, as amended (34 F.R. 8731) there is hereby redelegated to the Manager of Cleveland Disaster Branch Office the following authority:

A. *Financial assistance.* 1. To approve and decline disaster direct and immediate participation loans up to the total SBA share of (a) $30,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned exceed $35,000 for a single disaster on home loans, and (b) $100,000 on disaster business loans except to the extent of refinancing of a previous SBA disaster loan; and to approve disaster guaranteed loans up to $100,000.

2. To execute loan authorizations for Washington, area, and regional office approved loans and disaster loans approved under delegated authority, said execution to read as follows:

HILARY SANDOVAL, JR.,
Administrator,
By ----------
Manager,
Disaster Branch Office.

3. To cancel, reinstate, modify and amend authorizations for disaster loans approved under delegated authority.

4. To disburse unsecured disaster loans.

5. To extend the disbursement period on disaster loan authorizations or undisbursed portions of disaster loans.

II. The authority delegated herein may not be redelegated.

III. All authority delegated herein may be exercised by an SBA employee designated as acting manager of the disaster branch office.

Effective date: July 25, 1969.

JOHN F. O'BRIEN,
Acting Regional Director,
Cleveland Regional Office.

[F.R. Doc. 69–9677; Filed, Aug. 15, 1969, 8:46 a.m.]

CLIF-TEX SMALL BUSINESS INVESTMENT CO., INC.

Notice of Surrender of License

Notice is hereby given that Clif-Tex Small Business Investment Co., Inc. (Clif-Tex), has, pursuant to § 107.105 of the Regulations governing small business investment companies (33 F.R. 326, 13 CFR Part 107) surrendered its license to operate as a small business investment company (SBIC).

Clif-Tex was incorporated on April 22,, 1960, under the laws of the State of Texas to operate solely as an SBIC under the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.) (Act), and it was issued license number 10-0024 by the Small Business Administration on May 9, 1960.

Under the authority vested by the Act, and the regulations promulgated thereunder, the surrender of the license of Clif-Tex is hereby accepted and, accordingly, it is no longer licensed to operate as an SBIC.

Dated: July 30, 1969.

A. H. SINGER,
Associate Administrator for Investment.

[F.R. Doc. 69-9679; Filed, Aug. 15, 1969; 8:46 a.m.]

INVERNESS CAPITAL CORP.

Application for License

Notice hereby is given pursuant to § 107.103 of the regulations governing Small Business Investment Companies (13 CFR Part 107, 33 F.R. 326) that the parties listed below have applied to the Small Business Administration for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.). The proposed licensee is Inverness Capital Corp., having the address of 345 Park Avenue, New York, N.Y. 10022. It proposes to operate principally in the city of New York.

The Company is to commence operation with $1 million in private capital. The Company's stated purpose is to furnish equity capital and long-term loan funds to qualified small business concerns. The area of operations will not be restricted to any locality.

The Officers, Directors, and owner of the proposed licensee's common stock are:

Robert Barr Deans, Jr., 345 Park Avenue, New York, N.Y. 10017. Director and chairman of the board of directors.
G. Stanton Geary, 345 Park Avenue, New York, N.Y. 10017. Director and President.
Stewart B. Kean, Elizabethtown Gas Co., 1 Elizabethtown Plaza, Elizabeth, N.J. 07207. Director.
Charles K. Mills, Esq., Robinson, Mills & Welsh, The Press Building, 235 Montgomery Street, San Francisco, Calif., Director.
Phil E. Pearce, Post Office Box 567, Columbia, S.C., Director.
John M. Randolph, Old Mill Road, Greenwich, Conn., Director.
Walter D. Sohier, Curtis, Mallet-Prevost, Colt & Mosle, 63 Wall Street, New York, N.Y. 10005, Director and Secretary.
Jason W. Houck 1 Stone Place, Bronxville, N.Y., Director.
John E. Trunk, 21 The Lock, Rockville Center, Long Island, N.Y., Vice President and Treasurer.
John N. Marden, Curtis, Mallet-Prevost, Colt & Mosle, 63 Wall Street, New York, N.Y. 10005, Assistant Secretary.

The above officers and directors of the applicant are also officers and directors of Inverness Industries, Inc., which owns 378 of 505 shares (74.85 percent) of applicant's common stock. There are no other 10 percent stockholders of applicant's stock.

Prior to final action on the application, consideration will be given to any comments pertaining thereto which are submitted in writing, to the Associate Administrator for Investment, Small Business Administration, Washington, D.C. 20416, within a period of ten (10) days of the date of publication of this notice.

A copy of this notice shall be published in a newspaper of general circulation in the city of New York, N.Y.

Dated: August 5, 1969.

ARTHUR H. SINGER,
Associate Administrator for Investment.

[F.R. Doc. 69-9678; Filed, Aug. 15, 1969; 8:46 a.m.]

[Declaration of Disaster Loan Area 726]

MISSOURI

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of August 1969, because of the effects of certain disasters, damage resulted to residences and business property located in the town of Noel, in the State of Missouri.

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the area affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such area constitute a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Acting Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property, situated in the aforesaid town suffered damage or destruction resulting from explosion and fire occurring on August 3, 1969.

OFFICE

Small Business Administration Regional Office, 911 Walnut Street, Kansas City, Mo. 64106.

2. A temporary office will be established at Noel, Mo., address to be announced locally.

3. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to February 28, 1970.

Dated: August 5, 1969.

R. B. BLANKENSHIP,
Acting Administrator.

[F.R. Doc. 69-9680; Filed, Aug. 15, 1969; 8:46 a.m.]

[Declaration of Disaster Loan Area 727]

NEW JERSEY

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of July 1969, because of the effects of certain disasters, damage resulted to residences and business property located in Union and Essex Counties, N.J.;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Acting Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property, situated in the aforesaid counties, and areas adjacent thereto, suffered damage or destruction resulting from floods occurring on July 28, 1969, and continuing thereafter.

OFFICE

Small Business Administration Regional Office, 970 Broad Street, Room 1636, Newark, N.J. 07102.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to February 28, 1970.

Dated: August 8, 1969.

R. B. BLANKENSHIP,
Acting Administrator.

[F.R. Doc. 69-9681; Filed, Aug. 15, 1969; 8:46 a.m.]

[Declaration of Disaster Loan Area 728]

PENNSYLVANIA

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of August 1969, because of the effects of certain disasters, damage resulted to residences and business property located in Carbon and Schuylkill Counties, Pa.;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview

of the Small Business Act, as amended.

Now, therefore, as Acting Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property, situated in the aforesaid Counties, and areas adjacent thereto, suffered damage or destruction resulting from floods occurring on or about August 2, 1969.

OFFICE

Small Business Administration Regional Office, 1317 Filbert Street, Philadelphia, Pa. 19107.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to February 28, 1970.

Dated: August 8, 1969.

R. B. BLANKENSHIP,
Acting Administrator.

[F.R. Doc. 69-9682; Filed, Aug. 15, 1969; 8:46 a.m.]

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