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Part I

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**Agencies in this issue—**



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# Rules and Regulations

## Title 5—ADMINISTRATIVE PERSONNEL

### Chapter I—Civil Service Commission

### PART 213—EXCEPTED SERVICE

#### Department of the Interior

Section 213.3312 is amended to show that one position of Deputy Assistant Secretary for Applied Sciences, Office of the Assistant Secretary for Water Quality and Research, is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (21) is added to paragraph (a) of § 213.3312 as set out below.

§ 213.3312 Department of the Interior.

(a) *Office of the Secretary.* * * *

(21) One Deputy Assistant Secretary for Applied Sciences, Office of the Assistant Secretary for Water Quality and Research.

* * * * *

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

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

[F.R. Doc. 70-9743; Filed, July 28, 1970; 8:47 a.m.]

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### PART 213—EXCEPTED SERVICE

#### Department of Health, Education, and Welfare

Section 213.3316 is amended to show that the following positions are excepted under Schedule C: One Confidential Assistant (interdepartmental activities) each to the Administrator, Health Services and Mental Health Administration; the Commissioner, Social Security Administration; and the Administrator, Social and Rehabilitation Service; and one Private Secretary (interdepartmental activities) to the Commissioner, Food and Drug Administration. Effective on publication in the FEDERAL REGISTER, subparagraphs (8) and (9) are added to paragraph (h); subparagraph (3) to paragraph (l); and subparagraph (8) to paragraph (o) of § 213.3316 as set out below.

§ 213.3316 Department of Health, Education, and Welfare.

* * * * *

(h) *Office of the Assistant Secretary for Health and Scientific Affairs.* * * *

(8) One Confidential Assistant (interdepartmental activities) to the Administrator, Health Services and Mental Health Administration.

(9) One Private Secretary (interdepartmental activities) to the Commissioner, Food and Drug Administration.

* * * * *

(l) *Social Security Administration.* * * *

(3) One Confidential Assistant (interdepartmental activities) to the Commissioner.

* * * * *

(o) *Social and Rehabilitation Service.* * * *

(8) One Confidential Assistant (interdepartmental activities) to the Administrator.

* * * * *

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

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

[F.R. Doc. 70-9742; Filed, July 28, 1970; 8:47 a.m.]

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### PART 213—EXCEPTED SERVICE

#### Department of Health, Education, and Welfare

Section 213.3316 is amended to show that one position of Special Assistant for Telecommunications, Office of the Assistant Secretary for Planning and Evaluation, is excepted under Schedule C and that the position of Deputy Assistant to the Assistant Secretary for Education (Educational Television) is no longer excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (2) of paragraph (j) is revoked, and subparagraph (10) is added to paragraph (k) of § 213.3316 as set out below.

§ 213.3316 Department of Health, Education, and Welfare.

* * * * *

(j) *Office of the Assistant Secretary for Education.* * * *

(2) [Revoked]

(k) *Office of the Assistant Secretary for Planning and Evaluation.* * * *

(10) One Special Assistant for Telecommunications.

* * * * *

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

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

[F.R. Doc. 70-9741; Filed, July 28, 1970; 8:47 a.m.]

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### PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

#### Restrictions to Protect Competitive Principles

Section 330.504, which restricted the noncompetitive movement of an individual to a rural carrier position, is revoked. An editorial change, deleting the cross-reference to § 330.504, is made in § 330.501. Part 330 is amended as set out below.

§ 330.501 General restriction on movement after competitive appointment.

Except as provided in section 330.503, an agency may promote an employee or reassign him to a different line of work, or to a different geographical area, and it may transfer a present employee or reinstate a former employee of the same or another agency to a higher grade or different line of work, or to a different geographical area, only after 3 months have elapsed since the employee's latest nontemporary competitive appointment. The Commission may waive the restriction against movement to a different geographical area when it is satisfied that the waiver is consistent with the principle of open competition.

§ 330.504 [Revoked]

(5 U.S.C. 1302, 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

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

[F.R. Doc. 70-9744; Filed, July 28, 1970; 8:47 a.m.]

## Title 7—AGRICULTURE

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

### PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

#### Subpart U—U.S. Standards for Instant Nonfat Dry Milk

A notice of proposed rule making covering the issuance of amendments to U.S. Standards for Instant Nonfat Dry Milk (7 CFR Part 58, Subpart U) was published in the FEDERAL REGISTER on May 20, 1970 (35 F.R. 7739). It afforded interested persons the opportunity to submit within 30 days to the Hearing Clerk written data, views or arguments in connection with the proposal.

*Statement of consideration.* All comments received regarding the proposal were favorable. After considering all relevant information it has been determined that orderly marketing would be served best by making the effective date October 1, 1970.

In view of the extensive amendments to the U.S. Standards for Instant Nonfat Dry Milk and to correct the CFR section numbers, the corrected, amended standard is reprinted in full. The sections that have been amended are:

1. (3) (i) of § 58.2753(a).
2. (3) (ii) of § 58.2753(a).
3. (3) (viii) of § 58.2753(a).
4. (c) of § 58.2754.
5. (a) of § 58.2756.

The amended standards are as follows:

**Subpart U—U.S. Standards for Instant Nonfat Dry Milk** [1]

DEFINITIONS

Sec.
58.2750 Instant nonfat dry milk.

U.S. GRADE

58.2751 Nomenclature of the U.S. grade.
58.2752 Basis for determination of the U.S. grade.
58.2753 Requirements for the U.S. grade.
58.2754 U.S. grade not assignable.
58.2756 Test methods.
58.2759 Explanation of terms.

AUTHORITY: The provisions of this Subpart U issued under secs. 202–208, 60 Stat. 1087, as amended: 7 U.S.C. 1621–1627.

DEFINITIONS

**§ 58.2750 Instant nonfat dry milk.** [2]

(a) Instant nonfat dry milk is nonfat dry milk which has been produced in such a manner as to substantially improve its dispersing and reliquefication characteristics over that produced by the conventional processes.

(b) (1) "Nonfat dry milk" is the product resulting from the removal of fat and water from milk and contains the lactose, milk proteins and milk minerals in the same relative proportion as in the fresh milk from which made. It contains not over 5 percent by weight of moisture. The fat content is not over 1½ percent by weight, unless otherwise indicated.

(2) The term "milk" when used in this subpart means fresh, sweet milk produced by healthy cows, that has been pasteurized before or during the manufacture of the instant nonfat dry milk.

U.S. GRADE

**§ 58.2751 Nomenclature of the U.S. grade.**

The nomenclature of the U.S. grade is U.S. Extra.

**§ 58.2752 Basis for determination of the U.S. grade.**

(a) The U.S. grade of instant nonfat dry milk is determined on the basis of flavor and odor, physical appearance, bacterial estimate on the basis of standard plate count, coliform count, milkfat content, moisture content, scorched particle content, solubility index, titratable acidity and dispersibility.

(b) The final U.S. grade shall be established on the basis of the lowest rating of any one of the quality characteristics.

**§ 58.2753 Requirements for the U.S. grade.**

(a) U.S. Extra grade shall conform to the following requirements:

(1) *Flavor and odor (applies to reliquefied form).* Shall be sweet, pleasing and desirable but may possess the following flavors to a slight degree: Chalky, cooked, feed, flat.

(2) *Physical appearance.* Shall possess a uniform white to light cream natural color; shall be reasonably free-flowing and free from lumps except those that readily break up with very slight pressure.

(3) *Laboratory tests.* Shall be used to determine classification of the following quality characteristics:

(i) *Bacterial estimate.* Not more than 30,000 per gram, standard plate count.

(ii) *Coliform count.* Not more than 10 per gram.

(iii) *Milkfat content.* Not more than 1.25 percent.

(iv) *Moisture content.* Not more than 4.5 percent.

(v) *Scorched particle content.* Not more than 15.0 mg.

(vi) *Solubility index.* Not more than 1.0 ml.

(vii) *Titratable acidity.* Not more than 0.15 percent.

(viii) *Dispersibility.* Not less than 85.0 percent.

**§ 58.2754 U.S. grade not assignable.**

Instant nonfat dry milk shall not be assigned the U.S. grade for one or more of the following reasons: (a) Fails to meet the requirements for U.S. Extra grade, (b) has direct microscopic clump count exceeding 75 million per gram, or (c) the phosphatase test, when run at the option of the Department or when requested by the buyer or seller, shows more than 4 micrograms of phenol per milliliter of reconstituted nonfat milk.

**§ 58.2756 Test methods.**

(a) Testing methods contained in Methods of Laboratory Analyses for Dry Whole Milk, Nonfat Dry Milk, Dry Buttermilk and Dry Whey, Consumer and Marketing Service, U.S. Department of Agriculture, February 1, 1961 (mimeo), or the latest revision thereof, are to be used to determine bacterial estimate as standard plate count, direct microscopic clump count, coliform count, milkfat content, moisture content, scorched particle content, solubility index, titratable acidity, and flavor examination. Dispersibility shall be determined by the Modified Moats-Dabbah Method.

NOTE: All tests to be determined upon samples drawn from sound, undamaged packages.

(1) *Phosphatase activity.* Residual phosphatase shall be determined using Method II, Official Methods of Analysis of the Association of Official Agricultural Chemists, Ninth Edition, 1960 or latest revision thereof.

**§ 58.2759 Explanation of terms.**

(a) *With respect to flavor*—(1) *Slight.* Detected only upon critical examination.

(2) *Chalky.* A tactual type of flavor lacking in characteristic milk flavor.

(3) *Cooked.* Similar to a custard flavor and imparts a smooth aftertaste.

(4) *Feed.* Characteristic of the feed flavors in milk.

(5) *Flat.* Lacking characteristic flavor.

(b) *With respect to physical appearance*—(1) *Reasonably free-flowing.* Pours in a fairly constant, uniform stream from the open end of a tilted container or scoop.

(2) *Very slight pressure.* Lumps fall apart with only light touch.

(3) *Natural color.* A color that is white or light cream.

*Effective date.* This amendment shall become effective October 1, 1970.

Done at Washington, D.C., this 23d day of July 1970.

G. R. GRANGE,
*Acting Administrator.*

[F.R. Doc. 70-9722; Filed, July 28, 1970; 8:45 a.m.]

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

## PART 714—REFUNDS OF PENALTIES ERRONEOUSLY, ILLEGALLY, OR WRONGFULLY COLLECTED

On pages 8569 to 8571 of the FEDERAL REGISTER of June 3, 1970, was published a notice of proposed rule making to issue regulations governing refunds of penalties erroneously, illegally, or wrongfully collected.

Interested person were given 30 days after publication of the notice in which to submit written data, views, or recommendations with respect to the proposed regulations.

No written submissions pursuant to the notice were received and the proposed regulations, as published in the notice with the heading revised to read "Refunds of Penalties Erroneously, Illegally, or Wrongfully Collected," are adopted with the addition of an effective date provision as set forth below.

*Effective date:* Thirty days after publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on July 22, 1970.

KENNETH E. FRICK,
*Administrator, Agricultural Stabilization and Conservation Service.*

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[1] Compliance with these standards does not excuse failure to comply with the provision of the Federal Food, Drug, and Cosmetic Act.

[2] Instant nonfat dry milk covered by these standards shall not contain buttermilk or any added preservative, neutralizing agent or other chemical.

Sec.
714.35 Basis, purpose, and applicability.
714.36 Definitions.
714.37 Instructions and forms.
714.38 Who may claim refund.
714.39 Manner of filing.
714.40 Time of filing.
714.41 Statement of claim.
714.42 Designation of trustee.
714.43 Recommendation by county committee.
714.44 Recommendation by State committee.
714.45 Approval by Deputy Administrator.
714.46 Certification for payment.

AUTHORITY: The provisions of this Part 714 issued under secs. 372, 375, 52 Stat. 65, as amended, 66, as amended; 7 U.S.C. 1372, 1375.

### § 714.35 Basis, purpose, and applicability.

(a) *Basis and purpose.* The regulations set forth in this part are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, for the purpose of prescribing the provisions governing refunds of marketing quota penalties erroneously, illegally, or wrongfully collected with respect to all commodities subject to marketing quotas under the Act.

(b) *Applicability.* This part shall apply to claims submitted for refunds of marketing quota penalties erroneously, illegally, or wrongfully collected on all commodities subject to marketing quotas under the Act. It shall not apply to the refund of penalties which are deposited in a special deposit account pursuant to sections 314(b), 346(b), 356(b), or 359 of the Agricultural Adjustment Act of 1938, as amended, or paragraph (3) of Public Law 74, 77th Congress, available for the refund of penalties initially collected which are subsequently adjusted downward by action of the county committee, review committee, or appropriate court, until such penalties have been deposited in the general fund of the Treasury of the United States after determination that no downward adjustment in the amount of penalty is warranted. All prior regulations dealing with refunds of penalties which were contained in this part are superseded upon the effective date of the regulations in this part.

### § 714.36 Definitions.

(a) *General terms.* In determining the meaning of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. The definitions in Part 719 of this chapter shall apply to this part. The provisions of Part 720 of this chapter concerning the expiration of time limitations shall apply to this part.

(b) *Other terms applicable to this part.* The following terms shall have the following meanings:

(1) "Act" means the Agricultural Adjustment Act of 1938, and any amendments or supplements thereto.

(2) "Claim" means a written request for refund of penalty.

(3) "Claimant" means a person who makes a claim for refund of penalty as provided in this part.

(4) "County Office" means the office of the Agricultural Stabilization and Conservation County Committee.

(5) "Penalty" means an amount of money collected, including setoff, from or on account of any person with respect to any commodity to which this part is applicable, which has been covered into the general fund of the Treasury of the United States, as provided in section 372(b) of the Act.

(6) "State office" means the office of the Agricultural Stabilization and Conservation State Committee.

### § 714.37 Instructions and forms.

The Deputy Administrator shall cause to be prepared and issued such instructions and forms as are necessary for carrying out the regulations in the part.

### § 714.38 Who may claim refund.

Claim for refund may be made by:

(a) Any person who was entitled to share in the price or consideration received by the producer with respect to the marketing of a commodity from which a deduction was made for the penalty and bore the burden of such deduction in whole or in part.

(b) Any person who was entitled to share in the commodity or the proceeds thereof, paid the penalty thereon in whole or in part and has not been reimbursed therefor.

(c) Any person who was entitled to share in the commodity or the proceeds thereof and bore the burden of the penalty because he has reimbursed the person who paid such penalty.

(d) Any person who, as buyer, paid the penalty in whole or in part in connection with the purchase of a commodity, was not required to collect or pay such penalty, did not deduct the amount of such penalty from the price paid the producer, and has not been reimbursed therefor.

(e) Any person who paid the penalty in whole or in part as a surety on a bond given to secure the payment of penalties and has not been reimbursed therefor.

(f) Any person who paid the whole or any part of the sum paid as a penalty with respect to a commodity included in a transaction which in fact was not a marketing of such commodity and has not been reimbursed therefor.

### § 714.39 Manner of filing.

Claim for refund shall be filed in the county office on a form prescribed by the Deputy Administrator. If more than one person is entitled to file a claim, a joint claim may be filed by all such persons. If a separate claim is filed by a person who is a party to a joint claim, such separate claim shall not be approved until the interest of each person involved in the joint claim has been determined.

### § 714.40 Time of filing.

Claim shall be filed within 2 years after the date payment was made to the Secretary. The date payment was made shall be deemed to be the date such payment was deposited in the general fund of the Treasury as shown on the certificate of deposit on which such payment was scheduled.

### § 714.41 Statement of claim.

The claim shall show fully the facts constituting the basis of the claim; the name and address of and the amount claimed by every person who bore or bears any part or all of the burden of such penalty; and the reasons why such penalty is claimed to have been erroneously, illegally, or wrongfully collected. It shall be the responsibility of the county committee to determine that any person who executes a claim as agent or fiduciary is properly authorized to act in such capacity. There should be attached to the claim all pertinent documents with respect to the claim or duly authenticated copies thereof.

### § 714.42 Designation of trustee.

Where there is more than one claimant and all the claimants desire to appoint a trustee to receive and disburse any payment to be made to them with respect to the claim, they shall be permitted to appoint a trustee. The person designated as trustee shall execute the declaration of trust.

### § 714.43 Recommendation by county committee.

Immediately upon receipt of a claim, the date of receipt shall be recorded on the face thereof. The county committee shall determine, on the basis of all available information, if the data and representations on the claim are correct. The county committee shall recommend approval or disapproval of the claim, and attach a statement to the claim, signed by a member of the committee, giving the reasons for their action. After the recommendation of approval or disapproval is made by the county committee, the claim shall be promptly sent to the State committee.

### § 714.44 Recommendation by State committee.

A representative of the State committee shall review each claim referred by the county committee. If a claim is sent initially to the State committee, it shall be referred to the appropriate county committee for recommendation as provided in § 714.43 prior to action being taken by the State committee. Any necessary investigation shall be made. The State committee shall recommend approval or disapproval of the claim, attaching a statement giving the reasons for their action, which shall be signed by a representative of the State committee. After recommending approval or

disapproval, the claim shall be promptly sent to the Deputy Administrator.

§ 714.45 Approval by Deputy Administrator.

The Deputy Administrator shall review each claim forwarded to him by the State committee to determine whether, (a) the penalty was erroneously, illegally, or wrongfully collected, (b) the claimant bore the burden of the payment of the penalty, (c) the claim was timely filed, and (d) under the applicable law and regulations the claimant is entitled to a refund. If a claim is filed initially with the Deputy Administrator, he shall obtain the recommendations of the county committee and the State committee if he deems such action necessary in arriving at a proper determination of the claim. The claimant shall be advised in writing of the action taken by the Deputy Administrator. If disapproved, the claimant shall be notified with an explanation of the reasons for such disapproval.

§ 714.46 Certification for payment.

An officer or employee of the Department of Agriculture authorized to certify public vouchers for payment shall, for and on behalf of the Secretary of Agriculture, certify to the Secretary of the Treasury of the United States for payment all claims for refund which have been approved.

[F.R. Doc. 70-9720; Filed, July 28, 1970; 8:45 a.m.]

SUBCHAPTER C—SPECIAL PROGRAMS

[Amdt. 4]

## PART 780—APPEAL REGULATIONS

### Requests for Reconsideration and Appeals Requiring Special Handling

Section 780.11 of the appeal regulations, 7 CFR Part 780, is amended by revising paragraph (a) to read as follows:

§ 780.11 Requests for reconsideration and appeals requiring special handling.

(a) Determinations made by a State committee with respect to (1) the establishment of farm yields for wheat, feed grain, and cotton, (2) the establishment of wheat allotments, (3) the establishment of farm feed grain bases, (4) matters arising under the Tobacco Discount Variety Program, and (5) eligibility provisions of the Livestock Feed Program are not appealable to the Deputy Administrator.

* * * * *

Effective date: Upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on July 22, 1970.

KENNETH E. FRICK,
*Administrator, Agricultural Stabilization and Conservation Service.*

[F.R. Doc. 70-9719; Filed, July 28, 1970; 8:45 a.m.]

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

[Prune Reg. 8]

## PART 925—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREG.

### Limitation of Shipments

*Findings.* (1) Pursuant to the marketing agreement and Order No. 925 (7 CFR Part 925) regulating the handling of fresh prunes grown in designated counties in Idaho and in Malheur County, Oreg., under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the recommendations of the Idaho-Malheur County, Oreg., Fresh Prune Marketing Committee, established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of fresh prunes, in the manner herein provided, will tend to effectuate the declared policy of the act.

(2) The recommendation of the Idaho-Malheur County, Oreg., Fresh Prune Marketing Committee reflects its appraisal of the fresh prune crop and current and prospective market conditions. Shipments of Idaho-Oregon fresh prunes are expected to begin on or about July 30, 1970. The grade and size requirements provided herein are necessary to prevent the handling, on and after July 30, 1970, of prunes grading lower and being smaller in size than those herein specified, so as to provide consumers with good quality fruit, consistent with (1) the overall quality of the crop, and (2) maximizing returns to the producers pursuant to the declared policy of the act.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that, as hereinafter set forth, the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than July 30, 1970. A reasonable determination as to the supply of, and the demand for, prunes must await the development of the crop and adequate information thereon was not available to the Idaho-Malheur County, Oreg., Fresh Prune Marketing Committee until July 15, 1970; recommendation as to the need for, and extent of, regulation of shipments of such prunes was made at the meeting of said committee on July 15, 1970, after consideration of all available information relative to the supply and demand conditions for such prunes, at which time the recommendation and supporting information were submitted to the Department; shipments of the current crop of such prunes are expected to begin on or about the effective date hereof; and this regulation should be applicable, insofar as practicable, to all shipments of such prunes in order to effectuate the declared policy of the act; and compliance with the provisions of this regulation will not require of handlers any preparation therefor which cannot be completed by the effective time hereof.

§ 925.309 Prune Regulation 8.

(a) *Order.* During the period July 30, 1970, through December 31, 1970, no handler shall handle any lot of prunes unless such prunes meet the following applicable requirements, or are handled in accordance with subparagraph (3) of this paragraph:

(1) Minimum grade and size requirements: Such prunes grade at least U.S. No. 1 and are a minimum size of 1⅛ inches in diameter: *Provided,* That prunes which are affected by healed hail marks may be shipped if they otherwise grade at least U.S. No. 1.

(2) Containers: The net weight of prunes in any container, other than the one-half (½) bushel basket shall be either (i) less than 20 pounds, or (ii) more than 30 pounds.

(3) Notwithstanding any other provision of this regulation, any individual shipment of prunes which, in the aggregate, does not exceed 150 pounds net weight may be handled without regard to the restrictions specified in this paragraph (a) or in §§ 925.41 (Assessment) and 925.55 (Inspection and Certification).

(4) The terms "U.S. No. 1," "diameter," and "hail marks" shall have the same meaning as when used in the U.S. Standards for Fresh Plums and Prunes (§§ 51.1520–51.1538 of this title); and terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in the marketing agreement and order.

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

Dated: July 24, 1970.

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

[F.R. Doc. 70-9777; Filed, July 28, 1970; 8:50 a.m.]

## Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[Cotton Loan Program Regs., Amdt. 5]

## PART 1427—COTTON

### Subpart—Cotton Loan Program Regulations

MISCELLANEOUS AMENDMENTS

The regulations issued by the Commodity Credit Corporation published in

33 F.R. 8802 as Cotton Loan Program Regulations and containing the terms and conditions with respect to the Cotton Loan Program, as amended, are hereby further amended as follows:

1. Paragraph (a) of § 1427.1351 is amended to provide that producers shall obtain their loans through the county office which keeps the farm program records for the farm on which the cotton was produced. The amended paragraph reads as follows:

**§ 1427.1351 General statement.**

(a) The regulations in this subpart, including any amendments and the annual supplement hereto, set forth the requirements with respect to loans on cotton of the 1968 crop and each subsequent crop for which an annual supplement to these regulations is issued. Loans will be made available by CCC to eligible cotton producers on eligible upland cotton and eligible extra-long staple cotton through county offices. For other than cotton cooperative marketing association loans, each producer shall obtain his loan(s) through the county office which keeps the farm records for the farm on which the cotton was produced and is responsible for delivering the loan documents to the county office for disbursement of the loan(s). County committees or county office managers may approve loan clerks at convenient locations to assist producers in preparing loan documents.

* * * * *

2. Paragraph (a) of § 1427.1359 is amended to provide that the showing of gin weights on warehouse receipts must be approved by CCC and must also be permitted by the warehouseman's licensing authority. Paragraph (c) of § 1427.1359 is amended to provide that if it is established to the satisfaction of CCC that a bona fide error was made in the bale weight or in entering the loan rate for the bale, such error may be corrected. The amended paragraphs read as follows:

**§ 1427.1359 Weight, loan rate, and amount.**

(a) *Weight.* Loans will be made on the gross weight of upland cotton and on the net weight of extra long staple cotton, except that in the case of bales which weigh more than 625 pounds (including any allowance for lightweight bagging and ties), the weight to be used in determining the amount of the loan on the bale shall be 625 pounds. If the loan is made on cotton represented by warehouse receipts, the gross weight of the bale shall be the gross weight shown on the warehouse receipt. The gross weight shown on the warehouse receipt shall be the gross weight as determined by the warehouseman at the warehouse site, except that the warehouse receipt may show the gross weight established at a gin (1) in case the gin is in the immediate vicinity of the warehouse and is operated under common ownership with such warehouse or in any other case in which the showing of gin weights on the warehouse receipts is approved by CCC, and (2) if the showing of gin weights on the warehouse receipts is permitted by the warehouseman's licensing authority. If the loan is made on cotton represented by order bills of lading pursuant to § 1427.1371, the gross weight of the bale shall be the gross weight shown on the Weight and Condition Certificate. Notes for loans on cotton pledged on reweights will not be accepted if CCC determines that such reweights reflect an increase in weight due to the absorption of moisture. In making loans on upland cotton covered with bagging made of cotton material manufactured specifically for covering cotton bales, an allowance of not to exceed seven pounds per bale will be added to the gross weight of the bale: *Provided,* That the allowance to be added to the gross weight of the bale shall not exceed an amount which will reflect a normal tare weight of 21 pounds for bagging and ties for the bale. In order to encourage improved wrapping methods and to compensate for resulting reduced tare weight in making loans on upland cotton wrapped with material under the Cotton Experimental Bale Packaging Program sponsored by the National Cotton Council, Memphis, Tenn., there will be added to the gross weight of the bale an allowance equal to the number of pounds shown on the program bale tag to be necessary to adjust to normal tare weight of 21 pounds. The bale tag must identify the bale with the program and must also show the actual tare weight of the bale. No allowance other than those provided for in this section will be made.

* * * * *

(c) *Amount.* The amount due the producer will be determined by multiplying the weight of each bale, as determined under paragraph (a) of this section by the applicable loan rate, as determined under paragraph (b) of this section, and subtracting any unpaid warehouse receiving charge, as provided in § 1427.1369. CCC will not increase the amount advanced on any bale of cotton as a result of any redetermination of the quality of the bale after it is tendered to CCC and will not increase the amount advanced as a result of any redetermination of weight after the cotton is tendered to CCC, except that if it is established to the satisfaction of CCC that a bona fide error was made in the weight of the bale as shown on the warehouse receipt or in entering the weight of the bale or the loan rate for the bale on the Schedule of Pledged Cotton, such error may be corrected. In establishing the correct weight of the bale, CCC will deduct from the current weight of the bale any estimated weight gained while in storage.

3. Paragraph (b) of § 1427.1360 is amended to delete the provision that all bales pledged as security for a loan must be shipped to the warehouse by the same railroad if shipped by rail. The amended paragraph reads as follows:

**§ 1427.1360 Preparation of documents.**

* * * * *

(b) *Schedule of pledged cotton.* All cotton pledged as security for a loan must be stored in the same warehouse, must have come compression and compression paid status, must have been shipped to the warehouse by same mode of transportation, and must be packaged with the same type bagging if packaged with bagging on which there is a basis for a weight allowance as provided in § 1427.1359(a), but may be of different grades and staple lengths. Not more than 500 bales of upland cotton or 200 bales of extra long staple cotton may be pledged as security for a loan on one Form A.

* * * * *

4. Section 1427.1361 is amended to provide that all Form A loans will be disbursed by the county office which keeps the farm program records for the farm on which the cotton was produced. The amended section reads as follows:

**§ 1427.1361 Disbursement of loans.**

Disbursement of each Form A loan will be made by the county office which keeps the farm program records for the farm on which the cotton was produced by means of drafts drawn on CCC by the county office. The producer or his agent shall not present the Form A and supporting documents for disbursement unless the cotton covered by the Form A is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer shall immediately return the draft issued in payment of the loan, or if the draft has been negotiated, shall promptly refund the proceeds.

5. Section 1427.1364 is amended to provide that cotton tendered for loan must be free and clear of all liens (except warehouseman's lien for those charges which are authorized in the storage agreement with CCC, including a warehouseman's lien held by a cooperative warehouse for its producer-patrons). The amended section reads as follows:

**§ 1427.1364 Liens.**

Cotton tendered for loan must be free and clear of all liens (except the warehouseman's lien for those charges which are authorized in the storage agreement with CCC, including a warehouseman's lien held by a cooperative warehouse for its producer-patrons). The signatures of the holders of all such existing liens on cotton tendered as security for a loan, such as landlords, laborers, or motgagees, must be obtained on the Lienholder's Waiver on each Form A, except that in lieu of signing the Lienholder's Waiver on each Form A, the lienholder may waive his lien on all cotton of that crop produced by a producer on a farm (or on all farms) or pledged on one Form A by use of Form 679, or by use of another form approved by CCC. Notwithstanding the foregoing provisions, in lieu of waiving his prior lien on cotton tendered as security for a loan, a lienholder may execute a Lienholder's Subordination Agreement (Form CCC–864) with CCC in which he subordinates his security interests to the rights of CCC in the cotton. A fraudulent representation as to prior liens or otherwise will render the producer personally liable and subject him, and any other person who causes the fraudulent representation to be made,

to criminal prosecution under the provisions of the Commodity Credit Corporation Charter Act.

6. Section 1427.1366 is amended to provide that the cotton classification form must be dated not more than 15 days prior to the date the warehouse receipt was issued (State committees may in arid regions extend the period to not to exceed 30 days prior to the date the warehouse receipt was issued upon determining that such extension will not result in reduction of the grade of cotton during the extension period) and that a classification charge of 45 cents per bale shall be collected from the producer by the warehouseman for all cotton which is submitted for a Form A3 classification. The amended section reads as follows:

**§ 1427.1366 Classification and micronaire readings of cotton.**

(a) References made to "classification" in this subpart shall include micronaire readings. All cotton tendered for loan must be classed by a USDA Board of Cotton Examiners (referred to in this subpart as "the board") and tendered on the basis of such classification. A Cotton Classification Memorandum Forum 1 showing the classification of a bale must be based upon a representative sample drawn from the bale in accordance with instructions to samplers drawing samples for organized improvement groups under the Smith-Doxey Program. If the producer's cotton has not been sampled for a Form 1 classification, the warehouseman shall sample such cotton and forward the samples to the board serving the district in which the cotton is located. Such warehouseman must be licensed by the Consumer and Marketing Service, U.S. Department of Agriculture, to draw samples for submission to the board. A Cotton Classification Memorandum Form A3 must be inserted in each such sample. A Tag List and Record Sheet, Form CCC–812 (referred to in this subpart as "Form 812"), must be prepared by the warehouseman, listing each sample included in a shipment to the board. A copy of such Form 812 shall be included with the samples, and the original and two copies must be mailed separately to the board. The board will enter the classification of each bale on the Form 812 and return a copy of such form to the warehouseman. The classification of each bale will also be entered on the related Cotton Classification Memorandum Form A3, which will be returned to the producer by the board. If a sample has been submitted for a Form 1 or Form A3 classification, another sample shall not be drawn and forwarded to a board except for a review classification. Where review classification is not involved, if through error or otherwise two or more samples from the same bale are submitted for clasification, the loan rate shall be based on the classification having the lower loan value. The classification Form 1 or Form A3 must be dated not more than 15 days prior to the date the warehouse receipt was issued (State committees may in arid regions extend this period to not to exceed 30 days prior to the date the warehouse receipt was issued upon determining that such extension will not result in reduction in the grade of the cotton during the extension period), otherwise a review classification will be required. If a Form 1 or Form A3 review classification is obtained, the loan value of the cotton represented thereby will be based on such review classification.

(b) A classification charge of 45 cents per bale shall be collected from the producer by the warehouseman for all cotton for which samples are submitted to a board for a Form A3 classification or for a Form A3 review classification. The boards will bill warehousemen at the end of each month for such charges. Payment of these bills shall be made by check or money order payable to "Commodity Credit Corporation" and mailed to the New Orleans Office.

(Secs. 4, 5, 62 Stat. 1070, as amended; secs. 101, 103, 401, 63 Stat. 1051, as amended; 15 U.S.C. 714 b and c; 7 U.S.C. 1441, 1444, 1421)

*Effective date.* This amendment is effective for all loans made on 1970 and subsequent crop cotton.

Signed at Washington, D.C., on July 22, 1970.

KENNETH E. FRICK,
*Executive Vice President,*
*Commodity Credit Corporation.*

[F.R. Doc. 70–9721; Filed, July 28, 1970; 8:45 a.m.]

# Title 12—BANKS AND BANKING

## Chapter II—Federal Reserve System

### SUBCHAPTER C—FEDERAL RESERVE SYSTEM LABOR RELATIONS PANEL

### PART 294—PROCEDURES FOR RESOLVING IMPASSES

Implementing the provisions of § 269.10 of the Policy on Unionization and Collective Bargaining for the Federal Reserve Banks, 12 CFR Part 269, the Federal Reserve System Labor Relations Panel adds this Part 294 in order to guide parties who have reached an impasse in collective bargaining on how they might utilize the services of the panel and to advise such parties of the potential intervention of the panel in the public interest. These regulations are not intended to inhibit in any manner, other than as required by the limitations set forth by the policy, voluntary action by parties to a collective bargaining agreement in establishing procedures to resolve impasses.

The requirements of section 553(b), title 5, United States Code, with respect to notice, public participation, and deferred effective date were not followed in connection with these regulations. Generally, they are consistent with accepted labor relations practices, and in the circumstances of the present dynamic and often unpredictable status of labor relations in the public service, the panel has determined that avoidance of the above-mentioned requirements of section 553(b) would be in the public interest.

Accordingly, Chapter II of Title 12 of the Code of Federal Regulations is amended effective immediately by adding thereto a new Part 294.

MEDIATION



IMPASSE RESOLUTION BY PANEL



AUTHORITY: The provisions of this Part 294 issued under 12 CFR 269.10, Policy on Unionization and Collective Bargaining for the Federal Reserve Banks.

MEDIATION

**§ 294.100 Notice.**

(a) Parties entering negotiations upon their first collective bargaining agreement shall notify the Federal Reserve System Labor Relations Panel (hereinafter referred to as "Panel") of this fact and of the date of the first scheduled negotiation session.

(b) A party that wishes to amend, modify, or terminate an existing collective bargaining agreement shall so notify the Panel at least 30 days prior to the expiration of that agreement.

**§ 294.110 Appointment of mediator.**

(a) The Panel, upon its own motion, or upon the request of a party to an existing or a proposed collective bargaining agreement, may appoint a mediator if the Panel determines that a mediator would be able to assist the parties to reach an agreement.

(b) The parties may jointly request the assignment of a particular mediator; however, the Panel reserves the authority to assign a mediator of its choice.

(c) The Panel shall bear the costs of mediation, except as may otherwise be agreed to by the parties.

**§ 294.120 Duty of parties.**

It shall be the duty of the parties to mediation to participate fully and promptly in any meetings arranged by the mediator for the purpose of assisting the parties to reach agreement.

**§ 294.130 Confidential information.**

Confidential information disclosed by the parties to a mediator in the performance of his mediation functions shall not be divulged voluntarily or by compulsion. All files, records, reports, documents, or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him on behalf of any party to any cause pending in any type of proceeding, except where for good cause found by the Chairman of the Panel the Chairman directs production.

**§ 294.140 Mediator's report.**

The mediator shall submit to the Panel such reports as the Panel may require,

and such other reports as the mediator may deem appropriate.

IMPASSE RESOLUTION BY PANEL

§ 294.200 Scope of Panel action.

Upon motion of the Panel or upon the suggestion of the mediator, or at the request of a party to a proposed collective bargaining agreement, the Panel may consider negotiation impasses and may recommend procedures to the parties for the resolution of the impasse or may settle the impasse by appropriate action.

§ 294.300 Costs.

All costs and expenses of impartial third parties performing roles related to impasse resolution, other than the costs involving the services of the Panel, shall be borne by the parties equally.

§ 294.400 Voluntary action by the parties.

Parties to collective bargaining may utilize their own joint procedures for resolving impasses, which procedures may be established by collective bargaining agreement, to the extent that the terms thereof are not inconsistent with the policy.

By order of the Federal Reserve System Labor Relations Panel, July 24, 1970.

[SEAL] PAUL M. METZGER,
*Secretary.*

[F.R. Doc. 70-9766; Filed, July 28, 1970; 8:49 a.m.]

# Title 17—COMMODITY AND SECURITIES EXCHANGES

## Chapter II—Securities and Exchange Commission

[Releases Nos. 33-5068, 34-8907, IC-6082]

## PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

## PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

## PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

## Guidelines Concerning Applicability of Federal Securities Laws to Offer and Sale Outside the U.S. of Shares of Registered Open-End Investment Companies

On February 25, 1969, the Securities and Exchange Commission published notice (Investment Company Act Release No. 5618) (34 F.R. 5303) that it had under consideration publication of guidelines concerning the applicability of the Federal securities laws to the offer and sale outside the United States of shares of registered open-end investment companies and invited all interested persons to submit their views and comments on the proposed guidelines. A number of helpful comments were received in response to the release. After further review of the matter and consideration of all the comments received, the Commission is publishing these guidelines.

The purpose of the guidelines is not only to publicize the Commission's views on the applicability of the statutes which it administers to sales of open-end investment company shares outside the United States to foreign investors, but also to set forth what are believed to be appropriate standards for the marketing of U.S. investment company securities abroad. It has been the policy of our Government for the past several years to encourage foreign sales of American securities with the specific recommendation that registered investment companies enter this field. A number of registered open-end investment companies now have substantial sales abroad, and more propose to enter the foreign market. Sales of shares of registered open-end American investment companies are now a significant factor in the securities markets of certain foreign countries.

In this context the Commission believes it desirable that it provide these guidelines. They will insure that substantially the same disclosure required by the Federal securities laws for American investors will also be generally available for foreign investors who are purchasing shares of registered American investment companies. Such disclosure at the point of sale helps protect the U.S. securities market as a whole by insuring that foreign investors will not seek redemptions because of later realization that they had been inadequately informed about their investment. Loss of confidence in the integrity of American registered investment companies could trigger widespread redemptions resulting in losses to foreign and domestic investors and damage to the U.S. securities market.

Comments received from representatives of the investment company industry were particularly helpful in pointing out practical problems which might arise in attempts to comply with certain aspects of the guidelines as originally proposed. As a result, several modifications have been made in the sections relating to transactions and filing requirements which the Commission believes will not, as a practical matter, lessen the disclosure value of the documents involved.

As proposed, the guidelines spoke in terms of the U.S. issuer's responsibility in connection with foreign sales of its shares. The U.S. distributor, ordinarily an affiliated company, is, of course, included in that statement. Thus, these guidelines refer to the responsibilites of U.S. issuers or distributors in connection with sales of shares of registered U.S. investment companies overseas. As pointed out in these guidelines, the U.S. issuer or distributor will not be expected to supervise or police unaffiliated foreign broker-dealers which sell their shares, but rather to establish reasonable standards and procedures which should henceforth be embodied in agreements with foreign dealers. If serious deviations from these standards and procedures then come to the attention of the U.S. distributor, cancellation of the agreement would be in order.

It is intended that in case of any conflict with specifically applicable foreign law, the foreign law generally would be considered controlling.

### I. APPLICABILITY OF THE SECURITIES ACT OF 1933 TO OFFER AND SALE OF OPEN-END INVESTMENT COMPANY SHARES OUTSIDE THE UNITED STATES

The registration requirements of the Securities Act apply, unless an exemption is available, to any offer or sale of a security involving interstate commerce or use of the mails. Since "interstate commerce" is defined in section 2(7) (15 U.S.C. 77b(7)) of the Securities Act to include "trade or commerce in securities or any transportation or communication relating thereto * * * between any foreign country and any State, Territory, or the District of Columbia," this might be construed to encompass virtually any offering of securities made by a U.S. issuer outside the geographic territory of the United States.

However, because the Commission traditionally has taken the position that the registration requirements of section 5 of the Securities Act (15 U.S.C. 77e) are primarily intended to protect United States investors, the Commission announced in Securities Act Release No. 4708 (29 F.R. 9828) (July 9, 1964) that it will not take any action for failure to register securities of U.S. issuers distributed outside the territory of the United States to foreign nationals only, even though use of jurisdictional means may be involved in the offering, so long as the distribution is effected in a manner which would result in the securities coming to rest outside the United States. Thus, the Commission will not insist upon registration under the Securities Act of securities offered in this manner.

Foreign sales of noninvestment company securities are to be distinguished from sales of investment company securities. In the latter case the Commission deems registration under the Securities Act both logical and appropriate. Registered open-end investment companies are continually "in registration" so that registration under the Securities Act of the shares sold abroad would not impose an additional burden upon them. Open-end investment company shares, unlike for the most part other corporate securities, are vigorously merchandized abroad to large numbers of small investors from the public at large.

*Use of prospectus.* Accordingly, the Commission believes that issuers of registered open-end investment company shares offered and sold to foreign nationals outside the United States should

register such shares under the Securities Act and conduct such offerings by means of a prospectus which does not differ materially from the prospectus used in the United States. The Commission recognizes, of course, that the prospectus should be adapted to the particular foreign country where the offer is being made. Thus, disclosures included in the prospectus used in the United States, such as discussion of U.S. tax laws, may be deleted where inappropriate in a prospectus delivered in foreign countries. Conversely, disclosures specifically designed for the citizens of a particular foreign country may be added to the prospectus where appropriate.

The prospectus used in any foreign country should be printed in a language readily understood by that segment of the foreign public being solicited, which may or may not be the native language of the country. If, in the issuer's opinion, that segment of the foreign investing public which it is soliciting can understand English, the use of the same prospectus circulated domestically may be appropriate with such deletions or additions as would be necessary to prevent confusion of the foreign investor. Dealer agreements with foreign broker-dealers should provide for prospectus delivery to all purchasers. In cases where the share will be held by the foreign dealer in nominee name, the agreement might contain an undertaking that the dealer will pass the prospectus on to the ultimate purchaser to the extent known to the dealer.

Four copies of the prospectus used abroad should be filed with the Commission prior to use in the same fashion as prospectuses are filed pursuant to Rule 424(c) (17 CFR 230.424(c)). If the prospectus is printed in a foreign language, four copies of the English version of the prospectus from which the translation was made should be filed together with the four copies of the foreign language prospectus. Where two or more foreign language prospectuses are based upon the same English version, only four copies of the English version need be filed. These filings should be accompanied by a statement designating the respects in which the prospectus used abroad differs from the prospectus used domestically.

*Tombstones and supplemental sales literature.* In view of different approaches to the advertising of securities in many foreign countries, the Commission does not believe it appropriate to insist upon strict adherence to Rule 134 (17 CFR 230.134) under the Securities Act in the case of foreign advertisements in countries where existing methods of distribution of investment company shares involve advertisements significantly beyond the limits of Rule 134. Such foreign advertisements should, however, conform to the Commission's statement of policy (Securities Act Release No. 3856) (2 F.R. 8977) insofar as possible, except for paragraph (h) which deals with comparisons. Accordingly, predictions or projections of future investment results, for example, would not be permissible. It is recognized that, in advertising, the foreign broker-dealer is most likely to proceed on his own without seeking assistance from the distributor. The distributor cannot be expected to keep track of all locally published advertisements. The dealer agreement, however, should provide that advertisement will not contain misleading material and will generally conform to the provisions of the statement of policy (except for paragraph (h)). Copies of the statement of policy can be provided to the foreign broker-dealers. Misleading advertisements published by foreign broker-dealers would then be a basis for cancellation of the dealer agreement.

It is likely that supplemental sales literature, on the other hand, will be provided by the U.S. distributor in most cases. In this instance, there is no reason why the material cannot fully comply with the provisions of the statement of policy since they presumably are clearly understood by the U.S. distributor. Compliance with paragraph (h), however, may be impractical since it is recognized that comparisons are widely used in securities advertising abroad without restriction and foreign investors may expect such comparisons. Although not fully conforming with paragraph (h), comparisons which are used should, of course, be designated so as not to be misleading. Supplemental sales literature should also be filed pursuant to the provisions of section 24(b) (15 U.S.C. 80a-24(b)) of the Investment Company Act. Any foreign language material so filed should be accompanied by three copies of the English original which served as a basis for the translation. Where material is produced abroad, the distributor is not expected to supervise production and use, but the dealer agreement should contain a provision concerning supplemental sales literature similar to the one suggested above for advertisements. In those foreign jurisdictions which require that all securities sold within their boundaries be registered with their governments, United States distributors should refrain from circulating sales literature until the securities offered have been registered in such jurisdictions in conformity with local law.

It is intended that in case of any conflict with specifically applicable foreign law, the foreign law generally would be considered controlling.

II. Applicability of the Investment Company Act of 1940 to the Offer and Sale of Open-End Investment Company Shares Outside the United States

It is the Commission's view that the provisions of the Investment Company Act apply to an open-end company registered under the Act regardless of where its shares are sold. The Commission recognizes, however, that some underwriters desire to offer and sell shares of such companies to foreign nationals outside the United States under terms or arrangements different from those in effect in the United States.

For example, it may not be deemed economically feasible to offer or sell such shares to foreign nationals outside the United States with a sales load which is the same as that in effect in the United States. This raises the question whether it is appropriate that an exemption from section 22(d) of the Investment Company Act (15 U.S.C. 80a-22(d)) be granted. Because of the variety of considerations that may be involved, the Commission believes that question should be resolved by means of an appropriate application filed pursuant to section 6(c) of the Investment Company Act (15 U.S.C. 80a-6(c)) requesting relief from the provision of the section in question. Under this procedure, the issuer should present justification for the requested exemption, including appropriate discussion of relevant laws and business practices of the foreign countries in which open-end investment company shares may be offered and sold under the proposed arrangement. The issuer should submit as an exhibit to the application an opinion of counsel to the effect that the proposed arrangement would not be inconsistent with the laws of the countries in question and that it would meet the requirements of the appropriate regulatory authorities of such countries. Each such application will be considered on its individual merits.

Reasonable effort should be made by the U.S. distributor to insure that the foreign investor is kept informed of the activities of the U.S. investment company in which he has invested. Proxy materials and annual reports, required to be sent to shareholders, should be sent to foreign shareholders outside the United States to the extent such shareholders are known. It would be desirable to send appropriate foreign-language translations of such proxy materials and annual reports to foreign shareholders who have purchased their shares outside the United States in cases where there is a substantial number of shareholders speaking a particular foreign language, but the Commission recognizes that the time factor involved and the difficulty of determining what the appropriate language might be in many cases, may make such an undertaking impossible.

III. Broker-Dealer Registration Requirements Under the Securities Exchange Act of 1934 for Foreign Broker-Dealers Who Offer and Sell Shares of Open-End Investment Companies Outside the United States, Its Territories and Possessions

Section 15(a)(1) (15 U.S.C. 780(a)(1)) of the Securities Exchange Act makes it unlawful for a broker or dealer (other than one whose business is exclusively intrastate) to use the mails or instrumentalities of interstate commerce, including commerce between the United States and any foreign country, to induce or to effect any transaction in a nonexempt security otherwise than on a national securities exchange unless such broker or dealer is registered with the Commission. The Commission will not require the registration of an unregistered foreign broker-dealer who uses the Federal instrumentalities to buy shares

issued by an open-end investment company from the issuer or its principal underwriter for sale in a foreign country if (a) such shares are sold only to foreign nationals outside the United States, its territories and possessions and (b) such foreign broker-dealer is not directly or indirectly selling such shares to or acting for the account of an unregistered investment company whose portfolio contains shares issued by open-end investment companies registered under the Investment Company Act. On the other hand, a foreign broker-dealer who solicits and sells shares issued by such companies to U.S. nationals, no matter where located, is required to register with the Commission. This position supplements and is consistent with the position taken in Securities Exchange Act Release No. 7366 (Securities Act Release No. 4708) (29 F.R. 9828).

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

JUNE 23, 1970.

[F.R. Doc. 70-9730; Filed, July 28, 1970; 8:46 a.m.]

# Title 18—CONSERVATION OF POWER AND WATER RESOURCES

## Chapter VI—Water Resources Council

## PART 701—COUNCIL ORGANIZATION

In accordance with the provisions of section 402, 79 Stat. 244; 42 U.S.C. 1962d-1, Part 701—Council Organization is hereby revised as follows, effective upon publication in the FEDERAL REGISTER.

Subpart A—Introduction



Subpart B—Headquarters Organization



Subpart C—Field Organization



AUTHORITY: The provisions of this Part 701 issued under sec. 402, 79 Stat. 244; 42 U.S.C. 1962d-1.

### Subpart A—Introduction

#### § 701.1 General.

This part describes the organization established by the Water Resources Council in discharging its duties and responsibilities. The organization is designed to assure that Council Members will meet at least quarterly and consider and decide major matters before the Council. It provides that Representatives of Council Members together with the Director can take action when necessary and appropriate and, after consideration, submit recommendations to the Council Members on matters requiring their action. It also provides that the Council Members shall be continuously advised of the actions of their representatives and the Council staff. Council Members expect to participate personally in the work of the Council.

#### § 701.2 Creation and basic authority.

The Water Resources Council was established by the Water Resources Planning Act (42 U.S.C. 1962—1962d-5). The rules and regulations of this part are promulgated under section 402 of the Act (42 U.S.C. 1962d-1).

#### § 701.3 Purpose of the Water Resources Council.

It is the purpose of the Water Resources Council to effectuate the policy of the United States in the Water Resources Planning Act (hereinafter the Act) to encourage the conservation, development, and utilization of water and related land resources of the United States on a comprehensive and coordinated basis by the Federal Government, States, localities, and private enterprise with the cooperation of all affected Federal agencies, States, local governments, individuals, corporations, business enterprises, and others concerned, within the limitations set forth in section 3 of the Act (42 U.S.C. 1962–1).

#### § 701.4 Functions.

The functions of the Water Resources Council are:

(a) To maintain a continuing study and prepare periodically an assessment of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and of the national interest therein.

(b) To maintain a continuing study of the relation of regional or river basin plans and programs to the requirements of larger regions of the Nation.

(c) To appraise the adequacy of administrative and statutory means for coordination and implementation of the water and related land resources policies and programs of the several Federal agencies and to make recommendations to the President with respect to Federal policies and programs.

(d) To establish, after consultation with appropriate interested Federal and non-Federal entities, and with the approval of the President, principles, standards, and procedures for Federal participation in the preparation of comprehensive regional or river basin plans and for the formulation and evaluation of Federal water and related land resources projects, including primary direct navigation benefits as defined by section 7a, P.L. 89-670.

(e) To coordinate schedules, budgets, and programs of Federal agencies in comprehensive interagency regional or river basin planning.

(f) To carry out its responsibilities under title II of the Act with regard to the creation, operation, and termination of Federal-State river basin commissions.

(g) To receive plans or revisions thereof submitted by river basin commissions in accordance with section 204(3) of the Act (42 U.S.C. 1962b(3)), and to review and transmit them, together with its recommendations, to the President in accordance with section 104 of the Act (42 U.S.C. 1962a-3).

(h) To assist the States financially in developing and participating in the development of comprehensive water and related land resources plans in accordance with title III of the Act.

(i) To perform such other functions as the Council may be authorized by law, executive orders, regulations, or other appropriate instructions to perform.

(j) To take such actions as are necessary and proper to implement the Act and to carry out the functions enumerated herein.

#### § 701.5 Organization pattern.

(a) The Office of the Water Resources Council is composed of the Water Resources Council, the Chairman of the Water Resources Council, the Water Resources Council Staff headed by a Director, and Field Organizations within its jurisdiction.

(b) The Water Resources Council consists of the following members: The Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Army, the Secretary of Health, Education, and Welfare, the Secretary of Transportation (pursuant to section 7a, P.L. 89-670), the Chairman of the Federal Power Commisison, and such other agencies as may be added by statute.

(c) The Chairman of the Council is designated by the President.

(d) The Executive Officers of the Water Resources Council Staff are the Director, Deputy Director and two Assistant Directors. The principal Staff Officers are the Associate Director, General Counsel and Administrative Officer.

(e) The Water Resources Council staff is employed, assigned duties and responsibilities, and supervised by the Director in accordance with §§ 701.76 through 701.80, inclusive.

(f) Administrative, consultative and technical committees are established and

assigned duties and responsibilities by the Council and are supervised by the Director in accordance with §§ 701.76 through 701.80, inclusive.

(g) Field organizations are established by or operate under the Council and include field committees formerly under the Inter-Agency Committee on Water Resources and the offices of the Chairmen of Federal-State River Basin Commissions established under title II of the Act.

**§ 701.6 Location of office.**

The Headquarters is located in the Washington, D.C. area.

**§§ 701.7–701.50 [Reserved]**

## Subpart B—Headquarters Organization

**§ 701.51 The Council.**

Decisions of the Council are made as hereinafter described in §§ 701.53 and 701.54.

**§ 701.52 Definitions.**

(a) As used in this part the term "Member" means the Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Army, the Secretary of Health, Education, and Welfare, the Secretary of Transportation, the Chairman of the Federal Power Commission, or a designee appointed in accordance with § 701.53(a) when the designee is acting for one of the above-named.

(b) As used in this part the term "Representative" means an individual authorized by a "Member" to act for such member pursuant to § 701.54.

**§ 701.53 Council decisions by Members.**

Council decisions by Members with respect to the purpose stated in § 701.3 and the functions listed in § 701.4 are determined by majority vote of Members present except that decisions affecting the authority or responsibility of a Member, within the meaning of section 3(b) of the Act (42 U.S.C. 1962–1(b)), can be made only with his concurrence. In exceptional cases a Council decision may be made by written communication. Such decision requires unanimous approval of the Members.

(a) Each of the Secretaries named in § 701.5 and the Chairman of the Federal Power Commission shall designate in writing those individuals who may act as his designee in fulfilling his duties as a Member. (See § 701.58(c).)

(b) A quorum for the transaction of business consists of four or more Members, at least one of whom shall be an aforementioned Secretary or the Chairman of the Federal Power Commission.

(c) Each Member has equal responsibility and authority in all decisions and actions of the Council and shall have full access to all information relating to the performance of his duties and responsibilities.

(d) No vote shall be taken until each Member shall have had full opportunity to express his views.

(e) Members shall meet regularly at least quarterly, upon the call of the Chairman, or when requested by a majority of Members.

(f) The agenda and related documents for such meetings will be distributed to Members at least 7 days in advance.

(g) Matters specifically reserved for Council decision by Members are:

(1) Actions requiring Presidential action or approval.

(2) Submission to the President of nominations for Chairmen of Federal-State River Basin Commissions.

(3) Approval of Annual Budget requests and the Annual Operating Program of the Office of the Water Resources Council.

(4) Decisions involving substantial policy issues.

(5) Delegations of authority.

(6) Determination that testimony taken or evidence received shall be taken under oath.

(7) Issuance of invitations to become Associate Members or Observers.

(8) Appointment and termination of the appointment of Executive Officers and the Associate Director.

(9) Approval of Council rules and regulations and amendments thereto.

**§ 701.54 Council decisions by Representatives.**

Council decisions with respect to the purpose stated in § 701.3 and the functions listed in § 701.4, above, may be made by Representatives except for matters specifically reserved in § 701.53(g) for Council decision by Members. Only one Representative of a Member shall participate officially in a Council decision by Representatives, but up to four individuals may be authorized to act as Representatives of a Member. Council decisions by Representatives shall be by unanimous agreement of the Representatives and the Director, or in his absence the Acting Director. In exceptional cases, a decision may be made by written communication.

(a) The Representatives and the Director shall work to coordinate the water and related land activities for which the Council Members are responsible.

(b) Each Representative and the Director has equal responsibility and authority for Council decisions and shall have full access to all information relating to the performance of his duties and responsibilities.

(c) The Director shall serve as Chairman of meetings of Representatives. The Acting Director, designated in accordance with § 701.79(a), shall serve as Chairman in the absence or disability of the Director or vacancy in that office.

(d) Regular meetings for the transaction of business shall be the second Wednesday of each month, and special meetings shall be at the call of the Director or when requested by the Representatives of two Members. The Director will arrange, after consultation with the Representatives, the agenda of items for consideration; shall distribute the agenda for regular meetings and related documents to Representatives at least 7 days in advance of the meeting and as expeditiously as possible for special meetings; and shall insure that all matters within the purpose and scope of the functions of the Water Resources Council are presented for consideration. The Director shall include on the agenda for a regular meeting any matter proposed by any Representative. When items on the agenda have not been fully considered they shall take precedence, in the same order, over other matters to be placed on the agenda for the next regular meeting. The Director or a Representative may introduce matters not on the agenda or change the order of business at a particular meeting with the concurrence of a simple majority of the Representatives present.

(e) A quorum for the transaction of business consists of at least four Representatives of different Members and the Director or in his absence the Acting Director.

(f) Except for the appointment and tenure of the Executive Officers, matters specifically reserved for Council decision by Members should be considered by Representatives and the Director and proposals and recommendations formulated and presented at Council meetings of Members. The Council Members shall be advised of minority views, if any, on such proposals and recommendations.

(g) If unanimity of Representatives and the Director is not achieved, after full opportunity for expression of views and reasonable consideration, the Director shall upon his own initiative or upon the request of a Representative present the issue for consideration at the next meeting of Members of the Council. Presentation of the issue shall include a statement of the conflicting positions and recommendations for resolution.

(h) Upon the declaration by any Representative or the Director that an issue involves "substantial policy" (see § 701.53(g)(4)), it shall be referred with recommendations to a subsequent meeting of Council Members for decision.

**§ 701.55 Associate Members.**

(a) The Chairman, with concurrence of the Council, may invite the heads of other Federal agencies having authorities and responsibilities relating to the work of the Council to become Associate Members. Associate Members, on the same terms and conditions as Members, may designate persons to serve for them as Associate Members and to act for them as Associate Representatives.

(b) Associate Members and their Associate Representatives may participate with Members and Representatives in consideration of all matters relating to their areas of responsibility, except that their concurrence in a decision of the Council is not required. Where such decision affects the authority and responsibility of any non-Member agency within the meaning of section 3(b) of the Act, the Council shall request such agency to take concurrent action along the basis of the Council recommendations.

(c) Associate Members and Associate Representatives shall be furnished

agenda and minutes. They shall be furnished other materials pertinent to their participation in the work of the Council upon request.

§ 701.56 Observers.

(a) Chairmen of River Basin Commissions established under title II of the Act shall be Observers.

(b) The Chairman, with the concurrence of the Council, may invite the heads of offices or other officials of the Executive Office of the President or other Federal agencies to become Observers.

(c) Observers may designate persons to attend Council meetings of Members and Representatives. Observers and their representatives will be furnished agenda and other materials on the same basis as Associate Members.

§ 701.57 Official decisions of the Council.

Official decisions of the Council shall be of record. Decisions of record shall be recorded in accepted minutes of duly called regular or special meetings or set forth in resolutions, memoranda, or other documents approved by Members or by Representatives and the Director. Decisions which would affect the authority and responsibilities of heads of other Federal agencies, including Associate Members, within the meaning of section 3(b) of the Act, shall only be made during a regular or special meeting of Members and recorded in the minutes thereof.

§ 701.58 Secretary.

A Member of the Water Resources Council staff shall serve as Secretary of the Council and shall be recommended by the Director, and approved by the Council. In case of absence, disability, or vacancy, the Director shall designate an Acting Secretary.

(a) The Secretary shall keep the minutes of each meeting. The minutes shall, as a minimum, contain a record of persons present, a description of matters discussed and conclusions reached, and copies of all reports received, issued or approved by the Council. The draft of such record with or without copies of such records, as considered by the Secretary to be necessary, will be furnished to each Member, Associate Member, Observer, and Representative present and to the Director promptly after each meeting for review, comment, correction, and for approval at the next regular meeting of the Council. Subsequent to approval of the minutes, a copy of such minutes will be forwarded to all Members, Associate Members, Representatives, and Observers.

(b) The Secretary shall be responsible for the proper maintenance of all documents which are decisions of record, of agenda and of other related documents.

(c) Members, Associate Members, and Observers shall inform the Secretary in writing of persons authorized to represent them in Council meetings. The Secretary shall maintain a record of such authorizations.

§ 701.59 Subordinate groups at headquarters.

In addition to administrative, consultative and technical committees established by § 701.5(f), the Council may establish Subcommittees and Task Forces; Hearing Panels; and other appropriate subordinate groups to aid in the performance of its work.

(a) Membership on each such group shall be decided by the Council. Members representing Federal agencies shall be named by such agencies. Others shall be named as the Council shall decide.

(b) The Council shall determine the Chairmanship of each group.

(c) Subordinate groups shall be appointed for specific periods and termination dates shall be set forth in establishing documents.

(d) All subordinate groups shall report regularly to the Council upon their own initiative, or as the Council may direct. In any event, they shall prepare a final report on their assignments prior to termination.

(e) Each duly constituted subordinate group will be provided administrative and secretarial support by the Water Resources Council Staff to the extent possible, directly or through arrangements with other Federal agencies.

§ 701.60 Administrative committees.

(a) *Policy Development Committee.* The Policy Development Committee shall consist of an Assistant Director who shall be Chairman and one designated person (and a designated alternate) for each Member. Associate Members and Observers may be represented (see §§ 701.55 and 701.56). The Committee may organize work groups as needed. The Committee will assist the Council in carrying out the purpose set forth in § 701.3 and the functions in § 701.4 (c) and (d) by presenting recommendations for consideration by the Council concerning water and related land resources policy. In this connection, the Committee will consider assigned policy problems with respect to principles, standards and procedures for comprehensive water and related land resources planning and for the formulation and evaluation of Federal and federally assisted water and related land resources projects. Specific problems relating to policy and programs, and principles, standards and procedures, may be assigned by the Council or brought to the Committee by any Member for the preparation of a recommendation to the Council. The Policy Development Committee shall prepare a final report of its activities at least 30 days prior to its termination and shall terminate as of July 1, 1972, unless the Council shall otherwise decide. Subsequent Policy Development Committees shall be appointed for 2-year terms.

(b) *Federal-State Programs Committee.* The Federal-State Programs Committee shall consist of an Assistant Director who shall be Chairman and one designated person (and a designated alternate) for each Member. Associate Members and Observers may be represented (see §§ 701.55 and 701.56). The Committee may organize work groups as needed. The Committee will assist the Council in carrying out the purpose set forth in § 701.3 and the function in § 701.4 (a), (b), (e) and (g) by presenting recommendations for consideration by the Council concerning water and related land resources assessments and plans. In this connection, the Committee will supervise and review the regional and river basin planning programs of the Council through review of coordinated budgets, study proposals, agency and State participation, and review of reports, and similar matters. The Committee, working with designated State agencies, will also assist the States and Federal agencies to build up coordination between State and Federal agency planning for water and related land resources. Specific problems relating to regional and river basin assessments and plans may be assigned by the Council or brought to this Committee by any member for the preparation of a recommendation to the Council. The Federal-State Programs Committee shall prepare a final report of its activities at least 30 days prior to its termination and shall terminate as of July 1, 1972, unless the Council shall otherwise decide. Subsequent Federal-State Programs Committees shall be appointed for 2-year terms.

(c) *State Grants Committee.* The State Grants Committee shall consist of an Assistant Director who shall be Chairman and one designated person (and designated alternate) for each Member. Associate Members and Observers may be similarly represented (see §§ 701.55 and 701.56). This Committee, upon invitation of the Chairman of the Council, may also include a representative of each Federal agency not otherwise represented which administers grants-in-aid to States or other public bodies for water and related land resources planning. This Committee will assist the Council in carrying out the purpose set forth in § 701.3 and the function in § 701.4(h). It shall meet at the call of the Chairman and shall establish procedures for regular exchange of information between the participating agencies on planning grant programs. Each agency through its Washington office will supply the other participating agencies with appropriate information concerning applications for grants. Questions concerning individual applications or general proceedings shall be referred to the specific agency concerned or shall be considered at a special meeting of the Committee called for this purpose. The State Grants Committee shall prepare a final report of its activities at least 30 days prior to its termination and shall terminate as of July 1, 1972, unless the Council shall otherwise decide. Subsequent State Grants Committees shall be appointed for 2-year terms.

§ 701.61 Technical committees.

Technical committees may be appointed for 2-year terms. Such committees shall have as their first order of business the development for approval by the

Council of Representatives of a Charter. Technical committees shall consist of a Council staff member who shall be designated by the Director, and representatives of appropriate Federal agencies and other persons, as designated by the Council. Each technical committee shall prepare a final report of its activities at least 30 days prior to its termination, and each such committee shall terminate no later than 2 years after its establishment. The following technical committees shall terminate on July 1, 1972, unless the Council shall otherwise decide:

(a) Economics.

(b) Hydrology.

(c) Sedimentation.

(d) Vector Control.

**§ 701.62 Advisory committees.**

Advisory committees established by the Council may be of two types: (a) Standing, and (b) ad hoc. Standing advisory committees shall consider specific problems referred to them by the Council or by the Director and may consider upon their own initiative other problems and issues which they deem appropriate. Ad hoc advisory committees shall consider only the specific problem or issue which causes their establishment by the Council. Each advisory committee shall prepare and present recommendations on problems and issues which it considers for consideration by the Council as promptly as possible. Each advisory committee shall prepare a final report of its activities at least 30 days prior to its termination, and each such committee shall terminate no later than 2 years after its establishment. Advisory committees may be reappointed for succeeding 2-year terms.

**§§ 701.63–701.70 [Reserved]**

**§ 701.71 The Chairman.**

(a) The Chairman shall preside at Council meetings of Members.

(b) The Chairman is the official spokesman of the Council and represents it in its relations with the Congress, the States, Federal agencies, persons, or the public. He shall from time to time report, on behalf of the Council, to the President. He shall keep the Council apprised of his actions under this section.

(c) The Chairman shall request the heads of other Federal agencies to participate with the Council when matters affecting their responsibilities are considered by the Council.

(d) In the case of absence, disability, or vacancy, the Vice Chairman shall act as Chairman. The Vice Chairman, on annual basis beginning July 1 of each year (commencing as of July 1, 1966), shall be successively the Secretary of the Army, the Secretary of Agriculture, the Secretary of Health, Education, and Welfare, the Secretary of Transportation, the Chairman of the Federal Power Commission, and the Secretary of the Interior. If neither the Chairman nor the Vice Chairman is available then the position of Acting Chairman shall be filled in the same order of precedence as above.

**§§ 701.72–701.75 [Reserved]**

**§ 701.76 The Water Resources Council Staff.**

The Water Resources Council Staff (hereinafter the Staff) serves the Council and the Chairman in the performance of their functions and in the exercise of their authorities in accordance with the Act, the rules and regulations and other decisions of the Council, and all other laws, rules, regulations, and orders applicable to the Water Resources Council, and will be organized in accordance with the structure approved by the Council.

**§ 701.77 Director—duties and responsibilities.**

In addition to his role as Chairman of Representatives in Council meetings, the Director acts as the principal executive officer for the Council and head of the staff. He shall see to the faithful execution of the policies, programs, and decisions of the Council; report thereon to the Council from time to time or as the Council may direct; administer the office and staff of the Council within the limits of the Annual Budget and the Annual Operating Program related thereto; make recommendations to the Council and the Chairman relating to the performance of their functions and the exercise of their authorities; and facilitate the work of the Council and the Chairman. His duties and responsibilities include, but are not limited to, the following:

(a) Acting for the Chairman, represents the Council in its relations with the Congress, States, Federal agencies, persons, or the public under the general supervision and direction of the Council.

(b) Establishes the line of succession as Acting Director among the other officers of the Council below the Deputy Director, unless the Council otherwise directs.

(c) Directs the Staff in its service to the Council and the Chairman in the performance of their functions and in the exercise of their authorities. The Director is responsible to the Council for the organization of the Staff, employment and discharge of personnel, training and personnel development program, assignment of duties and responsibilities, and the conduct of its work.

(d) Insures that the quality of the work of the Staff in its studies, reports, and in other assignments is high, that the professional integrity of its personnel is respected, and that its overall perspective and independence of judgment with regard to water and related land resources matters is appropriately maintained within the context of the interagency, intergovernmental, and other staff collaboration that is both necessary and desirable in the fulfillment of the purpose of the Council as set forth in § 701.3.

(e) Prepares and recommends reports on legislation, Executive orders, and other documents requested of the Council.

(f) Prepares and recommends an Annual Budget request in accordance with policies, rules, and regulations applicable thereto. During its consideration by the Bureau of the Budget, the President and the Congress, the Director shall seek acceptance of the proposed Annual Budget by every appropriate means. On behalf of the Council, he is authorized in his discretion to make appeals and agree to adjustments. However, to the extent that time and circumstances permit, he shall consult with and obtain the approval of the Council on all substantial appeals and adjustments.

(g) Prepares and recommends the Annual Operating Program to carry out the work of the Council, within the appropriations provided by the Congress and allowances approved by the Bureau of the Budget.

(h) Prepares and recommends proposed rules and regulations, including proposed delegations of authority, for carrying out the provisions of the Act, or other provisions of law which are administered by the Council.

(i) Prepares and recommends an Annual Report of the Council, together with such other reports and materials for public information that are explanatory of the work and accomplishments of the Council.

(j) Appoints representatives of the Staff on Subordinate Groups established by the Council on which the Staff has membership. (See § 701.59.)

(k) Establishes and enforces administrative rules and regulations pertaining to the Staff consistent with applicable laws, Executive orders, Budget Circulars, and other regulations and orders.

**§ 701.78 Director—delegation of authorities.**

(a) Under the authority of section 403 of the Act (42 U.S.C. 1962d–2), the Director is delegated authority to—

(1) Hold hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reports thereon as he may deem advisable.

(2) Acquire, furnish, and equip such office space as is necessary.

(3) Use the U.S. mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(4) Employ and fix the compensation of such personnel below the grade of GS–16 as he deems advisable and such personnel of GS–16 and above as the Council shall approve, in accordance with the civil service laws and the Classification Act of 1949, as amended; assign duties and responsibilities among such personnel and supervise personnel so employed.

(5) Procure services as authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), at rates not to exceed $100 per diem for individuals.

(6) Purchase, hire, operate, and maintain passenger motor vehicles.

(7) Utilize and expend such funds as are deemed advisable for proper administration of the authorities delegated

herein. However, contracts and individual modifications thereof in excess of $25,000 shall be submitted to the Council for approval before execution.

(8) Request any Federal department or agency (i) to furnish to the Council such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and (ii) to detail personnel to temporary duty with the Council on a reimbursable basis.

(9) Make available for public inspection during ordinary office hours all appropriate records and papers of the Council.

(10) Compute and certify for payment funds to the States in accordance with standards and formula approved by the Council, and perform related functions of the Council contained in section 305 of the Act.

(11) Serve as a duly authorized representative of the Chairman of the Council for the purpose of audit and examination of any pertinent books, documents, papers, and records of the recipient of a grant under title III of the Act, and recommend to the Chairman the appointment of further representatives as may be necessary for such function.

(12) Review, for compliance, State programs approved under title III; conduct full inquiries as the Council may direct; and recommend for Council decision such withholding or reinstatement of payments as is appropriate and authorized by section 304 of the Act.

(b) The authorities delegated in this section may be redelegated by the Director to the extent determined by him to be necessary and desirable for proper administration.

### § 701.79 Other principal Council officers.

(a) A Deputy Director, who shall act for the Director in his absence; and who shall furnish general professional and administrative advice and assistance to the Director; have primary staff cognizance over the creation, operation and termination of Federal-State river basin commissions; have primary staff cognizance for Council participation in interstate and Federal-interstate compact negotiations; have primary staff cognizance of international matters; and perform other duties and responsibilities as assigned.

(b) An Assistant Director, who shall be the head of the Policy Development Division, in collaboration with representatives of other Federal agencies, State and local agencies, and others, and with the assistance of personnel assigned to him, maintains a continuing study of the adequacy of administrative and statutory means for the coordination of the water and related land resources policies and programs of the several Federal agencies; appraises the adequacy of existing and proposed policies and programs of Federal agencies, and their relationships to programs of States, local governments, and private enterprise, for the coordination, development, and management of water and related land resources; develops solutions for assigned policy problems with respect to principles, standards, and procedures for Federal participation in regional or river basin assessments, plans and programs and for the formulation and evaluation of Federal and federally assisted water and related land resources projects; makes appropriate recommendations for consideration of the Director and the Council with respect to Federal policies and programs; develops procedures consistent with and designed to implement established principles and standards; serves as Chairman of the Policy Development Committee; and performs other duties and responsibilities as assigned.

(c) An Assistant Director, who shall be the head of the Federal-State Programs Division, in collaboration with representatives of other Federal agencies, State and local agencies, and others, and with the assistance of personnel assigned to him, maintains a continuing study (1) of the adequacy of water supplies and the national interest therein and prepares national assessments, and (2) of the relation of regional or river basin assessments, plans and programs to the requirements of larger regions of the Nation; guides, coordinates and reviews Federal participation in the preparation of regional or river basin plans; coordinates and reviews implementation of the formulation and evaluation of Federal water and related land resources projects; develops guidelines for the preparation of, and coordinates and reviews, schedules, budgets, and programs of Federal agencies in regional or river basin planning and has staff cognizance over the operations and programs of field organizations with respect to regional or river basin planning, including supervision of Field Directors provided for in § 701.100; reviews plans submitted by river basin commissions or other water and related land resources plans assigned to the staff for review and prepares recommendations thereon to the Director and the Council; assists in fiscal and program administration of grants-in-aid to States as provided by title III of the Act, and in conformance with the Council's rules, regulations, and supplemental instructions, such rules to be prepared in collaboration with representatives of other agencies responsible under other acts for administering Federal grants to States for planning involving water and related land resources; is responsible for providing guidance to the States in applying for grants and executing approved planning programs; for making appropriate recommendations for consideration of the Director and the Council with respect to the administration of State grants-in-aid; serves as Chairman of the Federal-State Programs Committee and the State Grants Committee; and performs other duties and responsibilities as assigned.

(d) An Associate Director, who shall be the head of the Office of Advanced Projects and Research, in collaboration with representatives of other Federal agencies, State and local agencies, and others, and with the assistance of personnel assigned or detailed to him, and other consultants as necessary, is concerned with difficult conceptual and technical problems in the conservation, development, and utilization of water and related land resources; has general responsibility for Council relations with the research community, including but not limited to, the Committee on Water Resources Research of the Federal Council for Science and Technology, the Office of Water Resources Research, and water research institutes; advises the Director, the Council and others of research needs and findings that would improve water and related land resources conservation, development, and use; and performs other duties and responsibilities as assigned.

### § 701.80 Selection policy for professional personnel.

In the selection for employment of the professional staff as a whole, the Director shall be guided by the following criteria:

(a) Outstanding character and competence—both personal and professional.

(b) Spread and balance of training and experience in the several relevant professions—ecology; economics; economic geography; engineering; fish and wildlife biology; forestry; hydrology; irrigation; landscape architecture; law; political science; recreation; sanitary engineering; soil conservation; urban and other land planning; etc.

(c) Diversity of prior identification and experience, both planning and operating in Washington and in the field; including personnel with prior identification and experience with Federal, State, or local government, private enterprise, or university teaching and research.

### §§ 701.81–701.99 [Reserved]

## Subpart C—Field Organization

### § 701.100 Field Directors.

The Council may employ as professional staff Field Directors who shall be designated as chairman of committees or groups established by the Council to develop and prepare regional or river basin assessments or plans. Such Field Directors shall perform their official functions at locations established by the Council.

### § 701.101 Field committees.

The Council may establish or continue already established regional committees to carry out assigned functions at field level.

### § 701.102 Existing committees.

Field Committees operating under the Water Resources Council (formerly under the Inter-Agency Committee on Water Resources) are as follows:

Missouri Basin Inter-Agency Committee
Pacific Southwest Inter-Agency Committee
Arkansas-White-Red Inter-Agency Committee
Southeast Basins Inter-Agency Committee

W. DON MAUGHAN,
*Director.*

[F.R. Doc. 70-9724; Filed, July 28, 1970; 8:45 a.m.]

## PART 703—GRANTS TO STATES FOR COMPREHENSIVE WATER AND RELATED LAND RESOURCES PLANNING

On January 15, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 545). Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed revisions. After consideration of all such relevant matter as was presented by interested persons, the revision as so proposed is hereby adopted, subject to the following changes:

1. In paragraph (f) of § 703.2, change the words "the Water Resources Planning Act" to read "The Act".

2. In paragraph (h) of § 703.2, delete the word "Executive" before the word "Director" and the words "Water Resources" before the word "Council".

3. Change paragraph (b)(2) of § 703.3.

4. In paragraph (f) of § 703.3, delete the words "recalculate allotments and".

5. Change paragraph (d)(1)(i) of § 703.5.

6. In paragraph (d)(2)(i) of § 703.5, delete the word "or" before the words "under section 314(a)" and add at the end of subdivision (i) the following: "under section 206 of the Solid Waste Disposal Act (78 Stat. 678); under section 105 and 106 of the Clean Air Act (80 Stat. 416);".

7. In paragraph (d)(2)(iii) of § 703.5, delete "Federal Water Pollution Control Administration" and substitute "Federal Water Quality Administration".

8. In § 703.6, delete "701.79(d)" and substitute "701.79(c)", and add "of Part 701" before the words "of this chapter".

9. In paragraph (b)(2) of § 703.7, delete the word "Executive".

10. In § 703.9, lines 1 and 2, delete the words "for carrying out programs approved under § 703.4(c)", and the word "Executive".

*Effective date.* This revised Part 703 is effective upon publication in the FEDERAL REGISTER.

W. DON MAUGHAN,
*Director.*

Sec.



AUTHORITY: The provisions of this Part 703 issued under sec. 402, 79 Stat. 244; 42 U.S.C. 1962d–1.

### § 703.1 Purpose of Part 703.

This part sets forth the regulations that apply to Water Resources Council grants to the States for comprehensive water and related land resources planning as authorized by title III of the Water Resources Planning Act (Public Law 89–80, 79 Stat. 244). The purpose of this part is to describe the method of administration of grants to States to encourage increased:

(a) State participation in Federal-State comprehensive water and related land resources planning;

(b) State preparation of plans in light of regional and national plans and programs for the development and use of a State's water and related land resources;

(c) State training of personnel, where necessary, to develop additional technical planning capability.

### § 703.2 Definitions.

For purposes of administering this Part 703, the following definitions shall apply:

(a) "Act" means the Water Resources Planning Act (79 Stat. 244).

(b) "Application" means a document submitted by a State for consideration by the Council for a grant.

(c) "Augmented planning" means an increase in planning of water and related land resources undertaken by a State, measured by increased expenditures of non-Federal funds for comprehensive water and related land resources planning above the expenditure for the 12-month base period ending June 30, 1965.

(d) "Component" means one of three major subdivisions of the planning process: (1) General studies or analyses of broad utility such as of population, economics, geology, or soils, and inventories that are needed in comprehensive planning; (2) specialized studies, such as for water pollution, recreation, water and sewer programs, and flood control; and (3) plan formulation, including feasibility studies of specific projects.

(e) "Comprehensive water and related land resources planning" as applied to the State planning effort, means those overall activities, investigations, and studies (1) necessary for making coordinated decisions relating to the conservation, control, management, and use, including preservation as well as development, of water and related land resources (including flood plains, coastal and estuarine areas) within a State or a region, intrastate or interstate in nature; (2) which consider the potential for all water and related land resources use from the standpoint of present and future needs; and (3) which include provision for participation by all public and private agencies or interests that may affect or be affected by resource management. Such planning may include the process of selecting between alternative proposals and may consider institutional changes leading toward implementation of the selected plan.

(f) "Council" means the Water Resources Council established by section 101 of the Act.

(g) "Designated State agency" means a permanent agency of a State designated by State law or, in the absence of such State law, by the Governor to administer and coordinate a State comprehensive water and related land resources planning program and to act as liaison with the Council.

(h) "Director" means the principal executive officer of the Council.

(i) "Fiscal year" means a 12-month period ending on June 30, unless otherwise specified.

(j) "Land area of a State" means the land and inland water area of a State as defined and set forth in Table 3 on pp. 263–264 of Boundaries of the United States and the Several States, Geological Survey Bulletin 1212, U.S. Government Printing Office, Washington, 1966, or revisions thereof.

(k) "Per capita income of a State" means the average of the most recent 3 years of official U.S. Department of Commerce per capita income figures for the State.

(l) "Population of a State" means the latest official estimate of the U.S. Department of Commerce available on or before January 1 preceding the fiscal year for which funds are appropriated.

(m) "Program" means a coordinated set of planning activities designed to accomplish the best use, development, management, control, conservation, and preservation of the water and related land resources of a State in accordance with the criteria enumerated in section 303 of the Act. A program may be divided into elements, based on geography, political subdivisions, or kind of development, and may include appropriate administration and training of personnel.

(n) "Related land resources" means that land on which present or projected use or management practices cause significant effects on the quantity and/or quality of the water resource, and that land the use or management of which is significantly affected by or depends on existing and proposed measures for management, development or use of water resources.

(o) "State" means a State, the District of Columbia, Puerto Rico, or the Virgin Islands.

(p) "Supplemental instructions" means detailed instructions issued (in accordance with § 703.13) for the purpose of amplifying this part and facilitating grant applications.

### § 703.3 Allotments.

(a) An allotment of funds may be awarded to any State after a written application is approved by the Council. Within limitations prescribed by paragraph (b) of this section, the Council may grant up to 50 percent of the cost of a State's approved planning program. The non-Federal funds which comprise a portion of the cost of the approved program shall be eligible to match an allotment made from the Council only to the extent of increases in the non-Federal expenditures of the program above those incurred during a "base period" of one year ending June 30, 1965. In exceptional circumstances the Council may approve a longer base period. In addition, the base period may be adjusted because some States have different terminating dates for their fiscal year, but in no event can the base period terminate after June 30, 1965. Once established, the base level

of expenditures for such a period is intended to remain as the base for calculating non-Federal funds eligible for matching.

(b) The funds appropriated pursuant to section 301(a) of the Act for any fiscal year for grants to States shall be allotted among the participating States in accordance with section 302(a) of the Act as follows:

(1) Fifteen percent of the funds in the ratio that the population of each State bears to the population of all the States,

(2) Fifteen percent of the funds in the ratio that the land area of the State bears to the land area of all the States,

(3) Thirty percent of the funds in the ratio that the reciprocal of the per capita income of a State bears to the sum of the reciprocals for all the States, and

(4) Forty percent of the funds according to the need for comprehensive water and related land resources planning programs in each State, as determined by the Council.

(c) In determining the need of a State for comprehensive water and related land resources planning as specified in paragraph (b)(4) of this section, the Council shall consider:

(1) Crucial nature or immediacy of water and related land resources problems,

(2) Importance of the contribution of a State to Federal or Federal-State planning of water and related land resource use and development in its region,

(3) Specific opportunity for a State to make a substantial advance in comprehensive water and related land resources planning,

(4) Progress toward developing State staff capability for comprehensive water and related land resources planning, and

(5) Such other factors as the Council may determine to be relevant.

(d) Within 30 days after publication of the President's budget each year, the Council shall publish a tabulation showing the tentative distribution of funds to each State, based on the appropriation requested by the President for the next fiscal year. This publication does not confer entitlement to such funds; it is simply a preliminary figure that can be used by the States for budgetary planning purposes.

(e) Before any allotment may be paid, a State must submit and obtain Council approval of its application. Commitments for financial assistance are made only on the basis of an approved application and the availability of funds appropriated by the Congress.

(f) Because of the need to make funds available promptly for use by the States, the Council will distribute funds to the participating States as soon as possible after July 1 each year.

### § 703.4 Procedures for applications.

(a) *New applications.* Within 90 days after publication of the tentative allotments for any fiscal year, any State not having a program already approved for the coming fiscal year and interested in obtaining a grant for the following fiscal year for comprehensive water and related land resources planning shall submit to the Council an application which conforms to § 703.5. The detailed program of this application may be for one or more years or for a whole planning program leading to a completed State plan. Budget estimates may be shown for more than 1 year, with the understanding that except for the first year they are only estimates and subject to annual amendment and resubmission for approval.

(b) *Annual supplemental applications.* During any multiyear period for which a program has been approved, each State shall submit by the 90-day deadline each year any substantive amendments to the approved program that are proposed, and a budget for the coming fiscal year.

(c) *Renewed applications.* When a detailed program covering more than 1 year has been approved by the Council, a new application as outlined in §703.5 will be required for any additional period.

### § 703.5 Contents of applications.

A new or renewed application submitted by a State for approval shall present concise statements and, where helpful or necessary, charts or tabulations conveying information needed by the Council. A detailed form for preparation of the application, conforming to the following outline, will be supplied to the applicant:

(a) Name of State.

(b) Designated State agency: Name the designated State agency, and give name, title, and address of the chief officer of the agency.

(c) Authority: Cite the statutory or other authority of the designated agency to administer or perform water and related land resources planning in accord with the Act.

(d) Coordination:

(1) Include assurances that:

(i) In carrying out the State water and related land resources planning program, consideration will be given to relationships to other planning by the State or other governmental entities within the State with the view of attaining consistency among the several planning programs;

(ii) The economic and other relevant assumptions and projections to be used will be in harmony with those of other planning programs;

(iii) Optimum joint use will be made of equipment, personnel, and existing data among the various State planning programs; and

(iv) Steps taken, and to be taken, by the State will provide for statewide coordination of comprehensive water and related land resources planning with other comprehensive planning efforts in accord with section 303(2) of the Act, and Bureau of the Budget Circular No. A–95 (July 1969), including a provision that the Governor of the State will be given opportunity to review and comment on the proposed boundaries of multijurisdictional planning areas.

(2) Show also the steps to be taken for coordination of the State program with:

(i) Comprehensive statewide planning being carried on with assistance of grants made under section 701 of the Housing Act of 1954, as amended (68 Stat. 590); under the Land and Water Conservation Fund Act of 1965 (78 Stat. 897); under section 314(a) and 314(b) of the Comprehensive Health Planning and Public Health Service Amendments of 1966 (80 Stat. 1180), for statewide and areawide comprehensive health planning; under section 206 of the Solid Waste Disposal Act (78 Stat. 678); under sections 105 and 106 of the Clean Air Act (80 Stat. 416);

(ii) The work of commissions created under title II of the Act (79 Stat. 244) insofar as areas in the State are covered by such commissions;

(iii) Water pollution control programs in the State, including those conducted pursuant to the Federal Water Pollution Control Act, as amended (75 Stat. 204), and those developed by the Federal Water Quality Administration as a part of comprehensive, coordinated, joint plans for river basins done in accordance with section 201(b)(2) of the Act and as authorized by other acts;

(iv) Comprehensive water and related land resources planning, relating to economic development planning conducted within the State in accordance with titles III, IV, and V of the Public Works and Economic Development Act of 1965 (79 Stat. 552) and in accordance with section 206 of the Appalachian Regional Development Act of 1965 (79 Stat. 5);

(v) Comprehensive planning for the development of water and sewer systems in rural areas under the Consolidated Farmers Home Administration Act of 1961 (75 Stat. 307), as amended;

(vi) research done under the Water Resources Research Act (78 Stat. 329).

(e) Participating State agencies: List all State agencies administered or coordinated by the designated State agency and indicate whether each agency will be assisted by Federal funds granted under title III. Indicate also how coordination by the designated agency is related to the State "clearing house" agency established in compliance with Bureau of the Budget Circular No. A–95 (July 1969).

(f) Relationship to other State agencies: Describe how the planning to be done by the designated and participating State agencies is related to that to be done by other State planning and development organizations, such as intrastate river basin commissions and authorities, and special agencies in the State which have particular watershed or river basin jurisdictions or functions. This description should also provide for coordination with comprehensive statewide development planning, whether or not such planning receives Federal financial assistance.

(g) Relationship to Federal and Federal-State planning programs: Describe how the State's planning work will be coordinated with related work of Federal and Federal-State planning programs.

(h) Need for augmented planning: Include statements on at least the criteria set forth in § 703.3(c) (1), (2), (3),

and (4) to assist the Council in appraising the need for comprehensive water and related land resources planning among the States for the purpose of allotting the 40 percent of Federal title III funds available for distribution on the basis of planning need.

(i) Planning procedure: Describe the overall State program for comprehensive planning for water and related land resources development for which a title III grant is sought, including its expected duration. Summarize the steps to be followed in completing the State plan, projected on a year to year basis to the extent possible. Describe the major steps in planning, including provisions for obtaining necessary economic projections and other basic data. A flow chart or charts depicting the contemplated rate of progress in completing work within the various categories will be helpful.

(j) Detailed program: Outline specifically the planning program scheduled for the coming fiscal year or years for which Council approval is requested. Show for each of the several substantive components of the planning program, for the fiscal year of each annual request, an estimate of the budgeted amounts of State and Federal funds to be assigned to each component.

(k) Available information: Provide information about the nature and extent of water and related land resources, the status of their development, and their economic significance in the State, together with references to available data on each of these aspects.

(l) Current status of planning: Describe the State's water and related land resources planning programs as of the beginning of the fiscal year for which a title III grant is requested, including:

(1) The water and related land resources being studied.

(2) The planning activities being conducted,

(3) The planning resources in terms of personnel, equipment, funds and accumulated data and information, and

(4) The level of development and the progress of the planning program.

This statement should also indicate the segments of the total planning program that are handled by each participating agency.

(m) Accounting: Name the State agencies or officials responsible for receiving, disbursing, and accounting for Federal Title III and non-Federal matching funds used in planning. Also, indicate briefly in what way these accounts will be kept clearly identifiable.

(n) Civil rights assurance: Provide assurance that the planning will be conducted in compliance with the provisions of title VI of the Civil Rights Act of 1964.

(o) Other Federal grants to State agencies requested or to be requested for the fiscal year for which a Federal Title III grant is being requested: Report all other Federal grants in force, applied for, or expected to be applied for, by the designated State and participating statewide agencies for water and related land resources planning, and for comprehensive planning that includes or is related to water and related land resources planning for the fiscal year of the grant request.

(p) Augmentation and proposed budget: Show the amount of State fund augmentation and supply a proposed budget. In the budget, show the estimated obligations of both State matching and Federal Title III funds for each cost item; the Federal funds requested under title III should not exceed the preliminary estimate for the State, furnished by the Council after publication of the President's budget (see § 703.3 (d)). A revised budget should be submitted in connection with any proposed significant change in an approved program, or change in the method of accomplishing it.

### § 703.6 Federal coordination.

Interagency coordination of actions upon applications for Federal grants to States for planning which includes water and related land resources shall be effected in accordance with §§ 701.60(c) and 701.79(c) of Part 701 of this chapter.

### § 703.7 Annual report and program review.

(a) *Report.* On or before August 1 of each year, each State shall make an annual report to the Council on its approved planning program, providing financial and other information on the progress during the preceding fiscal year, in such form and substance as the Council shall prescribe in supplemental instructions.

(b) *Program review.* Each State's program including its annual report will be reviewed annually by the Council. As a consequence of the annual review and in compliance with sections 303 and 304 of the Act, the following actions may occur:

(1) If it appears to the Council that the State's program conforms to the requirements of section 303 of the Act, the State will continue to be eligible for a grant under title III.

(2) If, on the other hand, it appears that the program no longer complies with the requirements of section 303 in either design or administration, the Director shall ascertain all the relevant facts. The State agency designated to administer the program shall be given notice in writing, which notice shall state with particularity the apparent inadequacies of the program and shall cite specific requirements of section 303, this part, or supplemental instructions which apparently have not been met. The State shall be given timely opportunity to be heard through the filing of written statements and personal presentations in support of its position.

(3) If the Council shall determine, on the basis of all the facts and after reasonable notice and opportunity for a hearing, that the program does not meet the requirements of section 303, the State shall be notified that no further payments shall be made under the Act. A copy of such decision accompanied by a statement of the supporting facts will be furnished to the State.

(4) When the Council is satisfied that sufficient adjustments have been made in the design and operation of the program, payments to the State will be resumed. A copy of such decision shall be furnished to the State.

### § 703.8 Program costs and accounting.

(a) *Program costs*—(1) *Time of incurrence.* (i) Non-Federal matching funds must be obligated within the fiscal year of the budget set forth in an approved application to qualify as a basis for payment of Federal funds.

(ii) Once obligated to a State, Federal funds shall remain available to the State until expended, subject to the provisions of § 703.7(b); But the persistence of substantial annual balances will be considered in determining the relative need for planning, as the Council determines allotment to the State for subsequent years (see § 703.3(c)).

(2) *Redistribution of funds.* In the event that any State fails to make application for a grant for the current fiscal year, the grant allotment assigned to that State for that year will be retained as a commitment until April 1, at which time the commitment to that State will be withdrawn by the Council and the allotment shall be added to the unobligated title III balances available to the Council.

(3) *Rules on the incurrence of planning costs.* The budgetary practices, rules, and policies of the State as customarily applied, if in accord with generally accepted accounting practices, shall govern for costs incurred on an approved program unless the approved application stipulates a different method.

(4) *Sources of State planning funds.* The sources of a State's share of the cost of a program shall have no bearing on whether or not such costs can be matched by Federal funds, except that other Federal funds or property cannot be used for matching purposes.

(5) *Use of title III grants for other matching.* Federal or non-Federal funds allotted to a title III program shall not be used to meet a State's share of the cost of a Federal-State commission established under title II of this Act or to match Federal funds under any other federally aided program.

(6) *Ceilings on allowable costs.* The amount of each cost item that may be acceptable for Federal matching under this Act shall not exceed the actual cash outlay from non-Federal sources for that item, or the fair market value of the item, whichever is less.

(7) *Expenditures that may qualify as a basis for payment of Federal funds.* (i) Any funds used by a State for water and related land resources planning may be employed to match an allotment under title III of the Act, except that funds used for matching other Federal grants-in-aid or other federally aided programs, or funds specifically prohibited by the Council, may not be used to match allotments under title III. Such expenditures must be reasonable and clearly allocable to the State comprehensive water and related land resources planning effort

and may include but are not limited to expenditures for personal services; training of personnel; fringe benefits; consultant fees; equipment, supplies, and materials; travel of employees engaged in the program; contributed personal services; and payment for information services. Consultant services are eligible only to the extent that the development of trained State personnel for comprehensive water and related land resources planning activities is not impaired.

(ii) Detailed standards, listings, and descriptions of allowable and unallowable costs are given in Bureau of the Budget Circular No. A–87, "Principles for Determining Costs Applicable to Grants and Contracts with State and Local Government," May 9, 1968.

(b) *Accounting.* Based on generally accepted standards and principles, accounting procedures shall conform to the requirements of Bureau of the Budget Circular No. A–87 unless exceptions are granted by the Council, and shall include:

(1) Itemization of all supporting records of program expenditures in sufficient detail to show the exact nature, amount, and reasonableness of each expenditure;

(2) Maintenance of adequate records, approved by the appropriate official, to show that all salaries and wages charged against the planning program were authorized;

(3) Maintenance of payroll vouchers for salaries and wages;

(4) Cross-referencing of each expenditure with the supporting purchase order, contract, voucher, or bill.

The supporting documents should be endorsed by an official authorized to approve such expenditures.

**§ 703.9 Payments.**

Payments to the States shall be made according to the following procedure: At the beginning of each calendar quarter, the Director shall determine the amount to be paid to each State in relation to the total estimate for that fiscal year. This amount, subject to availability of appropriations, shall be paid in advance, adjusted by any excess or deficiencies in payments for prior quarters, as reflected in information submitted by the States in accordance with supplemental instructions.

**§ 703.10 Records.**

(a) The officers of the State agency, designated in compliance with section 303(3) of the Act, that receives funds under the Act, shall be responsible for maintaining books of account that clearly, accurately, and currently reflect the financial transactions involving allotments, grants, contracts, and other arrangements financed under the Act and also transactions financed with funds from other sources. In addition, they shall maintain files of all papers necessary to establish the validity of the transactions recorded and their allocability to the State comprehensive water and related land resources planning effort.

(b) Such records, with all supporting and related documents, shall be available at reasonable times, upon request, for inspection and audit by representatives of the Council and of the Comptroller General of the United States.

(c) Records relating to each allotment and each grant shall be retained and made available until the expiration of 3 years after the State agency's last disbursement of such funds.

**§ 703.11 Reports and publications.**

(a) The results of each completed segment of a comprehensive water and related land resources plan, and of the entire plan, shall be stated in a formal report, to be made available for public distribution. Where a central State planning or coordinating agency exists, such reports shall be referred to such agency for any appropriate review before publication.

(b) Appropriate acknowledgment shall be given in publications, news releases and other media of the Water Resources Council's participation in financing planning under the Water Resources Planning Act.

**§ 703.12 Nondiscrimination in federally assisted programs.**

In order to carry out the provision of title VI of the Civil Rights Act of 1964 (78 Stat. 252), no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance under the Act.

**§ 703.13 Supplemental instructions.**

As deemed appropriate the Council may amplify the rules and regulations in this part by means of supplemental instructions.

[F.R. Doc. 70–9725; Filed, July 28, 1970; 8:45 a.m.]

# Title 22—FOREIGN RELATIONS

## Chapter II—Agency for International Development, Department of State

[AID Reg. 5]

## PART 205—PER DIEM PAYMENTS TO PARTICIPANTS IN NONMILITARY ECONOMIC DEVELOPMENT TRAINING PROGRAMS

Part 205 of Chapter II of Title 22 of the Code of Federal Regulations (AID Regulation 5), is revised to read as follows:

**§ 205.1 Per diem rates.**

Participants in any training program under the Foreign Assistance Act of 1961 other than Part II may receive a per diem allowance in accordance with the following rates:

(a) For participants in programs of training in the United States, a per diem allowance not to exceed $25, or, in exceptional circumstances such other rate not to exceed $40, as the Administrator of the Agency for International Development or his designee may prescribe and such designee may be authorized to redelegate such authority.

(b) For participants in programs of training in countries other than the United States, a per diem allowance not to exceed those prescribed by the Standardized regulations (Government Civilian, Foreign Areas).

This revision shall become effective upon publication in the FEDERAL REGISTER.

LANE DWINELL,
*Assistant Administrator for Administration.*

JULY 17, 1970.

[F.R. Doc. 70–9717; Filed, July 28, 1970; 8:45 a.m.]

# Title 24—HOUSING AND HOUSING CREDIT

## Chapter VII—Federal Insurance Administration, Department of Housing and Urban Development

## PART 1905—STATEWIDE "FAIR" PLANS

Pursuant to title XII of the National Housing Act (added by the Urban Property Protection and Reinsurance Act of 1968, 12 U.S.C. 1749bbb—1749bbb–21), 5 U.S.C. 553, and delegation of authority by the Secretary of Housing and Urban Development (34 F.R. 2680, Feb. 27, 1969), the Federal Insurance Administrator published in the FEDERAL REGISTER (35 F.R. 5817–21, Apr. 9, 1970) a notice of proposed rule making in which he proposed to issue the following regulation pertaining to Part A of the Act (12 U.S.C. 1749bbb–3—1749bbb–6) as a new Part 1905 of Chapter VII of Title 24. A subsequent notice extending the time for receipt of comments to June 1, 1970, was also published in the FEDERAL REGISTER (35 F.R. 7655, May 16, 1970).

The purpose of the new part is: (1) To promulgate in regulatory form, with minor revisions and clarifications, the "Guidelines for Statewide FAIR Plans under the Urban Property Protection and Reinsurance Act of 1968" issued by the Department on October 3, 1968, in implementation of 12 U.S.C. 1749bbb–3; (2) to require such Plans to provide vandalism and malicious mischief coverage as essential property insurance in accordance with 12 U.S.C. 1749bbb–2(a)(2); and (3) to modify and further define present criteria for such Plans, in accordance with 12 U.S.C. 1749bbb–6(b).

Written comments on the proposed regulations were received from 12 State insurance authorities, 18 State FAIR Plans, seven national trade associations, 26 State trade associations, individual companies, and agencies, and one individual member of the Advisory Board (referred to in the following paragraph),

a total of 64 written comments. All relevant comments were given full and careful consideration. In addition, a public meeting was held on June 24, 1970, to explain the purpose of the proposed regulations in detail, to explore possible changes, and to invite further comments in either written or oral form from those (approximately 100) in attendance. The comments received at the meeting were generally the same as those which previously had been received in writing.

The proposed regulations and revisions were then discussed on June 25, 1970, on the basis of all comments received, with the Advisory Board established pursuant to 12 U.S.C. 1749bbb–1, in accordance with 12 U.S.C. 1749bbb–17; and the Board's comments and advice have been fully taken into consideration in the preparation of the regulations which are hereby adopted.

To allow the various State FAIR Plans sufficient time to implement the resulting regulations, as revised, and in accordance with the provisions of 5 U.S.C. 553(d), these regulations will become effective on September 1, 1970.

Part 1905 of Chapter VII of Title 24 is established to read as follows:

Sec.
1905.1 Definitions.
1905.2 Composition and supervision of FAIR Plan.
1905.3 Coverage and operation of the Plan.
1905.4 Insurer participation and placement program.
1905.5 Inspections and applications for insurance.
1905.6 Deemer or binder requirement.
1905.7 Placement action after inspection report.
1905.8 Prohibition of unnecessary reinspections.
1905.9 Notice of cancellation or nonrenewal.
1905.10 Impartial selection of adjusters.
1905.11 Coding and reports under the Plan.
1905.12 Inapplicability and waiver of regulations.

AUTHORITY: The provisions of this Part 1905 issued under title XII of the National Housing Act, added by the Urban Property Protection and Reinsurance Act of 1968, as amended (Secs. 405–407, Public Law 91–152, Dec. 24, 1969), 12 U.S.C. 1749bbb—1749bbb–21; 5 U.S.C. 553; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969.

### § 1905.1 Definitions.

As used in this part—

(a) "Act" means the Urban Property Protection and Reinsurance Act of 1968, codified as title XII of the National Housing Act (12 U.S.C. 1749bbb—1749 bbb–21), which authorized the program. Section references are to the National Housing Act;

(b) "Administrator" means the Federal Insurance Administrator within the Department of Housing and Urban Development, to whom the Secretary has delegated the administration of the program (34 F.R. 2680, Feb. 27, 1969);

(c) "Applicant" means any property owner, or his authorized representative, who duly requests essential property insurance for a risk eligible under a FAIR Plan;

(d) "Binder" means a temporary and preliminary contract of insurance to protect owner against loss from the occurrence of an insurable event before a policy is issued;

(e) "Deemer provision" means a provision in a Plan whereby interim coverage for an eligible risk is deemed automatically to attach upon the expiration of a specified period of time after an application for inspection and insurance;

(f) "Eligible property," "eligible risk," or "risk eligible under the Plan" means any real property, personal property, or mixed real and personal property, potentially insurable under one or more lines of essential property insurance, subject to an inspection to ascertain insurability and applicable premium rates;

(g) "Environmental hazard" means any hazardous condition that might give rise to loss under an insurance contract, but which is beyond the control of the property owner or tenant;

(h) "Essential property insurance" means insurance against direct loss to property as defined and limited in standard fire policies and extended coverage endorsement thereon, as approved by the State insurance authority, and insurance against the perils of vandalism and malicious mischief. Such insurance shall not include automobile insurance and shall not include insurance on such type of manufacturing risks as may be excluded by the State insurance authority;

(i) "FAIR Plan" or "Plan" means a statewide Plan to assure "fair access to insurance requirements" that is approved by the Administrator as meeting the criteria of Part A of the Act, including such modifications thereof as the Administrator may promulgate from time to time under this part in accordance with subsection 1214(b) of the Act (12 U.S.C. 1749bbb–6(b));

(j) "Inspection facility," with respect to any State, means any rating bureau or other person duly authorized and designated to perform inspections under a Plan;

(k) "Insurer" includes any property insurance company, or group of companies under common ownership or common management, authorized to engage in the insurance business under the laws of at least one State;

(l) "Participating insurer" means any insurer eligible for membership in a Plan and fully participating in that Plan. The term shall not include any insurer in any State in any year in which such insurer does not participate in the Plan on a risk-bearing or potentially risk-bearing basis;

(m) "Person" includes any individual, group of individuals, corporation, partnership, association, or any other organized group of persons;

(n) "Placement facility" means the facility established under a Plan to place or provide essential property insurance to persons making application for one or more lines of such insurance under the Plan;

(o) "Pool" means any pool or association of insurance companies in any State that is formed, associated, or otherwise created for the purposes of sharing risks and of making property insurance more readily available;

(p) "Property owner" or "owner," with respect to any real property, personal property, or mixed real and personal property, means any person having an insurable interest in such property;

(q) "Secretary" means the Secretary of Housing and Urban Development;

(r) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions, and the Trust Territory of the Pacific Islands;

(s) "State insurance authority" means the person having legal responsibility for regulating the business of insurance within a State;

(t) "Surcharge" means (1) any condition charge, and (2) any general or other charge added to the basic insurance rates or premium ordinarily applicable to the same class of property; but does not include specific rates that apply to all property in a Plan on the basis of actual self-rating experience;

(u) "Urban area" includes any municipality or other political subdivision of a State, subject to population or other limitations defined in rules and regulations of the Secretary, and such additional areas as may be designated by the State insurance authority; and

(v) "Year" means a calendar year; fiscal year of a company, association, or pool; reinsurance contract year; or such other period of 12 months as may be designated by the Administrator.

### § 1905.2 Composition and supervision of FAIR Plan.

(a) The Administrator will periodically review each State's FAIR Plan in its entirety for conformity to statutory criteria (12 U.S.C. 1749bbb–3—1749bbb–6) and this part. Although the number and location of the required elements in a Plan will vary according to the particular method and procedures used by the State, the required documentation comprising each Plan could include any or all of the following, as relevant:

(1) The State law, where one has been enacted;

(2) The industry agreement or program, if any;

(3) The approval action by the State insurance authority with respect to the industry agreement or program, or by court order or other approval authority, if applicable; and

(4) Implementing rules, regulations, and orders, together with operating procedures and forms.

(b) The Plan shall include a certification by the State insurance authority of the date on which the Plan was placed in effect and on which any amendments to the Plan are effective.

(c) The Plan shall evidence that it has been approved by, and is to be administered under the supervision of, the State insurance authority.

(d) The Plan shall provide for a continuing public education program by participating insurers, agents, and brokers, in order to assure that the Plan receives adequate public attention. For example, a brochure or other publication should be made widely available for distribution through all agents, brokers, and other producers. All participating insurers, agents, and brokers should include such a publication with each notice of cancellation or nonrenewal in order to provide policyholders with the required information concerning the placement of insurance under the Plan.

**§ 1905.3 Coverage and operation of the Plan.**

(a) At a minimum, the Plan shall provide for insurance against direct loss to property as defined and limited in standard fire policies and in (1) extended coverage, and (2) vandalism and malicious mischief endorsements thereon, as approved by the State insurance authority. It shall not include automobile insurance nor such types of manufacturing risks as may be excluded by the State insurance authority. The Plan shall specifically provide for insurance against direct loss to property that is being constructed or rehabilitated (including builder's risk coverage). To avoid the need for amendment to the Plan and delays in securing new approval action, the Plan should provide for the inclusion of such additional lines of property insurance as from time to time may be designated essential by the Administrator pursuant to section 1203(a)(2) of the Act, 12 U.S.C. 1749bbb–2(a)(2).

(b) The Plan shall specify its geographic area of coverage. If the entire State is not designated as the area of coverage, the Plan must specify—by name, by population size, or by class—the political subdivisions and other areas eligible under the Plan. The area of coverage may not be limited to communities that have a blighted or deteriorating area or an area approved by the Secretary for an urban renewal project.

(c) Each State insurance authority under whose jurisdiction a Plan has been put into operation shall keep the Administrator fully and currently informed of any modifications or changes in the organization or operation of the Plan in his State, whether or not such changes directly affect the availability of coverage under the Plan.

**§ 1905.4 Insurer participation and placement program.**

(a) The Plan's placement program may take any of a variety of forms; for example, it may involve a syndicated or direct writing pool, an assigned risk facility, a reinsurance pool or association, or combinations of the foregoing.

(b) The Plan shall not discriminate against, shall provide for full cooperation with, and shall seek cooperation from all agents and brokers licensed to write property lines in the State. The inclusion of agents and brokers on FAIR Plan governing boards is encouraged.

(c) The Plan shall include one or more all-industry placement facilities, doing business with every insurer participating in the Plan, to perform the following functions for properties meeting reasonable underwriting standards:

(1) Upon request by or on behalf of a property owner requesting an inspection under the Plan, distribute the placement or risks equitably among the insurers with which it does business; and

(2) Place insurance up to the full insurable value of the risk to be insured with one or more insurers with which it is doing business, except to the extent that deductibles, percentage participation clauses, and other underwriting devices are employed to meet special problems of insurability. In the case of very large risks not accommodated by the Plan (e.g., those whose full insurable value exceeds $1,500,000), the Plan shall provide that the placement facility shall assist in seeking to place the excess portion.

(d) As soon after May 1 of each year as practicable, each State insurance authority under whose jurisdiction a Plan has been put into operation shall notify the Administrator of the names of all insurers that are fully participating (on a risk-bearing basis) in the FAIR Plan of such State on that date in accordance with the conditions of the Standard Reinsurance Contract in effect at that time. For a Plan in which participation by insurers is voluntary, the notification shall include an estimate by the authority of the aggregate premium volume of essential property insurance written by participating insurers in relation to the total premium volume in such lines written by all property insurers in the State.

(e) Federal riot reinsurance will be offered only to those insurers that (1) have direct writings in one or more lines of essential property insurance and (2) are actually or potentially risk-bearing members of any pool organized under the Plan, as certified by the State insurance authority.

**§ 1905.5 Inspections and applications for insurance.**

(a) The Plan shall designate one or more inspection facilities, which may also operate as placement facilities if desirable.

(b) The Plan shall make its inspection and placement facilities readily available and accessible to the general public by providing a central source of information on the services it provides and on the manner of application. To assure the public's access to such information, the telephone information number of the Plan shall be listed alphabetically as "FAIR Plan" (1) in the white sections and (2) under "Insurance" in the classified sections of the telephone directories of each city where these facilities maintain an office.

(c) The Plan shall require that there will be an inspection of any eligible risk that is submitted to a placement facility or to a servicing insurer if such facility or insurer is unwilling to write coverage at regular rates. The Plan may not require as a precondition for obtaining an inspection that the property owner make a showing or certification that he has been unable to obtain insurance in the regular market.

(d) The Plan shall provide that inspections may be requested by the property owner or his authorized representative, the insurer, or the insurance agent, broker, or other producer. The Plan shall also provide that the request for an inspection need not be in writing, although it can provide for the transcribing of the pertinent information on a form.

(e) An inspection under the Plan shall be without cost to the property owner. Payment of a deposit premium may not be required as a precondition to inspection. However, the Plan may allow a property owner, at his option, to pay a deposit or provisional premium at the time of application, rather than at the time insurance under a deemer or binder provision becomes effective.

(f) The Plan may not require the presence of the owner of the building for a tenant to obtain an inspection, but the inspection facility must be provided access to the relevant portions of the building in which the property to be insured is located.

**§ 1905.6 Deemer or binder requirement.**

(a) Each Plan shall contain either a deemer or a binder provision in order to prevent lapses of insurance coverage for risks eligible under the Plan before coverage has been provided or declined under the Plan. A Plan may contain both a deemer and a binder provision.

(b) Plans adopting a deemer provision shall provide that eligible risks are automatically deemed insured if, (1) through no fault of the applicant, coverage has not been either offered or denied within 20 calendar days after the date the request for inspection was received, and (2) the applicant, at the time of requesting the inspection or at any time prior to the receipt of an inspection report indicating that the property is uninsurable, pays either the estimated annual premium or the portion thereof that is appropriate for the period of time for which the coverage is provided. The period of coverage provided under any such deemer provision shall not be less than the time required to complete the inspection and to process fully in the ordinary course of business any related application for insurance of the property submitted either directly to the placement facility or first to a designated insurer and thereafter to the placement facility if necessary.

(c) Plans adopting a binder provision shall provide that an applicant may apply for and obtain temporary coverage for a risk eligible under the Plan upon payment of a provisional premium at the time of requesting the inspection. The Plan, at its option, may also provide that coverage under the binder shall be extended for a sufficient period of time, after receipt of an unfavorable inspection report, to enable the applicant to bring the property up to insurable standards, but during the period of such rehabilitation reasonable condition surcharges may be added to the normal

premium rates otherwise applicable to such property.

(d) Coverage provided under the deemer or binder provisions of the Plan shall be at the normal rates for the class of property to be insured, exclusive of any surcharge, but shall be subject to an appropriate premium adjustment, if necessary, after the property has been inspected.

(e) It is expected that no policyholder will be without coverage following a cancellation or nonrenewal under the Plan or otherwise, due solely to delays in inspecting and placing the risk under the Plan, and the Plan shall set forth the manner in which the objective of maximum possible continuity of coverage is to be accomplished. Binding coverage immediately, subject to inspection, would accomplish this and is encouraged.

**§ 1905.7 Placement action after inspection report.**

(a) The placement facility or insurer to which a risk is referred by the inspection facility shall complete an action report and promptly notify the applicant of the following:

(1) The amount of coverage that it agrees to write; and, if the coverage is with a surcharge, the amount of such surcharges and the improvements needed for coverage at a lower surcharged rate and at an unsurcharged rate;

(2) The amount of coverage it agrees to write if specified improvements are made; or

(3) That it declines to write the coverage because the property does not meet reasonable underwriting standards, in which case it will also state the specific information from the inspection report and other sources that constitutes the basis for this determination.

(b) No surcharge shall be made on any risk unless it is based upon an appropriate, objective, and identifiable physical condition of the property, as disclosed by an inspection and specified in an inspection report, and no surcharge shall be made on the basis of environmental hazards.

(c) Reasonable underwriting standards for declination of risks must be relevant to the perils against which insurance is sought. For example, they may include:

(1) Physical condition of the property; however, the mere fact that a property does not satisfy all current building code specifications would not, in itself, suffice;

(2) The property's present use, such as extended vacancy (other than for rehabilitation purposes) or the improper storage of flammable materials; or

(3) Other specific characteristics of ownership, condition, occupancy, or maintenance that are violative of law or public policy and that result in a substantially increased exposure to loss.

(d) In the event that a risk is declined on the basis that it does not meet reasonable underwriting standards, or that the coverage will be written on condition that the property be improved, the insurer or placement facility shall promptly send copies of the inspection and action reports to the applicant, advising him of the appeal procedures available, including rights of appeal to the State insurance authority under applicable State law. Appeal procedures within the Plan shall provide for prompt handling.

**§ 1905.8 Prohibition of unnecessary reinspections.**

In order to avoid unduly increasing the costs of the program, no Plan shall require the annual or routine reinspection of eligible risks for which coverage has been previously obtained under the Plan. Once an eligible risk has been inspected and found insurable, the Plan may require its reinspection only (a) upon request of the property owner, (b) on a limited basis for statistical purposes, (c) upon change in type of occupancy, (d) upon a reasonable periodic schedule of not more often than once every 3 years, or (e) for cause, upon information or well-founded belief that the occupancy hazards or physical condition of the property have substantially changed since the last inspection.

**§ 1905.9 Notice of cancellation or nonrenewal.**

(a) Except in cases of owner or occupant incendiarism, material misrepresentation, or nonpayment of premium, each Plan shall require its participating insurers to give, and each such insurer shall give, property owners no less than 30 days prior written notice of any cancellation or nonrenewal of coverage initiated by the insurer with respect to any eligible risk, whether or not such risk is then insured under the Plan, in order to allow the affected property owner sufficient time to apply for an inspection and to obtain coverage under the Plan if necessary.

(b) For the purposes of this § 1905.9, the term cancellation or nonrenewal shall include (1) reductions in amounts of insurance and adverse modifications in coverage initiated by the insurer with respect to any owner individually, and (2) refusals by the insurer or its agents to renew any expiring coverage in any line of essential property insurance previously provided to the property owner.

**§ 1905.10 Impartial selection of adjusters.**

(a) No Plan or placement facility shall discriminate by providing for the primary use of services or any preferential treatment of any adjuster to the exclusion, detriment, or disadvantage of any other adjuster of equal or equivalent professional qualifications in any formal or informal arrangements made or promulgated for the adjustment of any insured losses under policies or contracts of insurance issued under the Plan.

(b) This § 1905.10 shall not be construed to prohibit (1) the use by servicing insurers of their adjusting staffs, (2) the impartial appointment of a supervisory adjuster with respect to any individual loss directly insured by three or more insurers, or (3) the obtaining of qualified loss adjusters at the lowest admnistrative cost for a reasonable period of time by FAIR Plans through the adoption of an impartial and periodic public bidding procedure.

**§ 1905.11 Coding and reports under the Plan.**

(a) The Plan shall provide for the separate coding of policies written pursuant to the Plan.

(b) The Plan shall provide for the submitting to the State insurance authority and the Administrator of periodic reports setting forth the number of requests for inspection, the number of risks inspected, and the results of referrals by the facility, including by individual insurer the number of risks accepted, the number of risks conditionally accepted and reinspections made, the number of risks declined, and such other information as the State insurance authority or the Administrator may from time to time require.

(c) Not later than 90 days after the close of its fiscal year, each placement facility under the Plan shall furnish to the Administrator a comprehensive report on its operations during the year, which at the minimum shall include such information for the year as may be called for on Form HUD–1603, Quarterly State FAIR Plan Report. The first such report shall include copies of all previously published annual and interim reports not already furnished to the Administrator. Subsequent reports shall include any additional printed or published report under the Plan.

(d) For periods beginning on and after January 1, 1970, each placement facility under the Plan shall also provide the Administrator with quarter-annual reports of its current operations on Form HUD–1603, which the Administrator shall furnish to the facility. Such reports shall be due not later than 90 days after the end of each quarter. With respect to any previous quarter for which the reports required by this paragraph have not already been furnished, reports shall be due not later than 90 days after the effective date of this § 1905.11.

**§ 1905.12 Inapplicability and waiver of regulations.**

(a) Notwithstanding the provisions of § 1905.3(a)(2), no Plan shall be required to offer vandalism and malicious mischief coverage in any State where by September 1, 1970, the State insurance authority certifies that the availability of such coverage in the normal market is adequate to meet the demand for such coverage, and that such adequate market availability also extends to properties that obtain fire and extended coverage under the Plan.

(b) Notwithstanding its effective date, the application of any requirement imposed by this part to any existing Federally approved statewide FAIR Plan shall automatically be deferred until the close of the first full regular session of the State legislative body following such effective date in any State where the implementation of such requirement is certified by the State insurance authority by September 1, 1970, to be inconsistent with or unauthorized by an applicable

State statute in force on such effective date.

(c) In addition to the specific waiver authorized by paragraph (a), the Administrator may waive compliance with any other requirement of this part with respect to any State, temporarily or indefinitely, and in whole or in part, if the State insurance authority certifies that compliance is unnecessary or inadvisable under local conditions or State law and the Administrator concurs in such certification.

*Effective date.* This part shall be effective on September 1, 1970.

GEORGE K. BERNSTEIN,
*Federal Insurance Administrator.*

[F.R. Doc. 70-9780; Filed, July 28, 1970; 8:50 a.m.]

# Title 26—INTERNAL REVENUE

## Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 7054]

## PART 154—TEMPORARY REGULATIONS IN CONNECTION WITH THE AIRPORT AND AIRWAY REVENUE ACT OF 1970

### Tax on Transportation of Property by Air

In order to prescribe temporary regulations, which shall remain in effect until superseded by permanent regulations, under sections 4271 and 4272 of the Internal Revenue Code of 1954, as added by section 204 of the Airport and Airway Revenue Act of 1970 (Public Law 91-258, 84 Stat. 239), the following regulations are hereby prescribed:

**§ 154.2 Statutory provisions; imposition of tax; definition of taxable transportation, etc.**

Sections 4271 and 4272 of the Internal Revenue Code of 1954, as added by section 204 of the Airport and Airway Revenue Act of 1970:

SEC. 4271. *Imposition of tax.*

(a) *In General.* There is hereby imposed upon the amount paid within or without the United States for the taxable transportation (as defined in section 4272) of property which begins after June 30, 1970, a tax equal to 5 percent of the amount so paid for such transportation. The tax imposed by this subsection shall apply only to amounts paid to a person engaged in the business of transporting property by air for hire.

(b) *By whom paid*—(1) *In general.* Except as provided by paragraph (2), the tax imposed by subsection (a) shall be paid by the person making the payment subject to tax.

(2) *Payments made outside the United States.* If a payment subject to tax under subsection (a) is made outside the United States and the person making such payment does not pay such tax, such tax—

(A) shall be paid by the person to whom the property is delivered in the United States by the person furnishing the last segment of the taxable transportation in respect of which such tax is imposed, and

(B) shall be collected by the person furnishing the last segment of such taxable transportation.

(c) *Determination of Amounts Paid in Certain Cases.* For purposes of this section, in any case in which a person engaged in the business of transporting property by air for hire and one or more other persons not so engaged jointly provide services which include taxable transportation of property, and the person so engaged receives, for the furnishing of such taxable transportation, a portion of the receipts from the joint providing of such services, the amount paid for the taxable transportation shall be treated as being the sum of (1) the portion of the receipts so received, and (2) any expenses incurred by any of the persons not so engaged which are properly attributable to such taxable transportation and which are taken into account in determining the portion of the receipts so received.

(d) *Termination.* Effective with respect to transportation beginning after June 30, 1980, the tax imposed by subsection (a) shall not apply.

SEC. 4272. *Definition of Taxable Transportation, etc.*

(a) *In General.* For purposes of this part, except as provided in subsection (b), the term "taxable transportation" means transportation by air which begins and ends in the United States.

(b) *Exceptions.* For purposes of this part, the term "taxable transportation" does not include—

(1) That portion of any transportation which meets the requirements of paragraphs (1), (2), (3), and (4) of section 4262(b), or

(2) Under regulations prescribed by the Secretary or his delegate, transportation of property in the course of exportation (including shipment to a possession of the United States) by continuous movement, and in due course so exported.

(c) *Excess Baggage of Passengers.* For purposes of this part, the term "property" does not include excess baggage accompanying a passenger traveling on an aircraft operated on an established line.

(d) *Transportation.* For purposes of this part, the term "transportation" includes layover or waiting time and movement of the aircraft in deadhead service.

[Secs. 4271 and 4272 as added by sec. 204, Airport and Airway Revenue Act 1970 (84 Stat. 239)]

**§ 154.2-1 Tax on transportation of property by air.**

(a) *Purpose of this section.* In general, section 4271 of the Internal Revenue Code of 1954, as added by the Airport and Airway Revenue Act of 1970, imposes a tax equal to 5 percent of the amount paid within or without the United States for the transportation of property by air which begins after June 30, 1970, if such transportation begins and ends in the United States. This section sets forth rules as to the general applicability of the tax. This section also sets forth rules as authorized by section 4272(b)(2) which exempt from tax payments for the transportation of property by air in the course of exportation (including shipment to a possession of the United States) by continuous movement, and in due course so exported. Further, this section provides administrative provisions relating to the payment, collection, and return of the tax.

(b) *Imposition of tax.* (1) The tax imposed by section 4271 applies only to amounts paid to persons engaged in the business of transporting property by air for hire.

(2) The tax imposed by section 4271 does not apply to amounts paid for the transportation of property by air if such transportation is furnished on an aircraft having a maximum certificated takeoff weight (as defined in section 4492(b)) of 6,000 pounds or less, unless such aircraft is operated on an established line. The tax imposed by section 4271 also does not apply to any payment made by one member of an affiliated group (as defined in section 4282(b)) to another member of such group for services furnished in connection with the use of an aircraft if such aircraft is owned or leased by a member of the affiliated group and is not available for hire by persons who are not members of such group.

(3) Since the tax imposed by section 4271 applies only to amounts paid to persons engaged in the business of transporting property by air for hire, the tax applies to amounts paid to an air carrier by a freight forwarder or express company for the transportation of property by air. The tax does not apply to amounts paid by a shipper to a freight forwarder or express company.

(c) *Property exported or imported entirely by air.* (1) The tax does not apply to amounts paid for transportation entirely by air which begins in the United States and ends outside the United States, or which begins outside the United States and ends in the United States. Transportation of property by air will be considered to begin and end at the points of origin and destination shown on a through airwaybill covering shipment of the property, even though there may be stopovers in the United States (such as, for example, to consolidate cargo at a "gateway" city). If a through airwaybill is issued by a person other than a person engaged in the business of transporting property by air for hire (for example, by a freight forwarder), the air carrier may accept an air freight manifest listing the article to be shipped by weight and destination as evidence of the existence of a through airwaybill.

(2) If a through airwaybill covering air transportation from its beginning in the United States to a foreign destination, or from its beginning abroad to a U.S. destination, has not been issued, then the export or import character of the shipment must be evidenced by a contract or other written evidence clearly showing the beginning point and ending point of the air transportation.

(3) If a through airwaybill has been issued covering air transportation to a foreign destination, but the transportation nevertheless ends in the United States (for example, because the foreign consignee cancels the order before the shipment leaves a gateway city), then the amount paid for air transportation is taxable. In such a case the air carrier must collect the tax from the shipper or other person who paid for the air transportation.

(d) *Exportation involving two or more modes of transportation.* (1) Even though transportation of property by air begins and ends in the United States, the tax does not apply if the property is being transported in the course of exportation by continuous movement and in due course is so exported, provided the requirements of this paragraph are satisfied. For example, the tax does not apply to air transportation from Chicago to New York if the property is in the course of exportation, by continuous movement, by boat from New York to Europe and in due course is so exported. Delays caused by circumstances beyond the control of the shipper (such as labor disputes or natural disasters) will not interrupt continuous movement. Property arriving at a gateway city by air may be repacked or consolidated with other property without interrupting continuous movement.

(2) Continuous movement in the course of exportation shall be evidenced by (i) the execution of the Export Exemption Certificate, Form 1363, and (ii) proof that exportation has actually occurred. The certificate shall be executed, in duplicate, by the shipper or other person making the payment subject to tax. Such person shall retain the duplicate with the shipping papers for 3 years from the last day of the month during which the shipment was made from the point of origin, and shall file the original with the carrier at the time of payment of the transportation charge. The carrier receiving the original certificate shall retain it along with the document showing payment of the transportation charge, for a period of 3 years from the last day of the month during which the shipment was made from the point of origin.

(3) The filing of a properly executed Form 1363 with the carrier suspends liability for the payment of the tax for a period of 6 months from the date of shipment from the point of origin. If the person who is liable for the tax has not provided evidence to the carrier of the actual exportation of a shipment within such period, then the temporary suspension of the liability for the payment of the tax ceases and the carrier shall collect the tax from the person who paid the carrier for the transportation charge. If, after collection of the tax by the carrier, proof of exportation is subsequently received by the carrier, credit or refund of the tax may be obtained under the terms set forth in section 6415 of the Internal Revenue Code of 1954.

(4) Documentary evidence of the exportation of the property may consist of a copy of export bill of lading, memorandum from the captain of the vessel, customs official, or a foreign consignee, shipper's export declaration, or other evidence sufficient to establish that the property has actually been exported. The person making the payment subject to tax shall furnish the appropriate documentary evidence to the carrier, or a statement that he holds such documentary evidence. In the latter case, the statement must: (i) Certify that the property covered by the Export Exemption Certificate, Form 1363, was exported; (ii) identify the evidence of exportation; (iii) specify the foreign destination or the possession of the United States to which the property was shipped; and (iv) show the place where such evidence will be available for inspection by internal revenue officers. Any documentary evidence or statement, as the case may be, shall be retained by the carrier and the person making the payment subject to tax for a period of three years from the last day of the month during which the shipment was made from the point of origin. If the person making the payment subject to tax is not the actual exporter and is unable to obtain documentary evidence of exportation, such person shall obtain from the person having custody of the documentary evidence a statement containing the same facts as listed above for a statement furnished to the carrier by the person liable for the tax. The person making the payment subject to tax shall furnish the original of such statement to the carrier and shall retain a copy in his records. The statement shall be retained for the same three year period as the evidence of exportation is to be retained.

(e) *Definitions*—(1) *Property.* The term "property" does not include excess baggage accompanying a passenger traveling on an aircraft operated on an established line.

(2) *Transportation.* The term "transportation" includes layover or waiting time and movement of the aircraft in deadhead service.

(3) *Taxable transportation.* The term "taxable transportation" is defined in section 4272.

(f) *Administrative provisions*—(1) *Collection of tax.* The tax imposed by section 4271 shall be paid by the person making the payment subject to tax and shall be collected by the person engaged in the business of transporting property by air for hire who receives such payment, except that in the case of amounts subject to tax which are paid by the U.S. Post Office Department, the tax shall not be collected by the person engaged in the business of transporting property by air for hire who receives such payment, but instead shall be paid directly by such Department as if it were a collecting agent.

(2) *Returns.* Liability for the tax imposed by section 4271 shall be reported on Form 720. Unless a taxpayer is notified by the district director that monthly or semimonthly returns are required, the return shall be filed for a period of one calendar quarter. Quarterly returns must be filed by the end of the second month following the end of the calendar quarter. For place of filing, see instructions on Form 720.

(3) *Payment of tax.* Every person who is liable, in any calendar quarter, for more than $100 of excise taxes (retail, manufacturers, and services) listed on Form 720 must make semimonthly, monthly, or quarterly deposits of such taxes with an authorized commercial bank depositary or a Federal Reserve Bank. Every taxpayer who is liable for $100 or less of taxes for a calendar quarter, or whose total taxes for a calendar quarter exceed the amounts deposited for the quarter by $100 or less must either remit the unpaid taxes with his quarterly return or deposit the unpaid amount with an authorized bank or Federal Reserve Bank.

(4) *Deposit requirements.* For deposit requirements, see instructions on Form 720.

(5) *Extension of time for filing returns.* District directors and directors of service centers may upon application of the taxpayer grant a reasonable extension of time in which to file the return. Application for an extension of time for filing the return should be addressed to the district director who has or will have audit jurisdiction of the return or the director of the service center for the center in which the taxpayer files his return. The application must contain a full recital of the cause of the delay. An extension of time for filing shall operate to extend the time for payment of the tax or any installment thereof unless specified to the contrary in the extension. However, see section 6656(a) relating to penalty for failure to make deposit of taxes.

(6) *Employer identification number.* Form 720 (Quarterly Federal Excise Tax Return) requires the use of an employer identification number. If such number has not been secured or applied for, an application on Form SS–4 shall be filed on or before the seventh day after the date of the first receipt of a payment for transportation of property by air with respect to which a tax is imposed by section 4271. Form SS–4 may be obtained from any district director or director of a service center. The application shall be filed with the Internal Revenue officer designated in the instructions applicable to Form SS–4.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

[SEAL] RANDOLPH W. THROWER,
*Commissioner of Internal Revenue.*

Approved: July 24, 1970.

JOHN S. NOLAN,
*Acting Assistant Secretary of the Treasury.*

[F.R. Doc. 70-9761; Filed, July 28, 1970; 8:48 a.m.]

# Title 33—NAVIGATION AND NAVIGABLE WATERS

## Chapter II—Corps of Engineers, Department of the Army

### PART 204—DANGER ZONE REGULATIONS

### Gulf of Mexico Off Matagorda Island, Tex.

Effective upon publication in the FEDERAL REGISTER, § 204.162, pertaining to a danger zone in the Gulf of Mexico off Matagorda Island, Tex., is amended to change the enforcement agency, paragraph (b)(3), to read as follows:

§ 204.162 **Gulf of Mexico off Matagorda Island, Tex.; Air Force practice gunnery, bombing, and rocket firing range.**

* * * * *

(b) *The regulations.* * * *

(3) The regulations in this section shall be enforced by the Commander, Matagorda Air Force Range, Tex., and such agencies as he may designate.

[Regs., July 21, 1970, ENGCS-ON] (Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

For the Adjutant General.

RICHARD B. BELNAP,
*Special Advisor to TAG.*

[F.R. Doc. 70-9767; Filed, July 28, 1970; 8:49 a.m.]

# Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

## Chapter 101—Federal Property Management Regulations

SUBCHAPTER H—UTILIZATION AND DISPOSAL

### PART 101-45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

### Standard Form 114 Series—Sale of Government Property

This amendment provides for the use of revised and new forms in the Standard Form 114 series in connection with the sale of Government personal property. Sections 101-45.304, 101-45.313, and 101-45.317 are amended to prescribe for and conform with these standard forms and to correct or delete appropriate references contained therein. Section 101-45.805 is added to clarify existing authority to correct mistakes in bids disclosed after award in negotiated sales. Sections 101-45.4901 through 101-45.4904, and 101-45.4905 are revised and §§ 101-45.4904-1 through 101-45.4904-4, 101-45.4905a, and 101-45.4905b are added to illustrate the January 1970 edition of the Standard Form 114 series.

Table of contents for Part 101-45 is amended to provide for new and revised entries, to delete the illustration in § 101-45.4905 and substitute a new illustration in lieu thereof, and to delete the illustrations in §§ 101-45.4917, 101-45.4918, and 101-45.4926, as follows:

Sec.

| | |
|---|---|
| 101-45.805 | Mistakes disclosed after award in negotiated sales. |
| 101-45.4901 | Standard Form 114, Sale of Government Property—Bid and Award. |
| 101-45.4902 | Standard Form 114A, Sale of Government Property—Item Bid Page—Sealed Bid. |
| 101-45.4903 | Standard Form 114B, Sale of Government Property — Item Bid Page—Sealed Bid. |
| 101-45.4904 | Standard Form 114C, Sale of Government Property—General Sale Terms and Conditions. |
| 101-45.4904-1 | Standard Form 114C-1, Sale of Government Property—Special Sealed Bid Conditions. |
| 101-45.4904-2 | Standard Form 114C-2, Sale of Government Property—Special Sealed Bid-Term Conditions. |
| 101-45.4904-3 | Standard Form 114C-3, Sale of Government Property—Special Spot Bid Conditions. |
| 101-45.4904-4 | Standard Form 114C-4, Sale of Government Property—Special Auction Conditions. |
| 101-45.4905 | Standard Form 114D, Sale of Government Property—Amendment of Invitation for Bids/Modification of Contract. |
| 101-45.4905a | Standard Form 114E, Sale of Government Property—Negotiated Sales Contract. |
| 101-45.4905b | Standard Form 114F, Sale of Government Property—Item Bid Page—Spot Bid or Auction. |
| 101-45.4917 | [Reserved] |
| 101-45.4918 | [Reserved] |
| 101-45.4926 | [Reserved] |

### Subpart 101-45.3—Sale of Personal Property

1. Section 101-45.304-8 is revised to read as follows:

§ 101-45.304-8 **Forms prescribed.**

Standard Forms 114, 114A, 114B, 114C, 114C-1, 114C-2, 114C-3, 114C-4, 114D, 114E, and 114F (illustrated in §§ 101-45.4901 through 101-45.4905b) shall be used, where appropriate, in sales of personal property except that Standard Form 114C is not applicable to those sales conducted by General Services Administration involving any strategic metals, minerals, and ores, which have been determined surplus pursuant to the Act. These forms will be stocked by General Services Administration as cut sheets only. Authority for the use of such forms in styles other than cut sheets may be granted when requests for such deviation are submitted in accordance with FPMR 101-26.302-5.

(a) *Deviation.* In the interest in establishing and maintaining uniformity in Government sales contracts to the greatest extent feasible, no deviation shall be made from the Standard Form 114 series, and no special conditions of sales shall be included which are inconsistent with the provisions contained therein, unless approval is obtained from the Commissioner, Property Management and Disposal Service, General Services Administration, Washington, D.C. 20405.

(b) *Cover sheet.* The development and use of a cover sheet will be at the option of the selling agencies. However, if a cover sheet is used, it should be developed so as to be uniform for and identified primarily with the selling agency and secondarily with the selling activities of such agency. The cover sheet should contain only the "what-where-when" types of information, such as the method of sale (i.e., sealed bid, spot bid, auction); sale (invitation for bids) number; general category(ies) of property being offered; identification of the selling activity; inspection period; and the bid opening time and date of the sale. Nothing of a binding nature either on the part of the bidder or the Government shall be included on this cover sheet.

(c) *Descriptions of standard forms—*(1) *Standard Form 114, Sale of Government Property—Bid and Award.* Standard Form 114, January 1970 edition and all subsequent editions (illustrated in § 101-45.4901), has spaces to be completed by the issuing sales activity and the bidder. Information furnished by the issuing sales activity is: Invitation for bids number; name and address of issuing sales activity; person to contact for sales information; address to which bids should be mailed; place, time, and date of bid opening; bid deposit whether or not required; and the number of days for payment to be made and property to be removed. In addition, the form provides that the Standard Form 114C, General Sale Terms and Conditions, and the standard form of special conditions applicable to the method of sale being employed are made a part of the invitation for bids by reference. The block indicating the standard form of special conditions for the appropriate method of sale must be checked by the issuing sales agency. If special terms and conditions in addition to those contained in the prescribed standard forms are to be made a part of the invitation by reference, such additional terms and conditions should be identified by a form number and so indicated in the appropriate place on Standard Form 114. Special terms and conditions that are not identified by a form number must be included in the invitation and not made a part thereof by reference. Standard Form 114C and the applicable standard form of special conditions may be attached to the invitation for bids at the option of the executive agency. Information to be furnished by the bidder is: Number of days but not less than 10, for Government's acceptance of the bid, if desired; total amount of bids; amount and form of bid deposit, when required; whether or not property was inspected; small business representation; and contingent free representation. Standard Form 114 shall be made a part of all sealed bid sales and may be used in auction and spot bid sales.

(2) *Standard Form 114A, Sale of Government Property—Item Bid Page—Sealed Bid.* Standard Form 114A, January 1970 edition and all subsequent editions (illustrated in § 101-45.4902), requires entries to be made by the bidder prior to his submitting his bid. It provides for the bidder to enter the item

numbers of the property on which he is bidding, his offered unit price bid per item, and his total price bid per item. Except as provided in subparagraph (3) of this paragraph, Standard Form 114A shall be made a part of sealed bid sales.

(3) *Standard Form 114B, Sale of Government Property—Item Bid Page—Sealed Bid.* Standard Form 114B, January 1970 edition and all subsequent editions (illustrated in § 101–45.4903), may be used in lieu of Standard Form 114A only when: (i) The number of items of property being sold could be described sufficiently on one page; (ii) property is offered on an "as generated" basis (term-type sale); (iii) bidding on an increment basis is permitted by the terms and conditions of the sale; or (iv) the use of Standard Form 114A might not be appropriate. A short, accurate, and to the extent feasible, commercially clear description shall be prepared for each item offered for sale.

(4) *Standard Form 114C, Sale of Government Property—General Sale—Terms and Conditions.* Standard Form 114C, January 1970 edition and all subsequent editions (illustrated in § 101–45.4904), is applicable to all sales of personal property (including sales by negotiation) and shall be made a part of all sales invitations, either by reference or by attachment thereto or both.

(5) *Standard Form 114C–1, Sale of Government Property—Special Sealed Bid Conditions.* Standard Form 114C–1, January 1970 edition and all subsequent editions (illustrated in § 101–45.4904–1), is in addition to the Standard Form 114C and is applicable only to sealed bid sales (other than term-type sales) and shall be made a part of all such sales invitations, either by reference or by attachment thereto or both.

(6) *Standard Form 114C–2, Sale of Government Property—Special Sealed Bid-Term Conditions.* Standard Form 114C–2, January 1970 edition and all subsequent editions (illustrated in § 101–45.4904–2), is in addition to the Standard Form 114C and is applicable only to sealed bid term-type sales and shall be made a part of all such sales invitations, either by reference or by attachment thereto or both.

(7) *Standard Form 114C–3, Sale of Government Property—Special Spot Bid Conditions.* Standard Form 114C–3, January 1970 edition and all subsequent editions (illustrated in § 101–45.4904–3), is in addition to the Standard Form 114C and is applicable only to spot bid sales and shall be made a part of all sales announcements, bidders registers, and bid cards, either by reference or by attachment thereto or both.

(8) *Standard Form 114C–4, Sale of Government Property—Special Auction Conditions.* Standard Form 114C–4, January 1970 edition and all subsequent editions (illustrated in § 101–45.4904–4), is in addition to the Standard Form 114C and is applicable only to auction sales and shall be made a part of all sales announcements and bidders registers, either by reference or by attachment thereto or both.

(d) *Other special conditions.* (1) Other special terms and conditions considered by a selling agency to be necessary for the particular property offered for sale and not inconsistent with those contained in the forms prescribed in this § 101–45.304–8, may be incorporated in invitations for bids in which these forms are used. Such additional terms and conditions should be kept to an absolute minimum. To the extent practicable, incorporation of such special conditions should be accomplished by a special form developed by the selling agency for that purpose and so indicated on the Standard Form 114. Each selling agency shall review periodically such terms and conditions which are in common use in its agency with a view to standardization of those in general use and elimination of unnecessary additions. The agency shall, from time to time, forward to the Commissioner, Property Management and Disposal Service, General Services Administration, such additional terms and conditions desirable for inclusion in the standard forms.

(2) Standard Form 114, Sale of Government Property—Bid and Award, incorporates by reference Standard Form 114C and Standard Forms 114C–1 and 114C–2, as appropriate. Therefore, it is not necessary to attach such forms each time invitations for bids are issued, but an agency may elect to do so. It is essential, however, that any terms and conditions incorporated in an invitation by reference be furnished to any prospective bidder promptly on request.

(e) *Standard Form 114D, Sale of Government Property—Amendment of Invitation for Bids/Modification of Contract.* Standard Form 114D, January 1970 edition and all subsequent editions (illustrated in § 101–45.4905), is applicable to all sales of personal property and shall be utilized as required.

(1) *Amendment.* (i) If after issuance of an invitation for bids, but before the time set for opening of bids or the start of a sale, it becomes necessary to make changes to the invitation, the changes shall be accomplished by the issuance of an amendment to the invitation for bids on Standard Form 114D. The amendment shall be sent to each firm or individual to whom the invitation for bids has been furnished and shall be displayed in the bid room. In the event an amendment must be issued to either an auction or spot bid invitation for bids in which mailed-in bids are not authorized and where time does not permit distribution by mail, such amendment may be issued at the time of bidder registration.

(ii) When an invitation is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation sent to all prospective bidders to whom invitations for bids were issued identifying the invitation and briefly explaining the reason for the cancellation.

(2) *Supplemental agreement.* A supplemental agreement is required for a contract modification which, in accordance with the contractual provisions, cannot be accomplished by unilateral action of the Government. Such supplemental agreement must be mutually agreed to by both parties and be distributed in the same manner as the original contract. Modifications to contracts require careful consideration before issuance and the sales contracting officer should be absolutely certain that the information contained in the supplemental agreement is accurate. In addition, the sales contracting officer must satisfy himself that the contract modification is authorized and that as a result of the contract modification, the purchaser will enjoy no advantage or gain which is uncompensated, or which would not reasonably flow from the terms and conditions of the invitation for bids or the solicitation of offers out of which the original contract arose.

(f) *Standard Form 114E, Sale of Government Property—Negotiated Sales Contract.* Standard Form 114E, January 1970 edition and all subsequent editions (illustrated in § 101–45.4905a), is applicable only to negotiated sales and is used to confirm quotations received from offerors contacted by the selling activity and constitutes the sales contract upon execution by the purchaser and by the Government. Standard Form 114E shall have attached thereto or made a part thereof by reference, Standard Form 114C, General Sale Terms and Conditions, and those additional special terms and conditions applicable only to the specific negotiation concerned.

(g) *Standard Form 114F, Sale of Government Property—Item Bid Page—Spot Bid or Auction.* Standard Form 114F, January 1970 edition and all subsequent editions (illustrated in § 101–45.4905b), is used only when mailed-in bids are authorized in connection with a spot bid or auction sale.

(h) *Description of property for sale.* The invitation for bids shall include a listing of the property being offered for sale and each unit or line item shall be assigned a specific item number. The property should be adequately described including all factual information necessary to convey to prospective bidders an accurate, concise, and clear understanding of the property being offered. To the extent applicable, the following guideline information should be included as a part of the description:

(1) Noun name and other descriptive information expressed in understandable commercial terms.

(2) Part numbers and pertinent specifications as to size, type, etc.

(3) Manufacturers' name or trade name and year of manufacture.

(4) Estimated total weight or cube.

(5) Condition of property limited generally to statements of fact such as "unused" or "used." To these general statements there may be added, when known and applicable, information such as "parts missing," "wrecked," "major components removed," etc.

(6) Quantity stated in the same unit of measure as that for which bids are solicited (each, pound, ton, per lot, etc.), such units to conform with established

trade practices in the industry or commodity area in which the property falls.

(7) Original acquisition cost, if known, or estimated cost (and so indicated) may be included.

(8) Location of the property; dates and time available for inspection; and name, title, and telephone number of custodian.

(h) *Removal of property.* A reasonable period of time shall be afforded successful purchasers to effect complete removal of the property and must be set forth in the invitation for bids.

2. Section 101–45.304–10 (a) and (b) are revised to read as follows:

**§ 101–45.304–10 Deposits and final payments.**

(a) Whenever a bid deposit is required by the terms and conditions of the invitation for bids, the normal deposit for individual type sales shall be 20 percent of the total amount of the bid. For sales of property on an "as generated" basis during a stated period of time (referred to as term contracts), the normal deposit shall not be less than an amount which will adequately protect the Government's interest, normally 20 percent of the estimated contract price. However, the bid deposit for a term contract in excess of 1 year's duration shall not exceed 20 percent of the total price estimated for 1 year's removal of property.

(b) Whenever a bid deposit is required by the terms and conditions of the invitation for bids, such deposit shall be in U.S. currency or any form of credit instrument other than a promissory note, made payable on demand in U.S. currency, except as provided for in Condition No. 4 of the General Sale Terms and Conditions, Standard Form 114C. Postdated credit instruments are not acceptable. Deposit bonds submitted on Standard Forms 150 and 151 (illustrated in §§ 101–45.4906 and 101–45.4907) may also be accepted when provided for in the invitation for bids.

* * * * *

3. Section 101–45.313–3(a) is revised to read as follows:

**§ 101–45.313–3 Representation and covenant.**

(a) *Representation.* Except as provided in § 101–45.313–7, each selling agency shall inquire of and secure a written representation from prospective purchasers as to whether they have employed or retained any company or person (other than a full-time employee working solely for the prospective purchaser) to solicit or secure the contract, and shall secure a written agreement to furnish information relating thereto as required by the sales contracting officer. The form of such representation shall be that contained in Standard Form 114, Sale of Government Property—Bid and Award (illustrated in § 101–45.4901).

* * * * *

4. Section 101–45.313–7(b) is revised to read as follows:

**§ 101–45.313–7 Exceptions.**

* * * * *

(b) Any negotiated contract in which the aggregate amount involved does not exceed $5,000.

* * * * *

5. Sections 101–45.317 (a) and (b) are revised to read as follows:

**§ 101–45.317 Noncollusive bids and proposals.**

(a) Condition No. 20 of the General Sale Terms and Conditions, Standard Form 114C, contains the certification of independent price determination. This condition is applicable to all invitations for bids and requests for proposals or quotations providing for the sale of personal property, except fixed price sale under section 203(e)(5) of the Act.

(b) The authority to make determinations described in paragraph (d) of Condition No. 20 of the General Sale Terms and Conditions, Standard Form 114C, shall not be delegated to an official below the level of the head of a selling activity of the agency.

* * * * *

### Subpart 101–45.8—Mistakes in Bids

Section 101–45.805 is added as follows:

**§ 101–45.805 Mistakes disclosed after award in negotiated sales.**

When a mistake in a purchaser's quotation is not discovered until after award, the authority to correct mistakes contained in this Subpart 101–45.8 may be utilized in accordance with the limitations and procedures set forth herein.

### Subpart 101–45.49—Illustrations

Subpart 101–45.49 is amended by revising the illustrations in §§ 101–45.4901, 101–45.4902, 101–45.4903, and 101–45.4904; by adding new illustrations in §§ 101–45.4904–1, 101–45.4904–2, 101–45.4904–3, 101–45.4904–4, 101–45.4905a, and 101–45.4905b; by deleting the illustration in § 101–45.4905 and substituting a new illustration in lieu thereof; and by deleting the illustrations in and reserving §§ 101–45.4917, 101–45.4918, and 101–45.4926, as follows:

**§ 101–45.4917 [Reserved]**

**§ 101–45.4918 [Reserved]**

**§ 101–45.4926 [Reserved]**

NOTE: The forms listed in §§ 101–45.4901, 101–45.4902, 101–45.4903, 101–45.4904, 101–45.4904–1, 101–45.4904–2, 101–45.4904–3, 101–45.4904–4, 101–45.4905, 101–45.4905a, and 101–45.4905b are filed as part of the original document.

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

*Effective date.* This amendment is effective November 1, 1970, but may be observed earlier under availability of the standard forms prescribed by this amendment.

Dated: July 16, 1970.

ROBERT L. KUNZIG,
*Administrator of General Services.*

[F.R. Doc. 70–9774; Filed, July 28, 1970; 8:50 a.m.]

# Title 49—TRANSPORTATION

## Chapter X—Interstate Commerce Commission

### SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 1044, Amdt. 1]

### PART 1033—CAR SERVICE

### Chicago and North Western Railway Co. Authorized To Operate Over Tracks of Burlington Northern, Inc.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 22d day of July 1970.

Upon further consideration of Service Order No. 1044 (35 F.R. 10448), and good cause appearing therefor:

*It is ordered,* That § 1033.1044 *Service Order No. 1044* (Chicago and North Western Railway Co. authorized to operate over tracks of the Burlington Northern, Inc.) be, and it is hereby, amended by substituting the following paragraph (d) for paragraph (d) thereof:

(d) *Expiration date.* This order shall expire at 11:59 p.m., August 31, 1970, unless otherwise modified, changed, or suspended by order of this Commission.

*Effective date.* This amendment shall become effective at 11:59 p.m., July 24, 1970.

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

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

By the Commission, Railroad Service Board.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[F.R. Doc. 70–9754; Filed, July 28, 1970; 8:48 a.m.]

# Title 50—WILDLIFE AND FISHERIES

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

### SUBCHAPTER B—HUNTING AND POSSESSION OF WILDLIFE

### PART 17—CONSERVATION OF ENDANGERED SPECIES AND OTHER FISH OR WILDLIFE

### List of Endangered Foreign Species

A new Part 17 was added to Title 50, Code of Federal Regulations, by publication in the FEDERAL REGISTER on June 2,

1970 (35 F.R. 8491). Notice of this rule making, and opportunity for public participation had been given in the FEDERAL REGISTER on April 10, 1970 (35 F.R. 5961), regarding the designation of ports of entry for fish and wildlife, and on April 14, 1970 (35 F.R. 6069), regarding the balance of the regulations.

However, certain species of fish and wildlife appeared in Appendix A (the U.S. List of Endangered Foreign Species) at the time of final publication which had not been included in the notice of proposed rule making. Therefore, the Department of the Interior has determined that the U.S. List of Endangered Foreign Species in Appendix A of the regulations should be amended by deleting therefrom all those species of fish and wildlife which had not previously appeared in a notice of proposed rule making, with opportunity for public comment.

The Department of the Interior will issue a notice of proposed rule making. This notice will propose the addition to Appendix A of most of the species deleted hereby, and will afford opportunity for public comment.

The Department of the Interior has also determined that notice and public procedure on this amendment are not in the public interest, and further that this amendment be effective on publication.

Appendix A is amended to read as follows:

APPENDIX A

U.S. LIST OF ENDANGERED FOREIGN FISH AND WILDLIFE

The list of endangered foreign fish and wildlife has been compiled from data supplied by international conservation organizations, foreign fish and wildlife agencies, individual scientists, and trade sources. If a candidate species is not listed, it may be because it is not endangered throughout its range or because there is insufficient evidence to warrant its inclusion on the list at this time. The list is under continual review. Factual data are welcome and should be submitted. The "Where found" column is a general guide to the native countries or regions where the named animals are found. It is not intended to be definitive.

MAMMALS

| Common name | Scientific name | Where found |
|---|---|---|
| Thylacine | *Thylacinus cynocephalus* | Tasmania. |
| Indris | *Indri indri* | Madagascar. |
| Variegated lemur | *Lemur variegatus* | Madagascar. |
| Coquerel's mouse lemur | *Microcebus coquereli* | Madagascar. |
| Aye-aye | *Daubentonia madagascariensis* | Madagascar. |
| Spider monkey | *Ateles geoffroyi frontatus* | Guatemala. |
| Spider monkey | *Ateles geoffroyi geoffroyi* | Guatemala. |
| Spider monkey | *Ateles geoffroyi ornatus* | Costa Rica. |
| Spider monkey | *Ateles geoffroyi panamensis* | Costa Rica. |
| Red-backed squirrel monkey | *Saimiri ostedii (Saimiri sciurus orstedii)* | Costa Rica. |
| Uakari, all species | *Cacajao* ssp | Peru, Colombia, Venezuela, Brazil, and Ecuador. |
| Golden-rumped tamarin<br>Golden-headed tamarin<br>Golden lion marmoset | *Leontideus* ssp | Brazil. |
| Lion-tailed macaque | *Macaca silenus* | India. |
| Tana River mangabey | *Cercocebus g. galeritus* | Kenya. |
| Orang-utan | *Pongo pygmaeus* | Indonesia, Malaysia, Brunei. |
| Pink fairy armadillo | *Chlamyphorus truncatus* | Argentina. |
| Thin-spined porcupine | *Chaetomys subspinosus* | Brazil. |
| Northern kit fox | *Vulpes velox hebes* | Canada. |
| Mexican grizzly bear | *Ursus arctos nelsoni* | Mexico. |
| Black-footed ferret | *Mustela nigripes* | United States, Canada. |
| Giant otter | *Pteronura brasiliensis* | Amazon Basin. |
| Asiatic cheetah | *Acinonyx jubatus venaticus* | Russia, Afghanistan, Iran, Saudi Arabia (formerly India and Pakistan). |
| Spanish lynx | *Felis pardina* | Spain. |
| Asiatic lion | *Panthera leo persica* | India. |
| Sinai leopard | *Panthera pardus jarvisi* | Sinai, Saudi Arabia. |
| Barbary leopard | *Panthera pardus panthera* | Morocco, Algeria, Tunisia. |
| Bali tiger | *Panthera tigris balica* | Bali. |
| Javan tiger | *Panthera tigris sondaica* | Indonesia. |
| Caspian tiger | *Panthera tigris virgata* | Russia, Afghanistan, Iran. |
| Sumatran tiger | *Panthera tigris sumatrae* | Indonesia. |
| Mediterranean monk seal | *Monachus monachus* | Mediterranean. |
| West Indian (Florida) manatee | *Trichechus manatus* | United States, Costa Rica, Guatemala, Panama, Brazil, Venezuela. |
| Amazonian manatee | *Trichechus inunguis* | Peru, Amazon. |
| Asian wild ass | *Equus hemionus* | Pakistan, Iran, India, China. |
| African wild ass | *Equus asinus* | Ethiopia, Somalia, Sudan. |
| Sumatran rhinoceros | *Didermoceros sumatrensis* | Southeast Asia, East Pakistan to Vietnam to Indonesia. |
| Javan rhinoceros | *Rhinoceros sondaiecus* | Indonesia, Burma, Thailand. |
| Vicuna | *Vicugna vicugna* | Peru, Bolivia. |
| Kashmir stag, hangul | *Cervus elaphus hanglu* | Kashmir. |
| Barbary stag | *Cervus elaphus barbarus* | Morocco, Tunisia, Algeria. |
| Persian fallow deer | *Dama dama mesopotamica* | Iraq, Iran. |
| Bawean deer | *Helaphus kuhli (Cervus kuhli)* | Indonesia. |
| Sonoran pronghorn | *Antilocapra americana sonoriensis* | Mexico, United States. |
| Anoa | *Anoa depressicornis* | Indonesia. |
| Wood bison | *Bison bison athabascae* | Canada. |
| Kouprey | *Bos sauveli* | Cambodia. |
| Pyrenean ibex | *Capra pyrenaica pyrenaica* | Spain. |
| Walia ibex | *Capra walie* | Ethiopia. |
| Arabian oryx | *Oryx leucoryx* | Arabian Peninsula. |
| Clark's gazelle, dibatag | *Ammordorcas clarkii* | Somalia, Ethiopia. |

MAMMALS—Continued

BIRDS

| Common name | Scientific name | Where found |
|---|---|---|
| Arabian ostrich | *Struthio camelus syriacus* | Jordan or Saudi Arabia. |
| Atitlan grebe | *Podilymbus gigas* | Guatemala. |
| Short-tailed albatross | *Diomedea albatrus* | Japan. |
| Japanese crested ibis | *Nipponia nippon* | Japan, Korea. |
| White-winged wood duck | *Cairina scutulata* | India, Thailand, Sumatra, Burma. |
| American peregrine falcon | *Falco peregrinus anatum* | Canada, United States, Mexico. |
| Christmas Island goshawk | *Accipiter fasciatus natalis* | Christmas Island. |
| Anjouan Island sparrow hawk | *Accipiter francesii pusillus* | Comoro Islands. |
| Galapagos hawk | *Buteo galapagoensis* | Galapagos. |
| Monkey-eating eagle | *Pithecophaga jefferyi* | Philippine Islands. |
| Seychelles kestrel | *Falco araea* | Seychelles Island. |
| Mauritius kestrel | *Falco punctatus* | Mauritius. |
| Horned guan | *Oreophasis derbianus* | Guatemala, Mexico. |
| Trinidad piping guan | *Pipile pipile pipile* | Trinidad. |
| Masked bobwhite | *Colinus virginianus ridgwayi* | United States, Mexico. |
| Brown-earred pheasant | *Crossoptilon mantchuricum* | China. |
| Chinese monal | *Lophophorus lhuysii* | China. |
| Sclater's monal | *Lophophorus sclateri* | China, Burma. |
| Edwards' pheasant | *Lophura edwardsi* | South Vietnam. |
| Imperial pheasant | *Lophura imperialis* | South Vietnam. |
| Swinhoe's pheasant | *Lophura swinhoii* | Formosa. |
| Palawan peacock pheasant | *Polyplectron emphanum* | Philippine Islands. |
| Bar-tailed pheasant | *Syrmaticus humiae* | Burma, China. |
| Blyth's tragopan | *Tragopan blythii* | Burma, China. |
| Cabot's tragopan | *Tragopan caboti* | China. |
| Western tragopan | *Tragopan melanocephalus* | India. |
| Whooping crane | *Grus americana* | Canada, United States. |
| Auckland Island rail | *Rallus pectoralis muelleri* | New Zealand. |
| Kagu | *Rhynochetos jubatus* | New Caledonia. |
| Great Indian bustard | *Choriotis nigriceps* | India, Pakistan. |
| Eskimo curlew | *Numenius borealis* | Canada to Argentina. |
| Audouin's gull | *Larus audouinii* | Morocco, Cyprus. |
| Azores wood pigeon | *Columba palumbus azorica* | Azores. |
| Bahamas parrot | *Amazona leucocephala bahamensis* | Bahamas. |
| Australian night parrot | *Geopsittacus occidentalis* | Australia. |
| Thick-billed parrot | *Rhynchopsitta pachyrhyncha* | Mexico, United States. |
| Red-faced malkoha | *Phaenicophaeus pyrrhocephalus* | Ceylon. |
| Seychelles owl | *Otus insularis* | Seychelles. |
| Mrs. Morden's owlet | *Otus ireneae* | Kenya. |
| Anjouan scops owl | *Otus rutilus capnodes* | Anjouan Islands. |
| Imperial woodpecker | *Campephilus imperialis* | Mexico. |
| Ivory-billed woodpecker | *Campephilus principalis* | Cuba, United States. |
| Tristram's woodpecker | *Dryocopus javensis richardsi* | Korea. |
| Euler's flycatcher | *Empidonax euleri johnstonei* | Grenada, West Indies. |
| New Zealand bush wren | *Xenicus longipes* | New Zealand. |

BIRDS—Continued

| Common name | Scientific name | Where found |
|---|---|---|
| Noisy scrub bird | *Atrichornis clamosus* | Australia. |
| Rufous scrub bird | *Atrichornis rufescens* | Australia. |
| Kokako | *Callaeas cinerea* | New Zealand. |
| Piopio | *Turnagra capensis* | New Zealand. |
| Reunion cuckoo shrike | *Coquus newtoni* | Reunion Island. |
| Mauritius cuckoo shrike | *Coquus typicus* | Mauritius. |
| Guadeloupe house wren | *Troglodytes aedon guadeloupensis* | Guadeloupe Island. |
| St. Lucia wren | *Troglodytes aedon mesoleucus* | St. Lucia, West Indies. |
| Martinique brown trembler | *Cinclocerthia ruficauda gutturalis* | Martinique. |
| White-breasted thrasher | *Ramphocinclus brachyurus* | Martinique, St. Lucia Island. |
| Mauritius olivaceous bulbul | *Hypsipetes borbonicus olivaceus* | Mauritius Island. |
| Cebu black shama | *Copsychus niger cebuensis* | Philippine Islands. |
| Seychelles magpie robin | *Copsychus seychellarum* | Seychelles Island. |
| White-necked rock fowl | *Picathartes gymnocephalus* | Togo to Sierra Leone. |
| Grey-necked rock fowl | *Picathartes oreas* | Cameroon. |
| Reed warbler | *Acrocephalus luscinia* | Micronesia. |
| Rodriguez warbler | *Bebrornis rodericanus* | Rodriguez Island. |
| Seychelles warbler | *Bebrornis seychellensis* | Seychelles. |
| Scarlet-breasted robin | *Petroica multicolor multicolor* | Norfolk Island. |
| Tahiti flycatcher | *Pomarea nigra nigra* | Tahiti. |
| Semper's warbler | *Leucopeza semperi* | St. Lucia Island. |
| Seychelles fody | *Foudia seychellarum* | Seychelles. |
| Sao Miguel bullfinch | *Pyrrhula pyrrhula murina* | Azores. |
| Slender-billed grackle | *Cassidix palustris* | Mexico. |

AMPHIBIANS AND REPTILES

| | | |
|---|---|---|
| Hawksbill turtle | *Eretmochelys imbricata* | Tropical seas. |
| Leatherback turtle | *Dermochelys coriacea* | Tropical and temperate seas. |
| South American river turtle | *Podocnemis expansa* | Orinoco and Amazon River Basins. |
| Yacare | *Caiman yacare* | Bolivia, Argentina, Peru, Brazil. |
| Anegada ground iguana | *Cyclura pinguis* | Anegada Island. |

FISH

| | | |
|---|---|---|
| Ala balik | *Salmo platycephalus* | Turkey. |
| Cicek | *Acanthorutilus handlirschi* | Turkey. |
| Miyako tanago | *Tankia tanago* | Japan. |
| Ayumodoki | *Hymenophysa curta* | Japan. |
| Mexican blindcat | *Prietella phreatophila* | Mexico. |
| Nekogigi | *Coreobagrus ichikawai* | Japan. |
| Giant catfish | *Pangasianodon gigas* | Thailand. |
| Catfish | *Pangasius sanitwongsei* | Thailand. |

(16 U.S.C. 668aa et seq.)

J. P. LINDUSKA,
*Acting Director, Bureau of Sport Fisheries and Wildlife.*

JULY 27, 1970.

[F.R. Doc. 70-9782; Filed, July 28, 1970; 8:50 a.m.]

# Proposed Rule Making

## DEPARTMENT OF THE TREASURY

### Bureau of Customs

### [ 19 CFR Parts 6, 8, 10, 11, 12, 16, 18, 21, 23, 25, 171, 172 ]

### ADMINISTRATIVE REVIEW

### Fines, Penalties, and Forfeitures; and Liquidated Damages

Notice is hereby given that under the authority of 5 U.S.C. 301, R.S. 251 (19 U.S.C. 66) and section 624, 46 Stat. 759 (19 U.S.C. 1624), it is proposed to amend the Customs Regulations relating to administrative review of Customs matters.

As part of the general revision of the Customs Regulations, scattered provisions in Chapter I, Title 19, Code of Federal Regulations, relating to administrative review are being brought together in a series of parts:

Provisions relating to review of and relief from fines, penalties, and forfeitures in Part 23 are revised and appear as Part 171, Fines, Penalties, and Forfeitures.

Provisions relating to review of and relief from the assessment of liquidated damages under the conditions of bonds posted with Customs scattered through Parts 8, 10, 11, 18, 21, and 25, together with present administrative practice are the source for Part 172, Liquidated Damages.

The proposed new Parts 171 and 172 contain several changes from the present provisions in addition to clarifying and editorial changes. The principal changes are:

1. In proposed § 171.13(a) a description is added of the evidence which should be produced by a petitioner whose property was seized while in possession of another. There is also added a description of the evidence to be produced by a family member whose property was seized while in the possession of another family member.

2. In proposed § 171.13(b), the investigation concerning which a petitioner holding a chattel mortgage or conditional sales contract should produce evidence refers to a record of or reputation for commercial crime rather than moral character, financial responsibility and credit risk status.

3. In proposed § 171.32, language is added to reflect the practice of allowing arrangements for delayed payments or payment in installments.

4. In proposed § 171.33, the time limit for filing supplemental petitions is stated, and the authority of the district director to act on supplemental petitions for relief is set out.

5. Proposed Part 172, Liquidated Damages, is added based on scattered references to authority to act upon petitions for relief from liquidated damages and present administrative practice.

Included as part of the proposed revision are necessary changes in Parts 6, 8, 10, 11, 12, 18, 21, and 25. Material which appears in revised form in proposed Parts 171 and 172 is deleted from Parts 8, 23, and 25.

As part of the proposed revision, there is included a parallel reference table showing the relationship between the proposed provisions and those in 19 CFR Chapter I.

Accordingly, to effect these changes, it is proposed to amend the Customs Regulations as follows:

### PART 6—AIR COMMERCE REGULATIONS

1. Section 6.11 is amended by deleting "§§ 23.23 to 23.25" in the last sentence and substituting "Part 171".

### PART 8—LIABILITY FOR DUTIES; ENTRY OF IMPORTED MERCHANDISE

2. Section 8.59 is amended as follows:

a. Paragraph (i) is amended by substituting "district director" for "collector", and by inserting before the last sentence thereof a new sentence which reads: "Any application for cancellation of liquidated damages incurred shall be made in accordance with the provisions of Part 172 of this chapter."

b. Paragraph (j) is deleted.

### PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

3. In § 10.39, paragraphs (e) and (f) are amended by inserting after the word "filed" in the first sentence the words "as provided in Part 172 of this chapter" and by substituting "district director" for "collector" each time it appears.

4. In § 10.92, paragraph (d) is amended by substituting "district director" for "collector", and by adding at the end thereof a new sentence as follows: "Application for cancellation of the liquidated damages incurred shall be made in accordance with the provisions of Part 172 of this chapter."

### PART 11—PACKING AND STAMPING, MARKING; TRADEMARKS AND TRADE NAMES; COPYRIGHTS

5. In § 11.11, paragraph (d) is amended by inserting after "filed" in the first sentence the words "as provided in Part 172 of this chapter" and by substituting "district directors" for "collectors" and "district director" for "collector".

### PART 12—SPECIAL CLASSES OF MERCHANDISE

6. Section 12.38 is amended by deleting the material in parentheses at the end thereof, and substituting "(see § 171.22(b) of this chapter)".

### PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

7. In § 18.8, paragraph (d) is amended by inserting after the words "payment thereof" the words "filed as provided in Part 172 of this chapter" and by substituting "district director" for "collector" each time the word appears.

### PART 21—CARTAGE AND LIGHTERAGE

8. In § 21.8, paragraph (c) is amended by substituting "district director" for "collector" and by adding at the end thereof a new sentence as follows: "Application for cancellation of liquidated damages incurred shall be made in accordance with the provisions of Part 172 of this chapter."

### PART 23—ENFORCEMENT OF CUSTOMS AND NAVIGATION LAWS

9. In § 23.23, paragraph (c) is amended by deleting all but the first sentence, and paragraphs (d) and (e) are deleted.

10. Part 23 is amended by deleting therefrom §§ 23.24, 23.25, and 23.34.

### PART 25—CUSTOMS BONDS

11. In § 25.15, paragraph (e) is amended by inserting after "application for relief" the words "in accordance with the provisions of Part 172 of this chapter".

12. Section 25.17 is amended by deleting paragraphs (a), (b), (e), (g), and (h).

13. Part 25 is amended by deleting therefrom § 25.19.

(R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

### PART 171—FINES, PENALTIES, AND FORFEITURES

14. A new Part 171, entitled "Fines, Penalties, and Forfeitures" is added to read as follows:

Sec.

Sec.
171.12 Filing of petition.
171.13 Additional evidence required with certain petitions.

Subpart C—Action on Petitions

171.21 Petitions acted on by district director.
171.22 Special cases acted upon by district director.

Subpart D—Disposition of Petitions

171.31 Act or omission did not occur.
171.32 Limitation on time decision effective.
171.33 Supplemental petitions for relief.

Subpart E—Restoration of Proceeds of Sale

171.41 Application of provisions for petitions for relief.
171.42 Time limit for filing petition for restoration.
171.43 Evidence required.
171.44 Forfeited property authorized for official use.

AUTHORITY: The provisions of this Part 171 issued under R.S. 251, secs. 618, 624, 46 Stat. 757, as amended, 759; 19 U.S.C. 66, 1618, 1624. The provisions of Subpart C also issued under sec. 1, 40 Stat. 223, as amended, R.S. 5294, as amended, sec. 9, 24 Stat. 81, as amended; 22 U.S.C. 401, 46 U.S.C. 7, 320.

### § 171.0 Scope.

This part contains provisions relating to filing of petitions and action upon petitions for relief from fines, penalties, and forfeitures incurred, and petitions for the restoration of proceeds from sale of seized and forfeited property.

## Subpart A—General Provisions

### § 171.1 Limitations on consideration of petitions.

(a) *Case referred for institution of legal proceedings.* No action shall be taken on any petition if the civil liability has been referred to the U.S. attorney for institution of legal proceedings. The petition shall be forwarded to the U.S. attorney.

(b) *Vessel or vehicle awarded for official use.* When a vessel or vehicle is awarded for official use, a petition shall not be considered unless:

(1) It is filed before final disposition of the property is made; or

(2) It is a petition for restoration of proceeds of sale filed in accordance with Subpart E of this part.

## Subpart B—Application for Relief

### § 171.11 Petition for relief.

(a) *To whom addressed.* Petitions for the remission or mitigation of a fine, penalty, or forfeiture incurred under any law administered by the Bureau of Customs shall be addressed to the Commissioner of Customs.

(b) *Signature.* The petition for remission or mitigation shall be signed by the petitioner. If the petitioner is a corporation, the petition shall be signed by an officer thereof.

(c) *Form.* The petition for remission or mitigation need not be in any particular form. It shall set forth the following:

(1) A description of the property involved;

(2) The date and place of the violation or seizure; and

(3) The facts and circumstances relied upon by the petitioner to justify the remission or mitigation.

(d) *Petition for relief from forfeiture.* When the petition is for relief from a forfeiture, it shall show the interest of the petitioner in the property and in appropriate cases shall be supported by bills of sale, contracts, mortgages, or other satisfactory evidence.

(e) *False statement in petition.* A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

### § 171.12 Filing of petition.

(a) *Where filed.* A petition for relief shall be filed with the district director for the district in which the property was seized or the fine or penalty imposed.

(b) *When filed.* Petitions for relief shall be filed within 60 days from the date of mailing of the notice of fine, penalty, or forfeiture incurred, unless additional time has been authorized as provided in § 23.23(c) of this chapter.

(c) *Number of copies.* The petition shall be filed in triplicate.

### § 171.13 Additional evidence required with certain petitions.

(a) *Seized property in possession of another responsible for act.* If the seized property was in the possession of another who was responsible for or caused the act which resulted in the seizure, evidence shall be produced by the petitioner as to the manner in which the property came into the possession of such other person. The petitioner shall also submit evidence that prior to parting with the property he did not know, nor have reasonable cause to believe, that the property would be used to violate Customs or other laws, and that he did not know or have reason to believe that the violator had a criminal record or general reputation for commercial crime. In the case of a family member having an interest in property seized while in possession of another family member, evidence shall be submitted that the petitioning family member did not know or have reason to know that the property was likely to be used in the act which resulted in the seizure.

(b) *Petitioner holding chattel mortgage or conditional sales contract.* A petitioner holding a chattel mortgage or conditional sales contract covering the seized property shall submit with his petition evidence showing that:

(1) He has an interest in such property, as owner or otherwise, which he acquired in good faith;

(2) He had at no time any knowledge or reason to believe that the property was being or would be used in violation of Customs or other laws of the United States; and

(3) Whether prior to the financial transaction an inquiry of at least one enforcement agency in the locality where the purchaser most recently resided, or resided in the past year, was made as to the purchaser's criminal record and reputation for commercial crime, and a responsive reply received.

## Subpart C—Action on Petitions

### § 171.21 Petitions acted on by district director.

In the following cases the district director may mitigate or remit fines, penalties, and forfeitures incurred under any law administered by the Bureau of Customs on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate.

(a) *$2,000 or less.* (1) Fines and other pecuniary penalties aggregating $2,000 or less in respect of any one offense;

(2) Forfeiture of imported merchandise or a claim for forfeiture value in lieu thereof when the merchandise is valued at $2,000 or less;

(3) Forfeiture of merchandise other than imported merchandise when the merchandise is valued at $2,000 or less, and no liability outside the purview of any other provision of this section has been incurred in connection with the same offense.

(b) *Over $2,000 but not over $20,000.* Penalty and forfeiture incurred under section 497, Tariff Act of 1930 (19 U.S.C. 1497), for failure to declare merchandise valued at more than $2,000 but not over $20,000, if the failure to declare is a first offense and involves a noncommercial importation. Where undeclared merchandise is valued at $2,000 or less, the provisions of paragraph (a) (1) and (2) of this section apply.

(c) *Not over $20,000.* (1) Forfeiture of motor vehicles, other than imported motor vehicles, valued at $20,000 or less, and no liability outside the purview of any other provision of this section has been incurred in connection with the same offense;

(2) Penalties and forfeitures, aggregating not over $20,000 in any one case and incurred under section 460, Tariff Act of 1930, as amended (19 U.S.C. 1460), for failure to report arrival as required by section 459, Tariff Act of 1930, as amended (19 U.S.C. 1459), in the following cases:

(i) Violations due to ignorance of the reporting requirements or due to inadvertence and either no merchandise, or only typical personal or souvenir merchandise which would have been free of duty, if entered, is carried in the vessel or vehicle, or

(ii) Where the violation is the first offense, although not due to ignorance or inadvertence, and no intended commercial use or threat to the revenue is involved.

(d) *Amount of penalty not specified.* Penalties imposed under title 13, United States Code, section 304, and in the amounts prescribed by Title 15, Code of Federal Regulations, § 30.24, for the failure to timely file the complete manifest of the carrier when required and all the required shipper's export declarations, when clearance or permission to depart prior to the filing thereof is granted upon the filing of the required bond.

### § 171.22 Special cases acted upon by district director.

(a) *Forfeitures of merchandise illegally transported coastwise.* Forfeiture

of merchandise under title 46, United States Code, section 883, for having been illegally transported coastwise, regardless of the value of the merchandise, may be remitted if the petition for relief establishes to the satisfaction of the district director that the violation occurred as a direct result of an arrival of the transporting vessel in distress.

(b) *Forfeiture of imported liquor or compound.* When any package of or package containing any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, or any vessel or vehicle in which the same has been transported has become subject to forfeiture under the provisions of 18 U.S.C. 3615, for noncompliance with 18 U.S.C. 1263, and the U.S. attorney has advised the district director that there is not sufficient evidence of intent to violate the law to warrant criminal prosecution thereunder, the forfeiture incurred shall be remitted pursuant to the authority of section 7327, Internal Revenue Code of 1954 (26 U.S.C. 7327), and section 618, Tariff Act of 1930 (19 U.S.C. 1618), upon the condition that the expenses of seizure, if any, shall be paid.

(c) *Claim for property stolen in Canada and seized by U.S. Customs.* Under the provisions of Executive Order 4306, dated September 19, 1925 (T.D. 41110), any person claiming to be the owner of property stolen in Canada, brought into the United States and seized by Customs authorities for violation of law, may file with the district director having custody of the property a petition for its release, addressed to the Secretary of the Treasury. The petition shall be supported by evidence of ownership in the claimant and shall contain a waiver and release of all possible claims against the United States or any officer thereof for compensation or damages incident to the seizure and detention of the property. If the district director is satisfied that the claimant is the owner of the property and that it was brought into the United States without collusion on the part of the claimant, the district director may release the property for return to Canada upon the payment of all expenses incident to its seizure and detention. In the event of conflicting claims for the property or any doubt as to the claimant's interest in or right to the property, the district director shall submit the matter to the Commissioner of Customs for decision.

### Subpart D—Disposition of Petitions

**§ 171.31 Act or omission did not occur.**

If it is definitely determined that the act or omission forming the basis of a penalty or forfeiture claim did not in fact occur, the claim shall be canceled by the district director. When the determination of whether or not the claim was erroneously made depends upon a construction of law, the claim shall not be canceled without the approval of the Commissioner of Customs unless there is in force a ruling by the Commissioner of Customs decisive of the issue.

**§ 171.32 Limitation on time decision effective.**

A decision to mitigate a penalty or to remit a forfeiture upon condition that a stated amount is paid shall be effective for not more than 60 days from the date of notice to the petitioner of such decision, unless the decision itself prescribes a different effective period or the decision is later amended to change the effective period. If payment of the stated amount is not received within the effective period, or arrangements made for delayed payment or installment payments, or a supplemental petition filed within the effective period, the full penalty or forfeiture shall be deemed applicable and shall be enforced by promptly referring the matter to the U.S. attorney for appropriate attention, unless other action has been directed by the Commissioner of Customs.

**§ 171.33 Supplemental petitions for relief.**

(a) *Time and place of filing.* If the petitioner is not satisfied with a decision of the district director or the Commissioner of Customs, a supplemental petition may be filed with the district director. Such a petition shall be filed either:

(1) Within 60 days from the date of notice to the petitioner of the decision on the initial petition for relief if no effective period is prescribed in the decision; or

(2) Within the time prescribed in the decision on the initial petition for relief as the effective period of the decision.

(b) *Consideration.* Where the district director has the authority to grant relief or additional relief in accordance with § 171.21, he may grant such relief if he believes it is warranted and there has been no specific request for review by the Commissioner of Customs. In all other cases, the supplemental petition, together with all pertinent documents, shall be forwarded to the Commissioner of Customs for reconsideration of the case.

### Subpart E—Restoration of Proceeds of Sale

**§ 171.41 Application of provisions for petitions for relief.**

The general provisions of Subpart B of this part on filing and content of petitions for relief apply to petitions for restoration of proceeds of sale except insofar as modified by this subpart.

**§ 171.42 Time limit for filing petition for restoration.**

A petition for the restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), shall be filed within 3 months after the date of the sale.

**§ 171.43 Evidence required.**

In addition to such other evidence as may be required under the provisions of Subpart B of this part, the petition for restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), shall show the interest of the petitioner in the property, supported in appropriate cases by bills of sale, contracts, mortgages, or other satisfactory documentary evidence. The petition shall be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture and was in such circumstances as prevented him from knowing of it.

**§ 171.44 Forfeited property authorized for official use.**

If forfeited property the subject of a claim under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), has been authorized for official use, retention or delivery shall be regarded as the sale thereof for the purposes of section 613. The appropriation available to the receiving agency for the purchase, hire, operation, maintenance, and repair of property of the kind so received is available for the granting of relief to the claimant and for the satisfaction of liens for freight charges and contributions in general average that may have been filed.

(Secs. 305, 306, 49 Stat. 880; 40 U.S.C. 304j, 304k)

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## PART 172—LIQUIDATED DAMAGES

15. A new Part 172, entitled "Liquidated Damages" is added to read as follows:



AUTHORITY: The provisions of this Part 172 issued under R.S. 251, secs. 623, 624, 46 Stat. 759, as amended; 19 U.S.C. 66, 1623, 1624.

**§ 172.0 Scope.**

This part contains provisions relating to the giving of notice of liquidated damages incurred under the terms of any bond posted with Customs, the filing of petitions for relief from liquidated damages incurred, and the consideration of such petitions.

### Subpart A—General Provisions

**§ 172.1 Notice of liquidated damages incurred and right to petition for relief.**

(a) *Notice of liquidated damages incurred.* When there is a failure to meet the conditions of any bond posted with Customs, the principal shall be notified in writing of any liability for liquidated

damages incurred by him and a demand shall be made for payment. The sureties on such bond shall also be advised in writing, at the same time as the principal, of the liability for liquidated damages incurred by the principal.

(b) *Notice of right to petition for relief.* The notice shall also inform the principal and his sureties on the bond that application may be made for relief from payment of liquidated damages under section 623(c), Tariff Act of 1930, as amended (19 U.S.C. 1623(c)), or any other applicable statute authorizing the cancellation of any bond or of any bond charge that may have been made against such bond.

§ 172.2 Failure to petition for relief.

(a) *Referral of claim to U.S. attorney.* If the parties liable for liquidated damages incurred fail to petition for relief or to pay or make arrangements to pay the liquidated damages within 60 days from the date of mailing of the notice of the liquidated damages incurred as provided for in § 172.1, or within such additional time as may have been granted, the district director of customs shall refer the claim immediately to the U.S. attorney for collection.

(b) *Absence from the United States.* If it appears that the parties liable for liquidated damages are absent from the United States or during the 60-day period referred to in paragraph (a) of this section were absent for more than 30 days, the district director may withhold such referral for a reasonable time unless other action is expressly authorized by the Commissioner of Customs.

## Subpart B—Application for Relief

§ 172.11 Petition for relief.

(a) *To whom addressed.* Petitions for relief shall be addressed to the Commissioner of Customs.

(b) *Form.* A petition for relief need not be in any particular form. Such petition shall set forth the facts relied upon by the petitioner to justify cancellation of the claim for liquidated damages, and shall be signed by the petitioner. If the petitioner is a corporation, the petition shall be signed by an officer thereof.

§ 172.12 Filing of petition for relief.

(a) *Where filed.* A petition for relief shall be filed with the district director of Customs for the district in which the liability for liquidated damages is incurred.

(b) *When filed.* A petition for relief shall be filed within 60 days from the date of mailing of the notice of the liability for liquidated damages incurred unless an extension of such period has been granted by the district director.

(c) *Number of copies.* The petition for relief shall be filed in triplicate.

## Subpart C—Action on Petitions

§ 172.21 Petitions acted on by district director of Customs.

In the following cases the district director of Customs may cancel any claim for liquidated damages incurred on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate:

(a) *Under $500.* Liquidated damages under $500, incurred under the terms of any bond posted with Customs.

(b) *Not over $20,000.* (1) Claims for liquidated damages not exceeding $20,000 incurred for violation of the conditions of bonds taken pursuant to schedule 8, part 5C, Tariff Schedules of the United States. (See § 10.39 (e) and (f) of this chapter.)

(2) Claims for liquidated damages not exceeding $20,000 incurred for violation of the conditions of bonds taken pursuant to schedule 3, part 1C, headnote 4, Tariff Schedules of the United States. (See § 10.92 of this chapter.)

(3) Claims for liquidated damages not exceeding $20,000 in cases involving only country of origin marking under section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304). (See § 11.11(d) of this chapter.)

(4) Claims for liquidated damages not exceeding $20,000 incurred for violation of the conditions of bonds taken pursuant to § 18.1 of this chapter. (See § 18.8(d) of this chapter.)

(5) Claims for liquidated damages not exceeding $20,000 incurred for violation of the conditions of cartmen's and lightermen's bonds taken pursuant to § 21.1 of this chapter. (See § 21.8(c) of this chapter.)

§ 172.22 Special cases acted on by district director of Customs.

(a) *Nonproduction of documents in general.* District directors of Customs are hereby authorized to treat any bond charge for the production of a missing document as satisfied upon payment by the principal or surety of the sum of $25 as liquidated damages for each missing declaration of the consignee or other document, except shippers' export declarations, special Customs and commercial invoices, and certificates of origin and certificates of reexport required under § 12.70 of this chapter, not produced within the time prescribed by law or regulations or any lawful extension of such time.

(b) *Nonproduction of special Customs or commercial invoices.* When a required special Customs or commercial invoice is not produced on the date of entry or within 6 months thereafter, unless such production is waived under the provisions of § 8.15(d) of this chapter, the bond charge for the production thereof may be canceled by the district director upon the payment of $25 as liquidated damages, if:

(1) The party who made the entry submits an application for relief explaining in detail why the special Customs or commercial invoice could not be produced within the prescribed period; and

(2) The district director of Customs is satisfied by such application or otherwise that the failure to produce the invoice within the prescribed period was due to causes wholly beyond the control of the party making the entry and not to any purpose of the foreign seller or shipper to withhold information required by law, regulation, or special instruction to be shown on the invoice.

(c) *Nonproduction of free-entry or reduced-duty documents.* When free entry or the application of a reduced rate of duty is dependent upon the production of a document which the importer fails to produce, or when a conditionally free or reduced-duty provision claimed on entry is held to be inapplicable, the claim for free entry or reduced rate of duty shall be treated by the district director as abandoned upon the assessment and payment of duty and the bond given for the production of the free-entry or reduced-duty document may be canceled without the collection of liquidated damages.

(d) *Failure to file timely entry under immediate delivery procedure.* When a timely entry for merchandise not subject to quota has not been filed after release under a special permit for immediate delivery, the liquidated damages assessed may be canceled by the district director upon the payment of $25, if he is satisfied that the delay in filing the entry was not due to willful negligence and was occasioned by circumstances reasonably beyond the control of the parties.

§ 172.23 Limitations on consideration of petitions.

No action looking to relief from the payment of full liquidated damages shall be taken on any petition, irrespective of the amount involved, if the claim has been referred to the U.S. attorney for collection as provided in § 172.2.

## Subpart D—Disposition of Petitions

§ 172.31 Act or omission did not occur.

If it is definitely determined that the act or omission forming the basis for a claim for liquidated damages did not in fact occur, the claim shall be canceled by the district director. When the determination of whether or not the claim was erroneously made depends upon a construction of law, the claim shall not be canceled without the approval of the Commissioner of Customs, unless there is in force a ruling decisive of the issue.

§ 172.32 Limitation on time decision effective.

A decision to cancel a claim for liquidated damages on condition that a stated amount be paid shall be effective for not more than 60 days from the date of notice to the parties of such decision, unless the decision itself prescribes a different effective period or the decision is later amended to change the effective period. If payment of the stated amount is not made, or arrangements made for delayed payment or installment payments, or a supplemental petition filed within the effective period, the full claim for liquidated damages shall be deemed applicable and shall be promptly referred to the U.S. attorney for collection, unless other action has been directed by the Commissioner of Customs.

§ 172.33 Supplemental petitions for relief.

(a) *Time and place of filing.* If the interested parties are not satisfied with a decision of the district director or the Commissioner of Customs, a supplemental petition may be filed with the district director of Customs by the interested parties. Such a petition shall be filed either:

(1) Within 60 days from the date of notice to the petitioner of the decision on the initial petition for relief if no effective period is prescribed in the decision; or

(2) Within the time prescribed in the decision on the initial petition for relief as the effective period of the decision.

(b) *Consideration.* Where the district director of Customs has authority to grant relief in accordance with the provisions of § 172.21, he may grant additional relief if he believes it is warranted and there has been no specific request for reconsideration by the Commissioner of Customs. In all other cases, the supplemental petition, together with all pertinent documents, shall be forwarded to the Commissioner of Customs for reconsideration of the case.

Prior to the adoption of the revision, consideration will be given to any relevant data, views, or arguments which are submitted in writing to the Commissioner of Customs, Washington, D.C. 20226, and received not later than 60 days from the date of publication of this notice in the FEDERAL REGISTER. No hearing will be held.

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

Approved: July 16, 1970.

EUGENE T. ROSSIDES,
*Assistant Secretary of the Treasury.*

*Parallel Reference Table*

(This table shows the relation of sections in proposed Part 171 to 19 CFR Part 23.)

| *Proposed section* | *19 CFR section* |
|---|---|
| 171.0 | None |
| 171.1(a) | 23.23(d) |
| 171.1(b) | 23.23(e) |
| 171.11 | 23.24(a) |
| 171.11(e) | None |
| 171.12(a) | 23.24(a) |
| 171.12(b) | 23.23(c) |
| 171.12(c) | 23.24(a) |
| 171.13(a) | 23.24(a) |
| 171.13(b) | 23.24(b) |
| 171.21 | 23.25(a) |
| 171.22(a) | 23.25(b) |
| 171.22(b) | 23.25(c) |
| 171.22(c) | 23.34 (a) and (b) |
| 171.31 | 23.25(e) |
| 171.32 | 23.23(c) |
| 171.33 | 23.25(d) |
| 171.41 | None |
| 171.42 | 23.24(c) |
| 171.43 | 23.24(c) |
| 171.44 | 23.24(d) |

(This table shows the relation of sections in proposed Part 172 to 19 CFR Chapter I.)

| *Proposed section* | *19 CFR section* |
|---|---|
| 172.0 | None |
| 172.1 | None |
| 172.2(a) | 25.15(e) |
| 172.2(b) | None |
| 172.11(a) | None |
| 172.11(b) | None |
| 172.12(a) | None |
| 172.12(b) | None |
| 172.12(c) | None |
| 172.21 | None |
| 172.21(a) | 25.17(g) |
| 172.21(b) | 10.39 (e) and (f), 10.92(d), 11.11 (d), 18.8(d), 21.8(c) |
| 172.22(a) | 25.17(a) |
| 172.22(b) | 25.17(b) |
| 172.22(c) | 25.17(e) |
| 172.22(d) | 8.59(j) |
| 172.23 | None |
| 172.31 | 25.19 |
| 172.32 | None |
| 172.33 | 25.17(h) |

[F.R. Doc. 70-9762; Filed, July 28, 1970; 8:48 a.m.]

# DEPARTMENT OF AGRICULTURE

## Consumer and Marketing Service

## [ 7 CFR Part 1007 ]

[Docket No. AO 366-A5]

## MILK IN GEORGIA MARKETING AREA

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

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 Georgia 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)).

The above notice of filing of the decision and opportunity to file exceptions thereto are issued 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).

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 Atlanta, Ga., on June 12, 1970, pursuant to notice thereof which was issued June 1, 1970 (35 F.R. 8748).

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

1. Revising the method of computing a producer's base; and

2. Revising the rules relating to base transfers including transfers to non-base-holding producers.

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. The method of computing a producer's base should be revised to provide for dividing his total deliveries during the September–January period by the actual days of delivery represented or by 145, whichever is greater.

This change was proposed and supported by all producer groups represented at the hearing.

A witness for proponent cooperatives stated that the present provision whereby the base of a producer, from whom at least 100 days' production was received at pool plants during the period September 1 to January 31, is computed by dividing his total deliveries during such period by 153, the total number of days in the 5-month period, creates inequities when producers are on every-other-day delivery.

He also indicated that the use of such divisor works a hardship on a producer whose milk may be off the market for a few days through no fault of his own. He cited instances of producers whose permits have been suspended temporarily because pesticide residues had been found in the milk. In many instances the source of the residue may have been purchased hay. He also mentioned other instances of dairy farmers who intended to begin shipping milk to the market as producers on September 1, but whose actual entrance on the market, for one reason or another, was delayed a few days. Other producers may have milk rejected for high acidity resulting from a power failure, or other circumstances over which the producer has no control. The cooperative association proposed a "grace period" of 8 days to avoid a reduction in the base of a producer whose milk was not delivered for a few days during the base-forming months.

The primary purpose of the base-excess plan is to encourage producers to maintain even production throughout the year. In the absence of price incentive to producers in this market, it has been found that production can be expected to fluctuate more widely during the year than handlers' Class I requirements.

Class I sales normally pick up in September with the end of the summer vacation period and the reopening of schools. To encourage production at this period, it was intended in the original order for this market that a producer would receive a base equal to his average daily production during the September–January period if he were on the market on the first day of September and continued as a producer during the entire period. Accordingly, any producer on the market for at least 100 days, but less than 153 days, now receives a base somewhat less than his average daily production delivered during the 5-month period

In practice, the intent of the base provisions is not fully implemented for the producer on every-other-day delivery. Such a producer whose milk is delivered on the first day of September and every other day thereafter through January 31 will have delivered 154 days' production during the period. Those whose milk is first received on September 2, and each succeeding alternate day thereafter, will have delivered only 152 days' production. In both instances, the total volume of milk delivered is divided by 153. Thus, one producer's base is enhanced and the others' is reduced as a result of the use of a common divisor.

To illustrate—in the case of two producers, each producing exactly 1,000 pounds per day during the base-forming period, one whose milk is received on September 1, and on each alternate day thereafter, would have delivered 154,000 pounds of milk and would receive a base of 1,007 pounds. The other would deliver only 152,000 pounds of milk and would receive a base of only 993 pounds. Since each produced 153,000 pounds during the 153-day period, each should receive a base of 1,000 pounds.

The order should be amended to rectify the present situation for producers whose milk is delivered to the market on an every-other-day schedule. In addition, a grace period up to 8 days should be recognized so that any producer whose milk may be off the market for 8 days or less in the September–January period can receive a full base. Accordingly, it is provided herein that the base of a producer, whose milk was received at a pool plant on at least 100 days during the September–January period, shall be computed by dividing the total deliveries of such producer by the number of days' production represented by such deliveries or by 145, whichever is greater.

2. Several changes should be made in the rules relating to base transfers to correct certain abuses that have developed, as well as to provide greater clarity.

Specifically, it should be provided that (1) a person may not hold both a "new producer base" and a base acquired by transfer, except as noted below, (2) partial transfers of base shall be effective on the first day of the month following application for transfer, (3) a producer who transfers base may not acquire additional base for 3 months, and (4) a producer who acquires base by transfer may not dispose of a portion of such base for 3 months.

As previously stated, the order provides that a producer from whom less than 100 days' production is received as producer milk during the September–January period may not have a base computed on the basis of his actual deliveries during such period. For such a producer it is provided that his base each month of delivery shall be 50 percent of his average daily deliveries during such month. This procedure continues until the producer has established a base on his deliveries during the next period of September through January. The reasons for this provision are set forth in the decision on the original order issued by the Assistant Secretary on January 15, 1969 (34 F.R. 960), official notice of which is taken.

Because bases can be transferred among producers, a question has arisen as to whether the order permits a new producer to acquire a base by transfer from a base-holding producer who desires to dispose of it, and at the same time receive a base computed as 50 percent of his current monthly deliveries.

It was not contemplated that a new producer could acquire base by both procedures and thus enhance his returns as compared to those of other producers.

As an example, in some cases the herd and base were transferred to a neighbor or relative who had not previously been a producer. The person to whom the base was transferred was considered a new producer, since individually such person had not been a producer who had earned a base during the previous September–January period. As such, he received a "new producer base" equal to 50 percent of his month's production plus the base which had been transferred to him.

It is the intent of the order that the "50 percent base" apply only to a producer who does not hold an established base, whether earned or acquired by transfer, except a producer who earned an established base and subsequently transferred such base to another person. The order, therefore, is amended to make this point clear.

Producers represented at the hearing supported the above rule and stated that it should apply to all transfers made prior to the effective date of any amendments resulting from the present proceeding. On June 8 the market administrator notified all producers that, on and after June 1, any "new producer" who acquired a base by transfer could not retain his "new producer base", but that transfers made prior to that date would not be affected. Applying the new rule to transfers made prior to June 1 would be inequitable and could work a severe hardship on "new producers" who, prior to June 1, acquired additional base in good faith, relying on the administrative interpretation then in effect. Many of such producers purchased the additional base at considerable cost and invested additional capital in cows and other facilities to increase their production. To nullify such transfers on the effective date of this proposed amendment could cause a severe financial loss to such producers. Accordingly, transfers of base to new producers made prior to June 1, 1970, shall not be affected by this amendment and may be retained through February 1971.

Producer witnesses also emphasized the need for clarifying the status of individuals who acquire a portion of the base held by a partnership, corporation, or family unit when such business is dissolved. They foresaw the possibility that under the existing order persons who acquired such base might be considered new producers and receive a base equal to 50 percent of their production in addition to that acquired by transfer from the dissolved entity. The amendment herein adopted which denies the "new producer" base to any person who holds a base, whether earned or acquired by transfer, eliminates such possibility.

The order now permits a base to be transferred in its entirety, or in units of not less than 100 pounds. No change should be made in this regard. However, the rules with respect to transfers should be revised as they relate to partial bases to eliminate some abuses that have developed.

Currently, the order provides that any base transfer is effective as of the "end of the month" in which application for transfer is made to the market administrator. In practice, this has been interpreted to mean that the transfer is effective as of the first day of the month in which the transfer is requested, unless a specific date is set forth in the application filed with the market administrator.

A witness for the cooperative associations testified that, in the case of partial transfers, the retroactive effective date, together with the lack of any limitation on the frequency of transfers, has afforded an opportunity for exploitation of the base-excess provisions. In certain cases, a producer who, as the end of the month approaches, realized that his production for the month will be less than his allotted base has transferred a portion of his base to a neighbor with excess production by reporting the transfer prior to the last day of the month. The following month the neighbor transferred such base back to the original holder.

Similarly, a group of producers may shift bases within the group as the end of the month approaches in order to maximize the base returns of the entire group at the expense of the remaining producers in the pool.

Consequently, it is provided that, in the case of a partial transfer of base, such transfer shall be effective as of the first day of the month following that in which the application for transfer is made to the market administrator. An exception is made for the month of March because a producer does not know until March 5 of each year what his base will be for the 12-month period beginning March 1.

A producer who finds that his established base exceeds his anticipated production for the year should be permitted to transfer that portion of his base, in excess of his requirements, to another producer effective as of March 1. For such transfer to become effective on March 1, the signed application for transfer must be received by the market administrator no later than March 15.

In the case of transfer of an entire base, the order is amended to provide that the transfer may be made effective as of the day on which the transfer takes place, if the market administrator receives an application for such transfer within 5 days of the transaction. Usually an entire base is transferred only in the case of death or the retirement of the producer. In the latter instance, the base transfer often is accompanied by a dispersal sale at which the herd and the

base are disposed of simultaneously. When the entire herd is dispersed, the base of the selling producer should be transferable on the same date. However, if application for transfer is not made within the 5-day period, the transfer shall become effective as of the first day of the following month.

To further insure that there will be no month-to-month transfers between producers or between groups of producers to enhance unduly the returns of the producers who are parties thereto, no producer who has received base by transfer should be permitted to dispose of any base to another producer until 3 full months have elapsed. Similarly, no producer who has transferred base to another should be permitted to acquire additional base by transfer until 3 full months have elapsed. Such rules do not interfere with the acquisition of additional base by a producer who intends to increase his production on a long-term basis. Neither do they affect adversely the producer who is reducing the size of his operation and desires to dispose of base in excess of his anticipated production.

In the case of jointly held bases, transfers of either the entire base or a portion thereof should be recognized only if the application for transfer is signed by each of the joint holders. Literally interpreted, the present provision requires joint signatures on the application only when the entire base is being transferred. In the case of partial transfer, however, a question also arises as to whether one of the joint holders has the right to dispose of a portion of such jointly held base. To relieve the market administrator of deciding this question, each joint holder should be required to sign any application for transfer.

The order now provides that an application for transfer of base must be signed by the baseholder or his heirs. In the case of bases held by estates or held in trust, the executor or trustee should have authority to sign an application for transfer of such base.

### 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 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. The following order amending the order, as amended, regulating the handling of milk in the Georgia marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. Revise the introductory text of § 1007.110 and paragraph (c) of § 1007.110 as follows:

**§ 1007.110 Base.**

The market administrator shall determine a base for each producer whose milk in the immediately preceding months of September through January was delivered to pool plants on not less than 100 days by dividing the total pounds of such producer's deliveries by the number of days' production represented by such deliveries or by 145, whichever is greater, subject to the following conditions:

* * * * *

(c) In the case of a producer who delivered no milk to a pool plant, or who delivered less than 100 days' production to a pool plant, during the months of September through January and who has not acquired a base by transfer pursuant to § 1007.111(b), the base of such producer shall be 50 percent of his average daily deliveries of producer milk for each month until a base is computed for him on the basis of not less than 100 days in a subsequent September–January period or until he acquires a base by transfer pursuant to § 1007.111(b): *Provided*, That a person for whom a base has been computed pursuant to this paragraph, and who acquired additional base by transfer prior to June 1, 1970, may continue to hold both bases through February 1971; and

* * * * *

2. In § 1007.111, paragraphs (b) and (c) are revised to read as follows:

**§ 1007.111 Base rules.**

* * * * *

(b) Except for bases assigned pursuant to § 1007.110 (b), (c) and (d) a base may be transferred in its entirety, or in amounts of not less than 100 pounds, by a person holding such base to any other person who currently is, or will become, a producer as defined in § 1007.15 within the month in which the transfer is to be effective. Application for transfer must be made to the market administrator on forms approved by the market administrator and signed by the baseholder(s), his heirs, executor or trustee, and by the person to whom such base is to be transferred, subject to the following conditions:

(1) A transfer of an entire base may be made effective any day of the month if application for such transfer is filed with the market administrator within 5 days thereafter. Otherwise such transfer shall be effective the first day of the month following that in which application is made;

(2) A transfer of a portion of a base shall be effective the first day of the month following that in which application for such transfer is made to the market administrator, except that a portion of a base may be transferred to be effective on March 1 of any year if application for such transfer is filed with the market administrator no later than March 15;

(3) A producer who has received base by transfer on or after March 1 of any year may not transfer any portion of his base for 3 full months following the effective date of such transfer;

(4) A producer who has transferred base on or after March 1 of any year may not receive additional base by transfer for 3 full months following the effective date of such transfer; and

(5) A base which is held jointly or as a partnership may be transferred in part, or in its entirety, only upon application signed by each joint holder or partner, his heirs, executor or trustee, and by the person to whom such base is to be transferred;

(c) A base which has been established by two or more persons operating a dairy farm jointly or as a partnership may be divided among the joint holders or partners if written notification of the agreed division of base signed by each joint holder or partner, his heirs, executor or trustee, is received by the market administrator prior to the first day of the month on which such division is to be effective.

Signed at Washington, D.C., on July 24, 1970.

JOHN C. BLUM,
*Deputy Administrator,*
*Regulatory Programs.*

[F.R. Doc. 70-9778; Filed, July 28, 1970; 8:50 a.m.]

# FEDERAL COMMUNICATIONS COMMISSION

[ 47 CFR Parts 2, 87, 91 ]

[Docket No. 18924; FCC 70-786]

## INDUSTRIAL RADIO SERVICES

### Aeronautical and Land Mobile Telemetering

In the matter of amendment of Parts 2, 87, and 91 of the rules to delete provisions for aeronautical telemetering and to make provisions for land mobile telemetering in the Industrial Radio Services, in the frequency band 216–220 MHz, Docket No. 18924.

In the matter of petition of Readex Electronics, Inc., for amendment of the Commission's rules governing the Industrial Radio Services to establish an Industrial Telemetry Radio Service and to allocate thereto frequencies in the band 216–220 MHz, RM–1635.

1. Notice is hereby given of proposed rule making in the above-captioned matters.

2. Limited provisions for non-Government aeronautical telemetering have been made for the past several years in a Government frequency band, 216–220 MHz, by virtue of footnote US5 to the Table of Frequency Allocations in § 2.106 of the rules. Footnote US5, the terms of which are also reflected in § 87.331(d) of the rules, reads as follows:

> US5 Until January 1, 1970, the frequencies 217.425 through 217.675 MHz and 219.325 through 219.575 MHz, inclusive, may be authorized for use by non-Government telemetering mobile stations aboard aircraft and telemetering land stations, for telemetering to and from aircraft in flight, when an engineering study indicates that harmful interference will not be caused to stations operating in accordance with the Table of Frequency Allocations.

3. A concerted effort has been underway for several years to move both Government and non-Government aeronautical telemetering from this portion of the spectrum to a frequency band allocated specifically for that function, i.e., 1435–1535 MHz. In recent years, authorizations for aeronautical telemetering operations in the band 216–220 MHz have borne an expiration date coincident with the termination date of footnote US5, January 1, 1970. However, during the same period, a relatively large number of requirements for mobile telemetering (other than aeronautical) have been satisfied, through arrangements with the Office of Telecommunications Management (OTM), recently replaced by the Office of Telecommunications Policy (OTP), in this same band on a waiver basis. The requirement for accommodation of these latter needs still exists whereas aeronautical telemetering can be accommodated elsewhere and the Commission has received no requests for extension of the expiration date in footnote US5. Aeronautical telemetering, per se, is limited to the flight testing of manned or unmanned aircraft, missiles, or major components thereof.

4. The frequency band 216–220 MHz has been employed by Government users for radio location purposes on a primary basis and for fixed and mobile (including telemetering) purposes on a secondary basis, within the framework of the existing international allocation of this band. While those operations will continue in the band, it has been determined in consultation with the OTP that it would also be in the national interest to make provision, on a regular but secondary basis, for industrial applications of land mobile telemetering in this band.

5. Coincidentally with the conclusion of discussions with the OTP on this matter, there was filed with the Commission a petition, RM–1635,[1] captioned as above, requesting amendment of the rules to establish an Industrial Telemetry Radio Service in this same band. It is petitioner's stated intention to provide a service wherein utility meters (i.e., gas, electric, and water) would be read remotely from a high-flying aircraft. Petitioner proposes one command unit in the aircraft and one remote unit in each home where such utility meters must be read. Utility meters would be modified to provide an electrical output and would be connected by wire to the remote unit of that home. The aircraft, flying at approximately 40,000 feet, would interrogate individual remote units within a radius of 200 miles on one frequency, using discrete address codes for each remote unit. A second frequency would be used for responses from the remote units to the plane where the received data would be stored on magnetic tape for later analysis.

6. The above proposed use goes well beyond the intent of the FCC/OTP discussions previously mentioned and it has been determined in subsequent discussions with the primary users of the band that each is opposed to such use. This opposition was based essentially on the wide-area interference potential from and to such an operation—an opposition in which the Commission concurs. It is clear that such readings could be gathered, if need be, by a cruising motor vehicle as well as from an aircraft even though on a much smaller scale. The question arises also why radio need be used in the operation. Since the meters are to be specially instrumented and then connected by wire to the remote unit, could they not as well be connected by wireline to the telephone or power companies? Comments are solicited specifically on this point, and a decision on it will be held in abeyance at this time. However, the rules proposed herein would preclude the use of airborne devices for telemetering purposes in this band.

7. It is proposed that the following actions be taken to meet our objectives in this proceeding:

(a) Delete footnote US5 from § 2.106 of the rules;

(b) Delete § 87.331(d) of the rules;

(c) Amend § 2.106 of the rules, as set forth below, to provide for use of the frequency band 216–220 MHz by non-Government stations in the land mobile service (excluding airborne devices) for industrial applications of telemetering on a secondary basis (with the Government radiolocation service having primary status); and

(d) Amend Part 91 to provide for land mobile telemetering in the Industrial Radio Services.

8. With respect to subparagraphs 7 (c) and (d) above, it is important to note that the intent of this proceeding is to accommodate telemetering requirements such as those associated with the development and testing of motor vehicles, earth moving equipment, etc. More specifically, because of the fact that the band will be shared with relatively high powered Government radiolocation devices, as well as other Government uses, it is not intended to provide for, as an example, vehicle locator systems of a type which might be construed as telemetering systems designed to serve major urbanized areas. It is intended that the band be available for local area requirements that can be accommodated compatibly on a case-by-case basis with other users and cannot be expected to be available nationwide, without constraint, for wide-area coverage systems. It should be noted also that, under the allocation proposed, airborne and point-to-point telemetering systems would be excluded.

9. Inasmuch as various bandwidths are required to perform different telemetering functions and inasmuch as the joint use of the band by Government and non-Government entities will necessitate close coordination of all assignments, we are presently of the opinion that a specific channeling plan should not be adopted in this band. However, both pro and con comments are invited on this point. Further, since there are now a number of telemetering systems operating in this band on a developmental basis, comments are solicited with respect to appropriate technical standards for stations and systems. Pending the receipt and analysis of the comments requested, we are not proposing specific amendments to Part 91. It is our intention, however, to adopt specific amendments to Part 91 in this proceeding, after analysis of the comments received.

10. Authority for the proposed amendments herein is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended. In accordance with the procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before August 31, 1970, and reply comments on or

[1] On July 13, 1970, the Association of Maximum Service Telecasters, Inc. filed comments in opposition to RM–1635.

before September 11, 1970. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

11. In accordance with § 1.419 of the Commission's rules and regulations, an original and fourteen copies of all comments filed shall be furnished the Commission.

Adopted: July 22, 1970.

Released: July 24, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] BEN F. WAPLE,
*Secretary.*

1. Amend § 2.106, in the frequency band 216–220 MHz, to read as follows in columns 5 through 11:

[2] Chairman Burch absent.

| (MHz) | | (MHz) | | | | |
|---|---|---|---|---|---|---|
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 216-220 | G, NG (US114) | 216-220 | Land mobile (telemetering only). | Telemetering land. Telemetering mobile. | | INDUSTRIAL. |

* * * * * * *

2. In § 2.106, US Footnote 5 is deleted and US Footnote 114 is added to read as follows:

US114 Non-Government use of the band 216–220 MHz is limited to the land mobile service, for telemetering purposes only, and shall have secondary status with respect to the Government radiolocation service. Airborne devices will not be authorized.

[F.R. Doc. 70-9757; Filed, July 28, 1970; 8:48 a.m.]

## [ 47 CFR Part 73 ]

[Docket No. 18928; FCC 70-816]

## TELEPHONE INTERVIEW PROGRAMS

### Licensee Control of Matter Broadcast

In the matter of amendment of Part 73 of the Commission's rules and regulations to provide for licensee control of matter broadcast during telephone interview programs on standard, FM, and TV broadcast stations.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. A number of broadcast stations provide telephone interview or "open-mike" programs. Such programs vary considerably as to format, but generally feature extemporaneous telephone conversations covering a wide variety of topics between members of the general public and the conductors of the programs. Special guests sometimes appear on the programs to answer questions or to reply to comments concerning the guest's particular field of expertise. In many cases where no guests appear, the conductor of the program chooses a specific topic for discussion and sometimes advocates a position with respect to that topic.

3. The programs may render a significant public service to the communities in which they are broadcast by providing a forum for ordinary citizens who wish to express their views publicly about important issues of the day.

4. The telephone interview format has generally been most successful where licensees have exercised close control over the manner in which the programs are conducted. Varying types of internal procedures are commonly used. Many licensees employ a brief tape delay system so that one or more persons at the station may delete obscene or irresponsible comments contrary to the licensee's own policies before they can be broadcast over the air. To protect against libelous personal attacks by anonymous individuals, it is often required that callers give their names and telephone numbers before their comments will be broadcast. This requirement may be combined with a call-back procedure by the licensee to verify the information which the caller has given.

5. Other types of licensee controls are used to achieve a reasonable balance between opposing views concerning controversial issues. Some licensees have adopted the prescreening procedure of asking callers the general tenor of their intended comments so as to avoid the presentation of a succession of participants who have essentially the same thing to say. Such procedures also avoid domination of the open-mike programs by organized groups of callers representing one particular point of view. And, of course, it is essential that licensees employ responsible moderators who will conduct the programs in accordance with the law and the Commission's rules and policies. If, instead, they encourage one point of view and vilify or ridicule those expressing contrary opinions, the latter will be unlikely to call in again and it will be difficult to achieve reasonable balance between opposing viewpoints.

6. Even with effective safeguards, it is inevitable that programs such as those discussed here will generate some listener complaints. The majority of such complaints warrant no Commission action and are the normal by-product of any system which allows citizens to express their views freely about controversial issues. The Commission's concern in this notice of proposed rule making is a limited one. We wish, first, to reaffirm the applicability of the fairness doctrine to telephone interview programs and, second, to propose rules which will aid in enforcing our personal attack rules.

7. We have stated in the past that the fairness doctrine applies fully to telephone interview programs and that the licensee is required to play "a conscious and positive role in bringing about balanced presentation of opposing viewpoints." See our Report "In the Matter of Editorializing by Broadcast Licensees," 13 FCC 1246, Volume I, Part 3, Pike & Fischer R.R. 91–201. When personal attacks are broadcast during discussion of a controversial issue on a telephone interview program, the licensee has an affirmative duty to notify and send copies of the attacks to the persons or groups attacked, with an offer of time to respond. (See §§ 73.123, 73.300 and 73.598 of the Commission's rules.)

8. We are not at present proposing adoption of a Rule which would require licensees to use electronic means to delay the broadcast of telephone conversations until the licensee can determine whether the broadcast would violate any statute or would otherwise be inconsistent with the licensee's own policies. We prefer to leave to the discretion of each licensee the determination of what method to adopt to assure the exercise by him of his responsibility, unless further experience indicates need for such a requirement. Many licensees already use an electronic tape-delay in connection with such programs. Others may have found that the moderators or conductors to whom they have entrusted the operation of "open-mike" programs are able so to conduct them as to prevent the broadcast of matter contrary to statute or licensee's policies. In any event, mere use of an electronic device, without the application of proper discretion, will not necessarily insure licensee control of program matter.

9. Although we are not proposing adoption of rules to require electronic delay of the broadcast of telephone conversations, we are proposing rules (as set forth below) which, we believe, will more nearly assure exercise of the licensee's responsibilities, particularly with regard to the personal attack principle, and which also, as a matter of basic fairness, will make available to persons attacked the information upon which they may judge whether civil action is available to them. The proposed rules, in our judgment, will provide appropriate and necessary means to carry out our functions under the public interest standard of the Communications Act.

10. The proposed rules would require licensees who broadcast telephone interview programs to record such programs and make them available for review by interested parties. The licensees also would be required to ascertain the names and addresses of all members of the public whose conversations are broadcast and to make such lists and recordings available to interested parties for a

period of 15 days.[1] After that period, in the absence of complaint or inquiry, a licensee may destroy the lists of names and re-use the tapes employed for the recordings.

11. On July 11, 1969, notice was given of the filing of a petition for rule making (RM-1475) by the National Citizens Committee for Broadcasting. In the main, petitioner would require:

(a) Retention and availability to the general public of all program logs and aural recordings of all programs broadcast except sports and entertainment;

(b) For programs containing a discussion of issues of public importance, a notation in the log of the issue and the names of persons whose views were expressed; and

(c) A prohibition against the broadcast of any telephone calls unless the name and address of the caller is recorded (but not necessarily broadcast). To the extent that petitioner's proposals are not considered in this notice, they will be given appropriate consideration in a separate document.

12. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules and regulations, interested persons may file comments on or before September 15, 1970, and reply comments on or before October 1, 1970. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

13. Authority for the amendments proposed herein is contained in sections 4(i), 303(r), 307, 308, and 309 of the Communications Act of 1934, as amended.

14. In accordance with the provision of § 1.419 of the rules, an original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission.

Adopted: July 22, 1970.

Released: July 24, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[2]

[SEAL] BEN F. WAPLE, *Secretary.*

[1] It is not intended to require that the names of those speaking via telephone be broadcast (although we believe this the preferable practice); only that the licensee obtain, for his own files and for later disclosure to interested parties, such names and addresses. It also has been suggested that, in order to assure himself that the names and addresses given by persons making telephone calls to the station are authentic, the licensee not only require that such persons disclose their names, addresses and telephone numbers before being allowed to broadcast their comments, but that, before they are broadcast, the licensee verify the number by comparing it with the telephone directory listing and calling the party back, in order to make sure that the caller has correctly identified himself. Although the proposed rule as now drafted would not require the call-back by the licensee, we welcome comments on this proposal as well as on other aspects of the proposed rule making.

[2] Chairman Burch absent; Commissioner Wells dissenting.

1. Sections 73.127, 73.302, and 73.677 are added to read as follows:

**§ 73.127 Telephone interview programs.**

(a) Whenever a licensee or a permittee of a standard broadcast station broadcasts programs consisting in whole or in part of telephone conversations with members of the public, the licensee shall record such converstions and shall retain the recordings for at least 15 days from date of broadcast. During this period, such recordings shall be made available to interested parties for monitoring at the studios or offices of each station which broadcasts the programs.

(b) Licensees or permittees who broadcast programs consisting in whole or in part of telephone conversations with members of the public shall, prior to the broadcast of such telephone conversations, exercise reasonable diligence to ascertain the correct names and addresses of those members of the public whose conversations are broadcast. Lists of the names and addresses of such persons shall be made available for at least 15 days from date of broadcast for inspection by interested parties in the studios or general offices of such station which broadcasts the program.

**§ 73.302 Telephone interview programs.**

(a) Whenever a licensee or a permittee of an FM broadcast station broadcasts programs consisting in whole or in part of telephone conversations with members of the public, the licensee shall record such conversations and shall retain the recordings for at least 15 days from date of broadcast. During this period, such recordings shall be made available to interested parties for monitoring at the studios or offices of each station which broadcasts the program.

(b) Licensees or permittees who broadcast programs consisting in whole or in part of telephone conversations with members of the public shall, prior to the broadcast of such telephone conversations, exercise reasonable diligence to ascertain the correct names and addresses of those members of the public whose conversations are broadcast. Lists of the names and addresses of such persons shall be made available for at least 15 days from date of broadcast for inspection by interested parties in the studios or general offices of such station which broadcasts the program.

**§ 73.677 Telephone interview programs.**

(a) Whenever a licensee or a permittee of a television broadcast station broadcasts programs consisting in whole or in part of telephone conversations with members of the public, the licensee shall record such conversations and shall retain the recordings for at least 1 month from date of broadcast. During this period, such recordings shall be made available to interested parties for monitoring at the studios or offices of each station which broadcasts the program.

(b) Licensees or permittees who broadcast programs consisting in whole or in part of telephone conversations with members of the public shall, prior to the broadcast of such telephone conversations, exercise reasonable diligence to ascertain the correct names and addresses of those members of the public whose conversations are broadcast. Lists of the names and addresses of such persons shall be made available for at least 15 days from date of broadcast for inspection by interested parties in the studios or general offices of such station which broadcasts the program.

[F.R. Doc. 70-9758; Filed, July 28, 1970; 8:48 a.m.]

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## [ 47 CFR Part 73 ]

[Docket No. 18927; FCC 70-801]

## TELEVISION STATION ACCESS TO NATIONAL NETWORK PROGRAMS

### Notice of Inquiry and Proposed Rule Making

In the matter of amendment of § 73.658 of the Commission's rules to limit television stations' access to the programs of more than one national network (petition of Triangle Telecasters, Inc., WRDU-TV, Durham, N.C.), RM-1525.

1. The purpose of this proceeding is to explore ways, including the possible adoption of a rule amendment to present § 73.658 of the Commission's rules, by which UHF stations, particularly those in markets having two VHF stations, can obtain increased access to national television network programs. The proceeding is prompted in part by a petition filed on November 5, 1969, by Triangle Telecasters, Inc. (Triangle), the licensee of UHF station WRDU-TV, Durham, N.C., which went on the air in November 1968 and has authority to identify itself with Raleigh, N.C., as well as Durham. VHF stations WTVD, Durham, and WRAL-TV, Raleigh, also operate in the Raleigh-Durham market. The VHF stations mentioned are primary affiliates of CBS and ABC, respectively. The thrust of the Triangle petition is that it should have a similar arrangement with NBC, which does not have a regular primary affiliation with any station in the market.[1]

2. The "primary" affiliation agreements between the VHF stations and the ABC and CBS networks, respectively, give the stations "first call" on any program offered by the network in the community, and exclusivity as against other stations in the community. In the case of CBS and WTVD, WTVD has 2 weeks to accept or reject a regularly scheduled program offered by CBS, and 72 hours in other cases. This agreement, for the usual 2-year period, provides for automatic renewal unless 6 months' notice is given, and either party can cancel it on a year's notice. With respect to individual programs, the station retains the right

[1] The petition asks the adoption of a new subparagraph in § 73.658 to the effect that no license shall be granted to any TV station, in a market having three or more stations, which has contracts, arrangements, or understandings, express or implied, with more than one network organization which provide for a primary affiliation or "the primary right of first refusal" as to that network's programs.

"Raleigh-Durham" is a recognized market, ranked about 50th or somewhat below among the nation's television markets (65th in total prime time homes according to the ARB 1969 "Television Market Analysis").

to reject programs as required by the Commission's rules; and CBS may cancel a program, or substitute one for another. CBS also has "secondary" affiliation agreements (on standard forms) with both WRAL–TV (the other VHF station) and WRDU–TV, under which it "may, but without any obligation to do so, from time to time offer" CBS programs, which the station has 72 hours to accept or reject (unless the offer specifies a longer period). If accepted by the station, CBS may withdraw the program only after 13 weeks of broadcast and then only after at least 28 days' notice.[2] NBC has a somewhat similar affiliation agreement (on its standard form) with WTVD, under which NBC "will offer to the Station * * * a variety of NBC Television Network Programs." This agreement was entered into for 1 year, cancelable by either party on 180 days' notice, and provides for withdrawal of a program by NBC on 24 hours' notice if it is being telecast on a delayed basis, but otherwise has no provision for withdrawal, except that a program may be withdrawn where necessary to enable NBC to honor another affiliation agreement. NBC has perprogram agreements with WRDU–TV.

3. In the current network "Standard Rate and Data" listing (June 10, 1970), ABC and CBS, respectively, list WRAL–TV and WTVD as regular affiliates, and NBC so lists WTVD. WRDU–TV is listed by NBC among "Other stations available on an occasional basis" (it is not listed by ABC or CBS). NBC similarly lists WRAL–TV.

*The petition and oppositions.* 4. The chief complaint of Triangle is that it has agreements with CBS and NBC, but both are subject to the prior rights of WTVD; and that the present situation is unfair competition and demonstrates the need for relief to make UHF viable. It is stated that often WRDU–TV has been unable to present a full network schedule because of carriage by WTVD of these networks' programs, often delayed even though Triangle offered to carry them live. Two examples of prime-time shows during the 1968–69 season are given.[3] Four instances of recapture by NBC of shows running on WRDU–TV, for presentation on WTVD (probably delayed) were given; three of these occurred just prior to ARB rating periods. According to Triangle, NBC stated that this was due to its contractual obligations to WTVD, requiring recapture even for delayed presentation on that station. Triangle states that it understands the desire of advertisers to have their programs carried on large-audience VHF stations, rather than UHF; but the furtherance of UHF requires rules inducing a different type of behavior. The impetus to UHF, it is stated, will outweigh any temporary dislocation.

5. NBC, opposing the petition, states that despite WRDU's limited circulation, NBC has made available and the station is currently carrying a substantial amount of NBC programing, including all daytime programs after 10 a.m. on Mondays through Fridays, five Saturday programs, nine prime time programs (seven carried live and two delayed), and AFL football and two bowl games, as well as a number of NBC "specials". It is stated that the reason for recapturing programs from WRDU–TV for WTVD delayed broadcast is not a matter of contract—NBC's position is that an affiliate which accepts a program but only for delayed broadcast in effect is making a counteroffer and thus kills the original offer and any first-refusal obligation—but involves other relevant factors, chiefly circulation. WRDU–TV, it is said, has the usual UHF disadvantage in an intermixed market, and thus, according to ARB, delivers only 2,800 prime-time homes compared to 79,200 for WTVD. This situation, it is observed, may change with UHF development, but is still true, and if an NBC official stated that the recapture was because of contract he was wrong. The economic facts of life are such that the right of first refusal, or its absence, is irrelevant, although of course NBC observes the terms of its contract with WRDU–TV. It is stated that the Commission recognized this long ago in the 1941 Chain Broadcasting Report, and again in the 1955 amendment to the territorial exclusivity rule (Report and Order in Docket 10989, June 1955, 12 R.R. 1542). It asks that therefore the petition be dismissed.

6. Capital Cities Broadcasting Corp., licensee of WTVD, opposes the Triangle petition at greater length, asserting that the proposed rule is not necessary because it would not affect the situation, and that no other action is necessary or warranted. It is urged that a rule barring stations such as WTVD from having more than one primary or "first refusal" affiliation agreement would not change the program-placement situation in this market, since NBC's use of WTVD is based not on any contract provisions but on NBC's own unilateral judgment.[4] It is also urged that no other action is warranted, for a number of reasons. First, it is pointed out that WRDU–TV does carry substantial amounts of NBC and CBS programing (as mentioned above), including 19½ out of 24½ hours of prime-time programing. It is also asserted, with respect to the "planning" of program schedules and recapture as to which Triangle complains, that WTVD had made its basic clearance plans for the 1969–70 season by July, and communicated them both to NBC and to WRDU–TV; in the case of four NBC programs time later became available and WTVD was able to clear for them, but the latest of these was in September,[5] so that in effect WRDU–TV was able to plan its schedule and adhere to it. The problem with WRDU–TV, and one of the chief reasons why NBC prefers another station, is said to be its lesser coverage in the market, with its location west of Durham so that it must operate a UHF translator to satisfactorily serve Raleigh and provides less coverage (barely Grade B) to sizable places south and east (Fayetteville, etc.). WTVD disclaims any "unfair competition" or desire to injure WRDU, citing examples of technical assistance it has given, film processing done for the station, and information as to scheduling it has furnished. One of the "recapture" instances mentioned by Triangle, additional to those just referred to, is said to have represented a response to audience phone calls asking why the NBC program ("Julia") was not on the station; when a CBS program being carried was canceled by that network, WTVD took the opportunity to schedule "Julia" instead of the CBS replacement program. It is said that "WTVD's obligation to compete fairly surely does not require it to refrain from competing altogether," simply to provide WRDU–TV with an assured program source.

7. Capital Cities argues that there are essentially two ways of dealing with this situation. One is for WRDU–TV to improve its facilities and performance to a point where it is regarded as at least a viable alternative to the VHF stations. The second would be for the Commission to "eliminate competition" by forcing one network to deal with WRDU–TV as a primary affiliate. As to the second, it is urged that, assuming arguendo that it is within the Commission's authority, such "forced affiliation" could be justified, if at all, only on a temporary basis (as a permanent matter, it is highly questionable whether the Commission could reasonably force viewers and suppliers to accept inferior service). Even temporarily, it is argued that the Commission should not force viewers to rely on inferior service while weakening Triangle's

[2] In recent pleadings filed in Docket 16041, and the April 30 oral argument in that proceeding, it was indicated that CBS now has a policy permitting "recapture" of a program, carried on a station other than a primary affiliate, only after 13 weeks of broadcast and on 28 days' notice. ABC indicated that it was about to adopt a similar policy. NBC does not have such a policy.

The 1965 notice of proposed rule making in that proceeding noted the regular 72-hour "first refusal" period provided in network contracts, but also the fact that in practice the affiliate's right is seldom, if ever, so limited.

[3] One was NBC's "Laugh In".

[4] It is said that the WTVD contract with NBC does not require NBC to accept a delayed broadcast, which it agrees to only if it finds it acceptable; that it does not cover all NBC programs but only those offered to WTVD; and the "first refusal" right is limited to 72 hours. See footnote 2, above.

[5] Three of these later instances are described as follows: One was a program ("High Chaparral") carried on WTVD 11:30 p.m.–12:30 a.m. Sunday nights, a period during which WTVD had carried NBC programs for some years. It originally, in July 1969, proposed to carry a different NBC program in this period, but this was not acceptable to NBC, so the different program was then given to WRDU–TV and WTVD carried "High Chaparral" instead. With respect to two other programs, WTVD originally planned to clear a syndicated program on Saturdays from 4 to 5 p.m. Negotiations for this proved unsuccessful; accordingly, WTVD notified NBC in September 1969 that this time would be available and NBC offered the "Bill Cosby Show" and "Adam 12" to WTVD for that period.

incentives to improve; even if the Commission should adopt some standard of "adequate" service before it would act, the service would not be truly comparable and therefore a burden to viewers. It is said that this would burden and restrain competition between networks, involving the Commission in "apportioning undesired affiliations among networks" to balance them, which the Commission has in the recent past refused to do (letter to the president of ABC, September 5, 1968, Commissioners Cox and Johnson dissenting). It is asserted that there is no reason for the Commission to start down this road, in view of WRDU–TV's only limited experience (on air November 1968) and a trend toward primary affiliation with UHF in two-VHF markets, so that, as of early 1970, there are only four markets where this has not happened (Birmingham and Raleigh-Durham in the top 100, Augusta and Lubbock among smaller markets).[6] Rather, the Commission should persist in aiding UHF development and rely on competitive pressures to force improvement of UHF facilities to an attractive point.

8. Capital Cities and Triangle continued the controversy in subsequent pleadings. Triangle asserts that an improvement in its facilities ignored by Capital Cities (rotation of its directional pattern so as to improve the signal over Raleigh) makes much of the Capital Cities opposition meaningless; Capital Cities claims that the difference is not substantial. There is argument over the significance of WRDU–TV's western location compared to the VHF stations in the market. There is also discussion concerning the NBC programs recaptured by WTVD for Saturday afternoon showing mentioned above; Triangle claims that they were presented only just before and during the fall rating period and then dropped, and Capital Cities claims that they were not shown later (November and December) chiefly because NBC preempted the time for other programs or WTVD preempted it for sports events (bowl games). Triangle's reply to the WTVD and NBC oppositions calls attention to the inequalities between its present situation and that of primary affiliates: 180-day cancellation as opposed to 28 days notice, not having to pay the switching charges involved in networks shifting from one station to another, and network promotion of its affiliates, now lacking. It is said that getting a primary affiliation for it and other stations similarly situated would be a great help to UHF, especially in the early stages, an "incentive" to viewers to buy UHF sets so as to increase UHF penetration. It is asserted that the unusual situation in the market, emphasized by Capital Cities as reason why no general rule should be considered, is "abnormal and unhealthy" and therefore a special reason for action to prevent it. It is urged that the situation may reflect the "economic facts of life" as Capital Cities claims; but this is the very reason why action is necessary, here as it has been elsewhere in the Commission's considerations and that of other agencies, for example the enactment of the "Robinson-Patman Act", all-channel legislation and rules and the 1941 Chain Broadcasting Rules. Regulation, it is said, is necessary to prevent the unrestrained operation of present "economic factors". There is also discussion of the advantages VHF stations such as the two in this market have during rating periods: they can pick and choose their programs, including network "specials" sometimes presented at these times. Triangle also claims that the comparative circulation figures cited by Capital Cities are not indicative of the real present situation, since WRDU–TV had only recently gone on the air.

*An alternative approach: limiting the amount of "secondary" network programs.* 9. In considering the problem raised by the Triangle petition, it is also appropriate to note a different approach, urged by another UHF station in an intermixed market in its 1965 comments in Docket 16041. WCCB–TV, Charlotte, N.C., urged in that matter that the rule proposed there (designed to make "uncleared" programs, those not taken by regular affiliates, more readily available to other stations) did not go far enough. It proposed a rule prohibiting a station from carrying, from its "secondary" network, more than 25 percent of the amount of programs it takes from its primary network. WCCB–TV urged that this would not involve what is termed "forced affiliation", or require the networks to furnish programs to any station, and would not limit a station at all as to programs from its primary network or to an unreasonable extent with respect to the "secondary" network. In opposing this suggestion, a number of the parties filing reply comments in Docket 16041 asserted that such a rule would have undesirable effects: denying valuable programs to the the public, imposing on ABC (the "third" network) the burden of furthering UHF development, and encouraging a station to carry more of the programs of its "primary" network so that it could then carry more from the secondary network. The proposal was also attacked as unnecessary, essentially for the reasons now urged by Capital Cities and noted above and also because WCCB–TV was already carrying more network programming than would necessarily become available to it under such a rule (it has since become a regular ABC affiliate).

*Discussion.* 10. In evaluating the above details and arguments, certain observations are appropriate. First, the situation involved is a rather specialized one. While in the early 1960's there were a fairly substantial number of these "two-VHF-one-UHF" situations in which the UHF stations had problems in getting substantial amounts of network programing, with the development of UHF more of these stations have obtained regular network affiliations, so that the problem presented here no longer exists. These include, among others, Charlotte, Jacksonville (Fla.) and Knoxville, and, more recently, Toledo, Birmingham, and Dayton. However, as noted above, besides the Raleigh-Durham situation the problem is presented in the Augusta, Ga., and possibly Lubbock, Tex., markets, and may also be in Baton Rouge and elsewhere when UHF stations for which CP's are now outstanding commence operations.[7] Therefore the situation is not so unique that a rule designed to meet it would not be appropriate if the public interest would be served by such a regulation. Moreover, a general rule might serve the public interest in other situations even if it were not appropriate to apply it here, for example because of the UHF station's location, resulting in substantial overlap of coverage with network affiliates in the Greensboro-Winston-Salem-High Point market to the west.[8]

11. Second, we note the tremendous increase in UHF set circulation in recent years, spurred by the all-channel legislation of 1962, our implementing rules effective April 30, 1964, and the demand for color sets. As of early 1969 it was estimated that nearly 55 percent of U.S. homes had UHF reception capability, and as of mid-1970 this figure is estimated to be nearly 68 percent. Therefore, while the problem involved here may be less acute and less generally prevalent, there also appears to be less reasonable basis for an innate and unvarying network preference for VHF when UHF is available. Third, it also appears that, to some extent, this increase in UHF potential has not been matched by a corresponding improvement in the economic situation of UHF stations, or their ability to get desirable programs. It is apparent from the factual allegations set forth above that, to a very large extent, vis-a-vis WRDU–TV and as far as NBC programs are concerned, WTVD, which is a basic CBS affiliate, can pick and choose the programs which it wishes to present, both at the start of a season and, to a very substantial extent, at any time thereafter. We do not say that WTVD's conduct has been improper or exceeded the bounds of "fair competition"; but that does not mean that the competitive conditions are satisfactory from the standpoint of the public interest, or that we are justified in not considering action.

12. Two other general observations appear appropriate. First, it does not

[6] Since then, the UHF station in Birmingham has received an affiliation, and according to Triangle similar arrangements are under negotiation for Lubbock. Therefore there may be only two such situations, Raleigh-Durham and Augusta.

[7] We do not here pass on the situation in San Diego, where ABC's continued authority to use XETV, Tijuana, Mexico, as its outlet in the market is at issue in a hearing proceed (Docket No. 18606).

[8] There is considerably more coverage in the latter market from WRDU–TV than from the Raleigh-Durham VHF stations, both located slightly southeast of Raleigh. However, this is less of a factor as to NBC, the network primarily involved here, because it is affiliated with WSJS–TV, Winston-Salem, the westernmost of the stations in that market. This would not be a significant factor in the Augusta or Lubbock situations.

appear that the rather legalistic approach urged by Triangle and set forth in footnote 1, above—limiting primary affiliations or "primary rights of first refusal" to one per station—is necessarily an appropriate, or likely to be an effective, approach. As Capital Cities and NBC point out, there is no "primary affiliation" involved in the relationships of these three parties. Rather, the matter is one of what NBC chooses to do, and whether its freedom of choice should be restricted. Second, it appears that much of WRDU–TV's problem is occasioned by the recapture practices of NBC. WRDU–TV gets a substantial amount of NBC programing to begin with, but later it is sometimes withdrawn from that station so that it may be presented over WTVD. This matter is under consideration in Docket 16041, specifically being mentioned in the notice setting oral argument therein issued in March 1970.[9] If rules are adopted there limiting this practice, or if NBC should voluntarily adopt a 13-week minimum placement policy as ABC and CBS have done or are about to do, the problem might be lessened.

*Conclusions.* 13. While we have not yet concluded, even tentatively, that general Commission action is warranted in this area, in our view a problem requiring our action by general rule may exist, and the subject should be explored. Accordingly, we are instituting the Inquiry proceeding set forth in the next paragraph, and invite comments on the questions set forth there. Also, in the notice of proposed rule making set forth in paragraph 15, below, we invite comments on various elements of a rule which may be adopted herein without further proceedings, if the comments warrant.

*Notice of inquiry.* 14. Comments are invited on the following questions:

(a) In situations where there are two VHF stations in a market, and one or more UHF stations, should the Commission adopt a rule limiting the extent to which the VHF stations can take programing from more than one network? Should this rule, if adopted, be in the form of simply a restriction to one primary affiliation or "primary right of first refusal" per station, or should it involve a limitation on the amount of programing a VHF station can take from a second network, such as a percentage or number of hours per week?

(b) Is there need for a rule to the same effect covering other situations, such as other types of "intermixed" markets (one VHF-one UHF, or one VHF-two UHF markets), or markets which are not intermixed but all-VHF or all-UHF?[10]

(c) If such a rule should be adopted, should it be limited to situations where the UHF station has facilities giving it coverage at least generally comparable to the VHF stations? What standards should be adopted in this respect, such as comparative coverage area, set circulation, or distance to Grade A or Grade B contours?[11]

(d) In what situations and to what extent, if at all, should a rule if adopted not apply because the coverage areas are largely different, and may involve different degrees of overlapping coverage with affiliates in another market?[12]

(e) To what extent would any problems in this area be removed by adoption of rules limiting the right of recapture, such as those under consideration in Docket 16041 or the practice of a minimum of 13 weeks run and then 28 days notice now adopted by CBS and ABC?

*Notice of proposed rule making.* 15. If the comments herein warrant, a rule along the lines generally indicated above may be adopted in this matter without further proceedings. Comments are invited on the appropriateness of such a rule, as indicated above, and also on what form it should take. For example, in addition to prohibiting a VHF station from having two "primary affiliations", or two "primary rights of first refusal", would it be appropriate to adopt a "rationing" type of rule such as that suggested in Docket 16041 by the Charlotte UHF station—limiting VHF stations to taking from their "second" network no more than a percentage such as 25 percent of the programing they carry from their primary network, or a limitation in terms of hours, such as 20 hours a week (or both, whichever is less)? Are there types of situations in which the rule should not apply, for example where the UHF station has no more than 50 percent of the Grade B coverage area of the smallest VHF station in the market?

16. Authority for this rule-making and inquiry proceeding, and adoption of rules along the lines proposed, is found in sections 4(i), 303(g), (i), and (r), and 403 of the Communications Act of 1934, as amended.

17. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before September 15, 1970, and reply comments on or before October 1, 1970. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

18. In accordance with the provisions of § 1.419 of the rules, an original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission.

Adopted: July 22, 1970.

Released: July 24, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[13]
[SEAL] BEN F. WAPLE,
*Secretary.*

[F.R. Doc. 70–9759; Filed, July 28, 1970; 8:48 a.m.]

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[9] Notice and order setting oral argument concerning network television programs not cleared by regular affiliated stations, Docket No. 16041, FCC 70–309, released Mar. 26, 1970.

[10] As far as other "intermixed" markets are concerned, this does not presently appear to be a substantial problem in the one VHF-two UHF markets, such as Binghamton, N.Y., Madison, Wis., and Rockford, Ill.

[11] There have been, and possibly still are, situations where the UHF stations operate with such small facilities that they could not be considered comparable. However, we are tentatively of the view that this is not true of any of the three situations mentioned: Raleigh-Durham, Augusta and Lubbock.

[12] It is noted that, according to the TV Digest "CATV & Station Coverage Atlas" (1969–1970), the WRDU–TV Grade B contours falls some 27 miles farther west than those of the market VHF stations, and falls some 40 miles short of those contours to the east. These distances may change as a result of the new contour location determination rules adopted in Docket 17253 (April 1970).

[13] Chairman Burch absent; Commissioner Bartley dissenting.

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## [ 47 CFR Part 73 ]

[Docket No. 18873]

## FM BROADCAST STATIONS

### Table of Assignments, New Castle, Pa.; Order Extending Time for Filing Reply Comments

In the matter of amendment of § 73.202 *Table of assignments,* FM Broadcast Stations (New Castle, Pa.), RM–1453.

1. This proceeding was begun by notice of proposed rule making (FCC 70–591) adopted June 3, 1970, released June 5, 1970 and published in the FEDERAL REGISTER on June 10, 1970 (35 F.R. 8946). The date for filing comments has expired and the date for filing reply comments is presently July 23, 1970. Comments in opposition were filed by The Hearst Corp. (Hearst), licensee of Station WTAE–FM, Pittsburgh, Pa., and Scott Broadcasting Co. of Pennsylvania, Inc., licensee of Station WKST, New Castle, and WFEM–FM, Ellwood City, Pa.

2. On June 21, 1970, Lawrence Broadcasting Co. (Lawrence), licensee of Station WBZY (AM daytime-only), New Castle, Pa., filed a request for extension to and including July 30, 1970, in which to file reply comments. Lawrence states that WTAE–FM referenced in its opposing comments an application to modify its existing facilities. It further states that the engineering data in said application has been ordered for reproduction through Cooper-Trent, but has not yet been received, and the material is necessary for a proper reply.

3. We are of the view that the additional time is warranted and would serve the public interest. *Accordingly, it is ordered,* That the time for filing reply comments in Docket 18873 is extended to and including July 30, 1970.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of

1934, as amended, and § 0.281(d)(8) of the Commission's rules.

Adopted: July 23, 1970.

Released: July 24, 1970.

[SEAL] JAMES O. JUNTILLA,
*Acting Chief, Broadcast Bureau.*

[F.R. Doc. 70-9760; Filed, July 28, 1970; 8:48 a.m.]

# INTERSTATE COMMERCE COMMISSION

## [ 49 CFR Part 1048 ]

[No. MC-C-2 (Sub-No. 1)]

## NEW YORK, N.Y., COMMERCIAL ZONE

### Redefinition of Limits

JULY 24, 1970.

Redefinition of the limits of the New York, N.Y., commercial zone heretofore defined in No. MC-C-2, New York, N.Y., commercial zone, embracing Ex Parte No. MC-37, commercial zones and terminal areas 111 M.C.C. 123.

Petitioner: Reading Company; Petitioner's representative: Joseph M. O'Malley, 415 Reading Terminal, Philadelphia, Pa. 19107. By petition filed June 12, 1970, the above-named petitioner requests the Commission to reopen the above proceeding for the purpose of redefining the limits of the New York, N.Y., commercial zone, which were most recently defined on February 4, 1970, in "New York, N.Y., commercial zone," 111 M.C.C. 123, at pages 129 and 130 (49 CFR 1048.101), so as to extend the partial exemption under section 203(b)(8) of the Interstate Commerce Act to transportation by motor vehicle which is performed with respect to any shipment which has a prior, or will have a subsequent, movement by rail, and which is performed wholly between points in the New York City commercial zone, on the one hand, and, on the other, petitioner's Trailer-on-Flat-Car facilities located at Port Reading (Woodbridge Township), N.J., namely within an area bounded on the east by the Arthur Kill, on the south by the property of Amerada Hess Corp., on the west by Cliff Road, and on the north by Woodbridge Carteret Road. This area encompasses certain rail yard facilities of the Reading Co.

No oral hearing is contemplated at this time, but any person (including petitioner), wishing to make representations in favor of, or against, the above-proposed revision of the limits of the New York, N.Y., commercial zone, may do so by the submission of written data, views, or arguments. An original and seven copies of such data, views, or arguments shall be filed with the Commission on or before September 15, 1970. Each such statement should include a statement of position with respect to the proposed revision, and a copy thereof should be served upon petitioner's representative.

Notice to the general public of the matter herein under consideration will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[F.R. Doc. 70-9753; Filed, July 28, 1970; 8:48 a.m.]

# Notices

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[Serial No. A 4721]

### ARIZONA

### Notice of Classification of Public Lands for Multiple-Use Management

JULY 22, 1970.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411–18) and to the regulations in 43 CFR Parts 2420 and 2461, the public lands described below are hereby classified for Multiple-Use Management. Publication of this notice has the effect of segregating all the described lands from appropriation under the agricultural land laws (43 U.S.C. Parts 7 and 9, 25 U.S.C. 334), and from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171). All of the described lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws. As used in this order, the term "public lands" means any lands (1) withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or (2) within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. The notice of proposed classification of these lands was published May 6, 1970 in 35 F.R. 7134 and was widely publicized. All comments received endorsed continued public ownership and protection of the Baker Canyon area and the classification is made as proposed.

3. The public lands described in this notice are shown on maps on file and available for inspection in the Safford District Office, Bureau of Land Management, 1707 West Thatcher Boulevard, Post Office Box 786, Safford, Ariz. 85546, and Land Office, Bureau of Land Management, 3204 Federal Building, Phoenix, Ariz. 85025.

4. The lands involved are in the Baker Canyon area of Cochise County and are described as follows:

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 23 S., R. 32 E.,
Secs. 14, 15, 22, 23, 26, 27, 34, and 35.

The land aggregates 4,814.20 acres of public land. The major public values to be preserved and/or enhanced by this classification are livestock grazing, wildlife habitat, wilderness preservation, and public recreation.

5. For a period of 30 days, interested parties may submit comments to the Secretary of the Interior, LLM 320, Washington, D.C. 20240.

ROY T. HELMANDOLLAR,
*Acting State Director.*

[F.R. Doc. 70-9726; Filed, July 28, 1970; 8:45 a.m.]

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[New Mexico 8754]

### NEW MEXICO

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

JULY 22, 1970.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1412), the following described lands are hereby classified for transfer out of Federal ownership under one or more of the following statutes: section 8 of the Taylor Grazing Act (43 U.S.C. 315g) and public sale under section 2455 of Revised Statutes (43 U.S.C. 1171).

2. As a result of the public hearing held on March 26, 1969, in Lordsburg, N. Mex., and the comments received as a result of the proposed classification notice (34 F.R. 3859–3860), the public lands described in paragraph 4 below, are hereby relieved of their segregative effect on July 31, 1970, at 10 a.m.

3. Publication of this notice segregates the following described lands from all forms of disposal under the public land laws, including the mining laws, except the form or forms of disposal prescribed in paragraph 1 above. However, publication does not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral and vegetative resources, other than under the mining laws.

NEW MEXICO PRINCIPAL MERIDIAN

HIDALGO COUNTY TYPE IV PLANNING UNIT (3–72)

T. 21 S., R. 17 W.,
Sec. 3, lot 1 and N½S½;
Sec. 9, SW¼NW¼, NW¼SW¼, and SE¼SW¼;
Sec. 11, S½SE¼;
Sec. 21, N½N½.
T. 23 S., R. 17 W.,
Sec. 30, lot 4;
Sec. 31, lots 1, 2, 3, 4, SE¼NW¼, E½SW¼, and SE¼.
T. 24 S., R. 17 W.,
Sec. 1, lots 3, 4, and S½NW¼.
T. 29 S., R. 17 W.,
Sec. 29.
T. 31 S., R. 17 W.,
Sec. 3;
Sec. 33, W½.
T. 32 S., R. 17 W.,
Sec. 18, SE¼SW¼ and SE¼SE¼;
Sec. 19, SE¼NE¼ and SE¼SE¼.
T. 21 S., R. 18 W.,
Sec. 11, NW¼ and NW¼SW¼.
T. 23 S., R. 18 W.,
Sec. 3, S½NE¼ and SE¼;
Sec. 23, S½NE¼;
Sec. 24, W½SW¼, and SE¼SW¼;
Sec. 25, SE¼SW¼ and S½SE¼.
T. 32 S., R. 18 W.,
Sec. 12, NW¼ and N½SW¼;
Sec. 13, NW¼NW¼, S½N½, N½S½, S½SW¼, and SW¼SE¼;
Sec. 14, E½ and NW¼;
Sec. 15, SW¼;
Sec. 21;
Sec. 22, N½;
Sec. 23, NE¼;
Sec. 24, W½ and W½SE¼;
Sec. 26, S½NW¼, SW¼, and NW¼SE¼;
Sec. 28, E½, E½W½, NW¼NW¼, and W½SW¼;
Sec. 35, lots 3 and 4.
T. 23 S., R. 19 W.,
Sec. 19, NE¼SE¼.
T. 28 S., R. 19 W.,
Sec. 8, SW¼SW¼;
Sec. 17, SE¼;
Sec. 20, NE¼NE¼, W½NE¼, and W½SW¼;
Sec. 21, W½NW¼, SW¼, and SW¼SE¼;
Sec. 28, NW¼NE¼, NW¼, and N½SW¼;
Sec. 29, SE¼NE¼ and E½SE¼;
Sec. 30, SW¼NE¼;
Sec. 31.
T. 29 S., R. 19 W.,
Sec. 5, N½SE¼ and SW¼SE¼;
Sec. 6, lots 3, 4, 5, 6, SE¼NW¼, and NE¼SW¼;
Sec. 7, lots 1, 2, 3, 4, NE¼, and E½NW¼;
Sec. 17, NW¼NW¼;
Sec. 18, lots 1 and 2.
T. 30 S., R. 19 W.,
Secs. 29, 30, and 31.
T. 31 S., R. 19 W.,
Sec. 6;
Sec. 7, lots 1, 2, 3, 4, E½, NE¼NW¼, and E½SW¼.
T. 22 S., R. 20 W.,
Sec. 24, E½;
Sec. 25, E½.
T. 23 S., R. 20 W.,
Sec. 1, SE¼SE¼;
Sec. 12, N½NE¼;
Sec. 25, SE¼SW¼ and SW¼SE¼.
T. 26 S., R. 20 W.,
Sec. 14, SE¼SE¼;
Sec. 24, SE¼;
Sec. 25, NE¼NE¼.
T. 29 S., R. 20 W.,
Sec. 6, lots 1, 2, 3, 4, 5, S½NE¼, SE¼NW¼, and SE¼;
Sec. 7, lot 3;
Sec. 8, W½NE¼, W½, W½SE¼, and SE¼SE¼;
Sec. 11, N½NE¼ and NE¼NW¼;
Sec. 12, E½ and E½W½;
Sec. 13, W½NE¼, W½, and NW¼SE¼;
Sec. 14;
Sec. 17, E½ and N½NW¼;
Sec. 19, lot 4;
Sec. 23;
Sec. 26, NW¼;
Sec. 27, N½, NW¼SW¼, and SE¼;
Sec. 28, NE¼, E½W½, and N½SE¼;
Sec. 29, W½NW¼, SW¼, and W½SE¼;
Sec. 30, lots 1, 2, 3, 4, E½NE¼, SE¼NW¼, W½SW¼, and SE¼;
Sec. 31, lots 2, 3, 4, SE¼NE¼, and E½SE¼;
Sec. 33, W½NE¼ and E½NW¼.

T. 30 S., R. 20 W.,
Sec. 4, S½SW¼;
Sec. 5, lot 4 and NW¼SW¼;
Sec. 6, lots 1, 4, 5, 6, and NE¼SW¼;
Sec. 7, lot 3;
Sec. 8, W½NE¼ and NW¼SE¼;
Sec. 9, NE¼, W½, and N½SE¼;
Sec. 13, NW¼SE¼;
Sec. 17, NE¼NE¼ and SE¼SE¼;
Sec. 20, S½;
Sec. 21, W½SW¼ and SE¼;
Sec. 22, SW¼;
Sec. 25, SE¼SE¼;
Sec. 27, SE¼NE¼, N½NW¼, and SW¼NW¼;
Sec. 28, W½NW¼;
Sec. 29, NE¼;
Sec. 31.
T. 31 S., R. 20 W.,
Sec. 1, lots 1, 2, 3, 4, S½N½, SW¼, W½SE¼, and NE¼SE¼;
Sec. 12.
T. 32 S., R. 20 W.,
Sec. 6, NW¼SE¼.
T. 33 S., R. 20 W.,
Sec. 18, NE¼SE¼.
T. 27 S., R. 21 W.,
Sec. 6, lot 5;
Sec. 7, lots 1, 2, 3, 4, NW¼NE¼, and NE¼NW¼;
Sec. 18, lot 1;
Sec. 20, SE¼NE¼ and W½SE¼;
Sec. 28, E½, S½NW¼, N½SW¼, and SE¼SW¼;
Sec. 29, SE¼NE¼ and NE¼SE¼;
Sec. 34, SE¼SW¼.
T. 28 S., R. 21 W.,
Sec. 3, SE¼NW¼;
Sec. 4, NW¼SE¼ and E½SW¼;
Sec. 10, SE¼;
Sec. 11, SW¼NE¼, S½NW¼, N½SW¼, and NW¼SE¼;
Sec. 12, E½ and E½W½;
Sec. 13, N½N½, SW¼NW¼, and W½SW¼;
Sec. 14;
Sec. 15, N½ and E½SE¼;
Sec. 21, S½SE¼;
Sec. 22, E½, NE¼SW¼, and S½SW¼;
Sec. 23, N½NE¼, SW¼NE¼, W½, and W½SE¼;
Sec. 24, NW¼NW¼;
Sec. 26, S½SW¼ and SW¼SE¼;
Sec. 27, N½ and S½SE¼;
Sec. 28, N½;
Sec. 34.
T. 30 S., R. 21 W.,
Sec. 1, lots 2, 3, 4, SW¼NE¼, S½NW¼, and NW¼SW¼;
Sec. 3, S½;
Sec. 4, lot 4 and SW¼SW¼;
Sec. 7, lot 4, SE¼SW¼, and NW¼SE¼;
Sec. 8, N½N½ and SE¼NE¼;
Sec. 9, S½NE¼, NW¼, and S½;
Sec. 10;
Sec. 11, W½NE¼, W½, and SE¼;
Sec. 12, lots 2, 3, 4, W½NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 13, lots 1, 2, W½NE¼, and NW¼;
Sec. 14, N½;
Sec. 15, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 17, NE¼, E½NW¼, SW¼NW¼, S½S½, and NE¼SE¼;
Sec. 18, lot 2, S½NE¼, SE¼SW¼, and S½SE¼;
Secs. 21 and 22;
Sec. 23, SW¼NE¼, N½S½, and SE¼SE¼;
Sec. 28, NE¼ and NE¼SE¼.
T. 31 S., R. 21 W.,
Sec. 23, SW¼SW¼;
Sec. 24, SW¼NW¼ and W½SW¼;
Sec. 26, S½NE¼, W½NW¼, SE¼NW¼, and NW¼SW¼;
Sec. 27, N½ and N½S½.
T. 27 S., R. 22 W.,
Sec. 12, lots 2, 3, 4, S½NE¼, and SE¼;
Sec. 13, NE¼NE¼.
T. 30 S., R. 22 W.,
Sec. 1, lots 1, 2, 3, SW¼NE¼, W½SE¼, and SE¼SE¼;
Sec. 11, lots 1, 2, 3, and 4;
Sec. 14, lots 1, 2, 3, and 4.
T. 31 S., R. 22 W.,
Sec. 1, lots 1, 8 and SE¼NE¼;
Sec. 2, SE¼;
Sec. 11, lots 1, 2, 3, and 4;
Sec. 12.

The lands described above aggregate 40,384.06 acres, more or less.

4. The following described lands are hereby relieved of their segregative effect at 10 a.m. on July 31, 1970:

NEW MEXICO PRINCIPAL MERIDIAN

T. 29 S., R. 18 W.,
Sec. 20, SE¼NE¼ and SW¼SW¼;
Sec. 21, S½NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 22, N½, N½S½, SE¼SW¼, and S½SE¼.
Sec. 23, NW¼SW¼;
Sec. 28, S½NW¼ and E½SW¼;
Sec. 29, NE¼NE¼ and N½NW¼;
Sec. 33, NE¼NW¼.
T. 22 S., R. 19 W.,
Sec. 19;
Sec. 22, NW¼ and S½;
Sec. 27, NW¼;
Sec. 29, NW¼.
T. 24 S., R. 19 W.,
Sec. 13, NE¼NW¼;
Sec. 19, SE¼NW¼;
Sec. 20, E½NE¼ and NW¼NE¼;
Sec. 21, NW¼.
T. 26 S., R. 19 W.,
Sec. 29, SE¼SW¼;
Sec. 30, SE¼NE¼ and NE¼SE¼;
Sec. 31, SE¼NE¼ and NE¼SE¼.
T. 27 S., R. 19 W.,
Sec. 4, S½NW¼ and SW¼SE¼.
T. 27 S., R. 20 W.,
Sec. 13, SW¼NW¼;
Sec. 14, NE¼NE¼ and NE¼SE¼;
Sec. 31, lots 3, 4, 5, 6, NE¼SW¼, and NW¼SE¼;
Sec. 32, lots 5, 9, 10, and 11.
T. 28 S., R. 20 W.,
Sec. 5, lots 3 and 4;
Sec. 6, lots 1, 2, 3, and SE¼NW¼;
Sec. 7, lots 2, 3, 4, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8, NE¼NE¼, S½N½, and S½;
Sec. 15, NW¼ and W½SW¼;
Sec. 17, SW¼NE¼, E½SW¼, and W½SE¼;
Sec. 18, lot 1, SE¼SW¼, and W½SE¼;
Sec. 19, W½NE¼, E½NW¼, and NE¼SW¼;
Sec. 20, S½SE¼;
Sec. 21, N½N½ and S½S½;
Sec. 22, W½NW¼ and SE¼SE¼;
Sec. 23, SW¼SW¼;
Sec. 24;
Sec. 26, SW¼NE¼, W½NW¼, and SE¼NW¼;
Sec. 27, E½NE¼;
Sec. 31, E½NE¼ and NE¼SE¼.
T. 29 S., R. 21 W.,
Sec. 1, lots 4, 6, 7, and NW¼SE¼;
Sec. 3, lots 3, 4, SW¼NE¼, S½NW¼, SW¼, and S½SE¼;
Sec. 4;
Sec. 5, lots 3 to 14, inclusive;
Sec. 8, lots 1 to 8, inclusive, 11, 12, NW¼, and S½SW¼;
Sec. 9;
Sec. 10, N½ and W½SW¼;
Sec. 11, NE¼NE¼ and S½NE¼;
Sec. 13, SW¼SW¼;
Sec. 14, NE¼NW¼ and S½S½;
Sec. 17, lots 1, 2, 5, 6, 7, 12, and N½SW¼;
Sec. 20, lots 1 and 6;
Sec. 21, N½ and N½S½;
Sec. 23, N½;
Sec. 24, W½NW¼, W½SE¼, and SE¼SE¼;
Sec. 25, E½SE¼;
Sec. 26, E½SW¼;
Sec. 27, N½SW¼ and S½SE¼;
Sec. 29, S½SW¼;
Sec. 31, lots 1, 3, 4, N½NE¼, SW¼NE¼, E½NW¼, E½SW¼, and SE¼;
Sec. 33, N½NW¼ and W½SW¼;
Sec. 34, NE¼;
Sec. 35, SE¼NE¼, NW¼NW¼, E½SW¼, and SE¼.

The lands described above contain 13,803.88 acres, more or less.

5. For a period of 30 days, interested parties may submit comments to the Secretary of the Interior, LLM, 721, Washington, D.C. 20240.

CLYDE R. DURNELL,
*Acting State Director.*

[F.R. Doc. 70-9775; Filed, July 28, 1970; 8:50 a.m.]

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[Serial No. U-8150]

## UTAH

### Notice of Classification of Public Lands for Multiple-Use Management

1. Pursuant to the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. 1411–18), and to the regulations in Title 43 CFR Parts 2410 and 2411, the public lands within the area described in paragraph 2 below are hereby classified for multiple-use management. Publication of this notice has the effect of segregating the described lands from appropriation under the agricultural land laws (43 U.S.C., Parts 7 and 9; 25 U.S.C., sec. 334), and from sales under section 2455 of the Revised Statutes as amended (43 U.S.C. 1171). The lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws, except as noted in paragraph 4 below. As used herein, "public lands" means any land withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48. Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. The public lands affected are those administered by the Bureau of Land Management in Uintah and Daggett Counties, Utah, bounded on the east by the Utah-Colorado State line, on the south by the rim of Diamond Mountain, on the west by the Ashley National Forest, and on the north by the crest of the watershed which drains north into Browns Park. Public domain lands within the area described hereby classified for multiple-use management aggregate approximately 47,500 acres.

3. The following described 10 parcels of public domain land that fall within this classification area are excluded from this classification:

SALT LAKE MERIDIAN, UTAH

T. 1 N., R. 23 E.,
Sec. 19, SE¼SE¼;
Sec. 20, NE¼NE¼, N½SW¼, SW¼SW¼;

Sec. 29, NW¼NW¼;
Sec. 30, NE¼NE¼;
Sec. 33, SW¼NE¼, NE¼SW¼, S½SW¼, W½SE¼.
T. 1 S., R. 23 E.,
Sec. 1, SW¼NE¼, S½NW¼, NW¼SE¼;
Sec. 8, SE¼SW¼;
Sec. 22, SE¼SE¼;
Sec. 23, SE¼SW¼, SW¼SE¼;
Sec. 24, NW¼NW¼;
Sec. 26, lot 1, N½NE¼, NE¼NW¼;
Sec. 27, E½NE¼.
T. 1 S., R. 24 E.,
Sec. 8, SW¼SW¼;
Sec. 12, SE¼SW¼, W½SE¼;
Sec. 13, NE¼NW¼;
Sec. 19, SW¼NE¼.

The areas described excluded from this classification aggregate 1,358.04 acres.

4. Publication of this notice also has the effect of segregating the recreation sites, overlook, and campground described below from all forms of appropriation, location, entry, or selection under the public land laws, including the general mining laws, and from surface use and occupancy under the mineral leasing laws:

SALT LAKE MERIDIAN, UTAH

COW HOLLOW RECREATION SITE

T. 1 S., R. 24 E.,
Sec. 7, SE¼SW¼, SW¼SE¼.

80 acres.

POT CREEK RECREATION SITE

T. 1 S., R. 24 E.,
Sec. 15, SW¼NW¼, NW¼SW¼.

80 acres.

WILD MOUNTAIN OVERLOOK

T. 2 S., R. 25 E.,
Sec. 13, SW¼NE¼.

40 acres.

JONES HOLE CAMPGROUND

T. 2 S., R. 25 E.,
Sec. 35, lots 3 and 4.

84.83 acres.

The recreation areas described above aggregate 284.83 acres.

5. No adverse comments were received following publication of a notice of proposed classification in the FEDERAL REGISTER of April 30, 1970 (35 F.R. 6874), or at the public hearing which was held at Vernal, Utah, on May 13, 1970. Maps depicting these lands and the record showing the comments received and other information are on file and may be viewed at the Bureau of Land Management District Office, 91 West Main Street, Vernal, Utah; and the State Office, Federal Building, 125 South State Street, Salt Lake City, Utah.

6. For a period of 30 days from date of publication of this Notice of Classification in the FEDERAL REGISTER, this classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior as provided for in 43 CFR 2461.3. During this 30-day period, interested parties may submit comments to the Secretary of the Interior, LLM 320, Washington, D.C. 20240.

R. D. NIELSON,
*State Director.*

[F.R. Doc. 70-9727; Filed, July 28, 1970; 8:45 a.m.]

[Serial No. Utah 8708]

## UTAH

## Notice of Classification of Public Lands for Multiple-Use Management

1. Pursuant to the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. 1411–18), and to the regulations in Title 43 CFR Parts 2410 and 2411, the public lands within the area described in paragraph 2, below, are hereby classified for multiple-use management. Publication of this notice has the effect of segregating the described lands from appropriation under the agricultural land laws (43 U.S.C., Parts 7 and 9; 25 U.S.C., sec. 334), and from sales under section 2455 of the Revised Statutes as amended (43 U.S.C. 1171). The lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws except as noted in paragraph 4 below. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (43 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. The public lands affected are those administered by the Bureau of Land Management within the following described area in Sevier, Piute, and Garfield counties, Utah:

SALT LAKE MERIDIAN

Beginning at the northwest corner of sec. 22, T. 21 S., R. 2 W., thence following the Fishlake National Forest boundary southwesterly to the S¼ corner of sec. 2, T. 31 S., R. 5 W., thence following the BLM Richfield-Cedar City district boundary south ½ mile, west ½ mile, south ½ mile, west ½ mile, south ½ mile, west ¼ mile, south ½ mile, west 1¼ miles, south ½ mile, east ¼ mile, south ½ mile, east ¼ mile, south ½ mile, east ¼ mile, south ¼ mile, east ½ mile, south ¾ mile, west ½ mile, south 1 mile, east 1 mile, south 1 mile, east 1 mile, north 1 mile, east 1 mile, north 1 mile, east 1 mile to the southeast corner sec. 31, T. 31 S., R. 4 W., which is the boundary of the Dixie National Forest, thence following said forest boundary east and north to the southeast corner sec. 25, T. 30 S., R. 2½ W., thence following said forest boundary south approximately 13½ miles to the southwest corner sec. 31, T. 32 S., R. 2 W., thence east 6 miles to the southeast corner sec. 36, T. 32 S., R. 2 W., which is the Dixie National Forest boundary, thence following said forest boundary north and east approximately 14½ miles to the southeast corner of sec. 32, T. 30 S., R. 1 W., thence north 6 miles, west 1 mile, north 1 mile, east 1 mile, north 3 miles, east 1 mile, north 2 miles, west approximately ¼ mile to the southeast corner sec. 33, T. 28 S., R. 1 W., thence north 1 mile, east 1 mile, north 2 miles, east ½ mile, north 3 miles, east ½ mile, north 2 miles, east ½ mile, north 1 mile, east approximately 2¼ miles to the southeast corner of sec. 17, T. 27 S., R. 1 E., thence north 1 mile, east ½ mile, north 1½ miles, east ½ mile, north ½ mile, east ¼ mile, north 1 mile to the southeast corner of sec. 28, T. 26 S., R. 1 E., which is the Fishlake National Forest boundary, thence following said forest boundary northerly to a point near the middle of sec. 28, T. 21 S., R. 1 E., thence west ¼ mile, north ¼ mile, west ¼ mile, north ¼ mile, west 6¼ miles, south ¼ mile, west ¼ mile, south ½ mile, west ¼ mile, north ¼ mile, west 1¾ miles, north 1½ miles, west 2½ miles to point of beginning. Located within the above described exterior boundary is an independent area of the Fishlake National Forest which is not considered as part of the classification area. The exterior boundary of this National Forest area is described as follows: Beginning at northeast corner of sec. 19, T. 24 S., R. 1 W., thence westerly and southerly along said forest boundary to the southwest corner sec. 27, T. 29 S., R 2½ W., thence easterly and northerly following said forest boundary line to point of beginning.

The public domain lands within the area described hereby classified for multiple-use management aggregate approximately 372,713 acres.

3. The following described 12 parcels of public domain land that fall within this classification area are excluded from this classification, and the segregative effect of the notice of proposed classification published in the FEDERAL REGISTER of April 23, 1970 (35 F.R. 6517), is hereby terminated as to these 12 tracts:

SALT LAKE MERIDIAN, UTAH

T. 21 S., R. 1 W.,
Sec. 35, N½SW¼, SW¼SW¼.
T. 22 S., R. 1 W.,
Sec. 10, SW¼SW¼, SE¼;
Sec. 11, NE¼, N½NW¼, S½S½;
Sec. 22, lot 14.
T. 25 S., R. 3 W.,
Sec. 22, E½NW¼.
T. 26 S., R. 4 W.,
Sec. 1, lot 4.
T. 27 S., R. 3 W.,
Sec. 30, SW¼SE¼;
Sec. 31, NW¼NE¼.
T. 28 S., R. 3 W.,
Sec. 5, lot 2, SE¼NE¼.
T. 29 S., R. 3 W.,
Sec. 34, SW¼SW¼.
T. 31 S., R. 4 W.,
Sec. 2, lot 7.

The areas described excluded from this classification aggregate 1,087.26 acres.

4. Publication of this notice also has the effect of segregating the recreation sites described below from all forms of appropriation, entry, location, or selection under the public land laws, including the general mining laws, and from surface use and occupancy under the mineral leasing laws:

SALT LAKE MERIDIAN, UTAH

WINTER SPORTS AREA

T. 24 S., R. 1 W.,
Sec. 22, NE¼.

Containing 160 acres.

WILLOW PATCH RECREATION SITE

T. 24 S., R. 1 W.,
Sec. 9, NW¼SW¼NW¼, W½NE¼SW¼NW¼, N½SW¼SW¼NW¼, S½SW¼NW¼NW¼.

Containing 25 acres.

SWIFT SPRING CREEK RECREATION SITE

T. 29 S., R. 2½ W.,
Sec. 10, SW¼SE¼SW¼.

Containing 10 acres.

CHRIS CREEK RECREATION SITE

T. 24 S., R. 1 W.,
Sec. 9, SE¼SE¼NW¼, SW¼SW¼NE¼, S½NE¼SE¼NW¼, NW¼SW¼NE¼.

Containing 35 acres.

KOOSHAREM RESERVOIR RECREATION SITE

T. 25 S., R. 1 E.,
Sec. 30, W½SW¼.
T. 25 S., R. 1 W.,
Sec. 25, E½SE¼.

Containing 160 acres.

PRAETOR CANYON RECREATION SITE

T. 26 S., R. 1 E.,
Sec. 4, S½NW¼NW¼, N½SW¼NW¼, SW¼NE¼NW¼, NW¼SE¼NW¼.

Containing 60 acres.

SEVIER RIVER BEND RECREATION SITE

T. 26 S., R. 4 W.,
Sec. 5, NE¼NW¼, E½NW¼NW¼.

Containing 60 acres.

DURKEE SPRING RECREATION SITE

T. 27 S., R. 3 W.,
Sec. 12, SW¼SW¼SE¼;
Sec. 13, NW¼NW¼NE¼.

Containing 20 acres.

BULLION GULCH RECREATION SITE

T. 27 S., R. 4 W.,
Sec. 26, SE¼SW¼SE¼SW¼;
Sec. 35, NE¼NW¼NE¼NW¼.

Containing 5 acres.

BEAVER CREEK RECREATION SITE

T. 27 S., R. 4 W.,
Sec. 14, SW¼SE¼NW¼SW¼, SE¼SW¼NW¼SW¼.

Containing 5 acres.

COTTONWOOD BEND RECREATION SITE

T. 28 S., R. 1 W.,
Sec. 31, W½SE¼SW¼SW¼, E½SW¼SW¼SW¼.
T. 29 S., R. 1 W.,
Sec. 6, E½NW¼NW¼NW¼, W½NE¼NW¼NW¼.

Containing 20 acres.

OAK SPRING RECREATION SITE

T. 29 S., R. 3 W.,
Sec. 7, S½SW¼NE¼NW¼, N½NW¼SE¼NW¼, N½NE¼SW¼NW¼, S½SE¼NW¼NW¼.

Containing 20 acres.

FISHERMEN'S BEACH RECREATION SITE

T. 30 S., R. 2 W.,
Sec. 21, SE¼NE¼, NE¼SE¼.

Containing 80 acres.

LONG NEEDLES RECREATION SITE

T. 30 S., R. 2½ W.,
Sec. 26, N½SW¼SW¼SW¼, S½NW¼SW¼SW¼, NW¼SE¼SW¼SW¼, N½S½SW¼SW¼SW¼;
Sec. 27, NE¼SE¼SE¼SE¼, SE¼NE¼SE¼SE¼.

Containing 20 acres.

POLE CANYON RECREATION SITE

T. 31 S., R. 2 W.,
Sec. 19, SW¼NE¼SW¼SE¼, SE¼NE¼SW¼SE¼.

Containing 5 acres.

The recreation sites described above aggregate 680 acres.

5. No adverse comments were received following publication of the Notice of Proposed Classification in the FEDERAL REGISTER of April 23, 1970 (35 F.R. 6517), or at the public hearing which was held at Richfield, Utah, on April 30, 1970. However, it was determined that the 16 isolated tracts aggregating 1,793.39 acres described in paragraph 3 of this notice should be excluded from this classification. Maps depicting these lands and the record showing the comments received and other information are on file and may be viewed at the Bureau of Land Management District Office, 850 North Main Street, Richfield, Utah; and the State Office, Federal Building, 125 South State Street, Salt Lake City, Utah.

6. For a period of 30 days from date of publication of this Notice of Classification in the FEDERAL REGISTER, this classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior as provided for in 43 CFR 2461.3. During this 30-day period interested parties may submit comments to the Secretary of the Interior, LLM 320, Washington, D.C. 20240.

R. D. NIELSON,
*State Director.*

[F.R. Doc. 70-9728; Filed, July 28, 1970; 8:45 a.m.]

# DEPARTMENT OF COMMERCE

## Business and Defense Services Administration

### CLARK UNIVERSITY, ET AL.

### Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

The following is a consolidated decision on 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) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

A copy of the record pertaining to this consolidated 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. 20230.

*Decision:* Applications denied. Applicants have failed to establish that instruments or apparatus of equivalent scientific value to the foreign articles, for such purposes as the foreign articles are intended to be used, are not being manufactured in the United States.

Reasons: Section 602.5(e) of the regulations provides in pertinent part:

> The applicant shall on or before the 20th day following the date of such notice [of denial without prejudice to resubmission], inform the Administrator whether it intends to resubmit another application for the same article to which the denied application relates. The applicant shall then resubmit the new application on or before the 90th day following the date of the notice of denial without prejudice to resubmission, unless an extension of time is granted by the Administrator in writing prior to the expiration of the 90-day period. * * * If the applicant fails within the applicable time periods specified above, to either (1) inform the Administrator whether it intends to resubmit another application for the same article to which the denial without prejudice to resubmission relates, or (2) resubmit the new application, the prior denial without prejudice to resubmission shall have the effect of a final decision by the Administrator on the application within the context of the paragraph (d) of this section.

The meaning of the section is that should an applicant either fail to notify the Administrator of its intent to resubmit another application for the same article to which the denial without prejudice relates within the 20-day period. or fails to resubmit a new application within the 90-day period, the prior denial without prejudice to resubmission will have the effect of a final denial of the application.

None of the applicants to which this consolidated decision relates has satisfied the requirements set forth above, therefore, the prior denials without prejudice have the effect of a final decision denying their respective applications.

Section 602.5(e) further provides:

> * * * the Administrator shall submit a summary of the prior denial without prejudice to resubmission to the FEDERAL REGISTER for publication, to the Commissioner of Customs, and to the applicant.

Each of the prior denials without prejudice to resubmission to which this consolidated decision relates was based on the failure of the respective applicants to submit the required documentation, including a completely executed application form, in sufficient detail to allow the issue of "scientific equivalency" to be determined by the Administrator.

Docket No. 67-00023-01-77030. Applicant: Trustees of Clark University, 960 Main Street, Worcester, Mass. 01610. Article: NMR spectrometer, JNM-C-60H. Date of denial without prejudice to resubmission: October 19, 1967.

Docket No. 67-00034-01-77040. Applicant: Austin College, 900 North Grand, Sherman, Tex. 75090. Article: Mass spectrometer, Model RMU-6E. Date of denial without prejudice to resubmission: October 25, 1967.

Docket No. 67-00042-01-77040. Applicant: Lehigh University, Bethlehem, Pa. 18015. Article: Mass spectrometer, Model RMU-6E. Date of denial without prejudice to resubmission: September 6, 1967.

Docket No. 67-00065-33-46500. Applicant: The Johns Hopkins University, Baltimore, Md. 21205. Article: Reichert Ultramicrotome, Model "OmU2". Date of denial without prejudice to resubmission: May 11, 1967.

Docket No. 67-00066-65-77040. Applicant: Arizona State University, Tempe, Ariz. 85281. Article: Mass spectrometer, Model CH-4B. Date of denial without prejudice to resubmission: October 24, 1967.

Docket No. 67-00068-33-46500. Applicant: Colorado State University, Fort Collins, Colo. 80521. Article: Reichert Ultramicrotome, Model "OmU2". Date of denial without prejudice to resubmission: May 11, 1967.

Docket No. 69-00002-33-46500. Applicant: U.S. Veterans Administration Hospital, Hines, Ill. 60141. Article: Ultramicrotome, Model "OmU2". Date of denial

without prejudice to resubmission: January 16, 1969.

Docket No. 69–00071–89–77040. Applicant: Washington State University, Pullman, Wash. 99163. Article: Mass Spectrometer, Model GD–150. Date of denial without prejudice to resubmission: January 29, 1969.

Docket No. 69–00130–33–46040. Applicant: Yale University School of Medicine, 333 Cedar Street, New Haven, Conn. 06510. Article: Electron microscope, Model Elmiskop IA. Date of denial without prejudice to resubmission: February 6, 1969.

Docket No. 69–00131–01–77040. Applicant: Kent State University, Kent, Ohio 44240. Article: Mass spectrometer, Model MS 1201. Date of denial without prejudice to resubmission: February 6, 1969.

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

[F.R. Doc. 70–9768; Filed, July 28, 1970; 8:49 a.m.]

## STANFORD 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 as amended (34 F.R. 15787 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. 70–00555–80–34000. Applicant: Stanford University, 820 Quarry Road, Palo Alto, Calif. 94304. Article: Wind-driven generator, Model B24H. Manufacturer: Dunlite Electrical Co., South Australia.

Intended use of article: The article will be used to supply power for an unmanned scientific station to be established in Antarctica. It is being sent to the United States so that personnel of Stanford University can test its operation prior to deployment to Antarctica.

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 provides a brushless operation, delivers more than 500 watts power, and has the capability to operate at wind speeds to 150 miles per hour (m.p.h.). The most closely comparable domestic instrument available at the time the foreign article was ordered is the Model LD136 manufactured by the Buckwell Engineering Co., South El Monte, Calif., which provides 200 watts power. We are advised by the National Bureau of Standards in a memorandum dated June 23, 1970, that the capabilities for brushless operation, 500 watts power and operation at wind speeds to 150 m.p.h. are pertinent to the purposes for which the foreign article is intended to be used.

For the foregoing reasons, we find that the Model LD136 is not of equivalent scientific value to the foreign article for those purposes for which the foreign 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. 70–9770; Filed, July 28, 1970; 8:49 a.m.]

## UNIVERSITY OF CALIFORNIA

### 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 as amended (34 F.R. 15787 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. 70–00585–33–54500. Applicant: University of California, San Francisco, Purchasing Department, 1438 South 10th Street, Richmond, Calif. 94804. Article: Harms tubinger perimeter, complete with dark adaptometric attachment. Manufacturer: Oculus Co., West Germany.

Intended use of article: The article will be used to teach the residents in ophthalmology the forms and progress of field defects in glaucoma patients and to determine subtle field defects among neuro-ophthalmologic patients.

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 a tubinger perimeter with a dark adaptometric capability. We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated June 18, 1970, that the operation of this foreign article and interpretation of the test results are pertinent to the purposes for which the foreign article is intended to be used. HEW further advises that it knows of no domestic instrument or apparatus which can be used for the purposes for which the foreign 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. 70–9769; Filed, July 28, 1970; 8:49 a.m.]

## UNIVERSITY OF NORTH CAROLINA

### 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 as amended (34 F.R. 15787 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. 70–00549–33–46040. Applicant: University of North Carolina, School of Medicine, Chapel Hill, N.C. 27514. Article: Electron microscope, Model JEM 100–B. Manufacturer: Japan Electron Optics Lab. Co., Ltd., Japan.

Intended use of article: The article will be used for studies of the molecular and cell biology of reproductive processes in living things. Research concerns studies of detailed membrane configurations in spermatozoa, ova, zygotes, developing organisms, and cells accessory to those which participate directly in reproduction.

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 has a specified resolving capability of 3 angstroms. The most closely comparable domestic instrument is the Model EMU–4B electron microscope which was formerly manufactured by the Radio Corp. of America (RCA), and which is presently being supplied by the Forgflo Corp. (Forgflo). The Model EMU–4B has a specified resolving capability of 5 angstroms. (The lower the numerical rating in terms of angstroms units, the better the resolving capability.)

We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated June 10, 1970, that the additional resolving capability o. the foreign article is pertinent to the puroses for which the foreign article is intended to be used.

We, therefore, find that the Model EMU–4B 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 such purposes as this 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. 70–9771; Filed, July 28, 1970; 8:49 a.m.]

## UNIVERSITY OF WASHINGTON

### 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 as amended (34 F.R. 15787 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. 70–00569–33–46040. Applicant: University of Washington, Medical School, Department of Ophthalmology, Seattle, Wash. 98105. Article: Electron microscope, Model AEI–801. Manufacturer: Associated Electrical Industries, Ltd., United Kingdom.

Intended use of article: The article will be used for investigations covering anatomical, developmental and biochemical aspects of eye and central nervous system tissues, with emphasis on neuroanatomy. Other projects involve analysis of the sites of photopigment molecules in the membrane of the outer segment of the photoreceptor. Also the electron microscope will be used in the training of medical and graduate students and resident physicians in neuroanatomical approaches to questions of eye and central nervous system morphology and pathology.

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 has a guaranteed resolving power of 5 angstroms and is equipped with a tilt stage which is guaranteed to operate without loss of resolution. The most closely comparable domestic instrument is the Model EMU–4B electron microscope which was formerly manufactured by the Radio Corp. of America (RCA), and which is currently being supplied by Forgflo Corp. (Forgflo). The Model EMU–4B has a guaranteed resolving power of 5 angstroms and can be equipped with a tilt stage. The tilt stage of the EMU–4B, however, is not guaranteed to operate at 5 angstroms resolution.

We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated June 18, 1970, that a tilt stage guaranteed to allow 5 angstroms resolution is pertinent to the applicant's research studies.

We, therefore, find that the Model EMU–4B electron microscope is not of equivalent scientific value to the foreign article, for such purpose as this article is intended to be used.

The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be adapted to the instrument with which the article is intended to be used.

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

[F.R. Doc. 70–9772; Filed, July 28, 1970; 8:49 a.m.]

## YALE UNIVERSITY 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.

Amended regulations issued under cited Act, as published in the October 14, 1969, 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.

Docket No. 71–00002–91–46500. Applicant: Yale University, Department of Biology, New Haven, Conn. 06520. Article: Ultramicrotome, Model OmU2. Manufacturer: C. Reichert Optische Werke A.G., Austria. Intended use of article: The article will be used in a study of the structure of the submicroscopic channels (plasmodesmata) which interconnect adjacent plant cells in a tissue. Its purpose is to cut ultrathin sections of tissue containing plasmodesmata which will then be viewed in the electron microscope. Application received by Commissioner of Customs: July 6, 1970.

Docket No. 71–00003–33–46500. Applicant: Michigan State University, Department of Anatomy, Giltner Hall, Room 274, East Lansing, Mich. 48823. Article: Ultramicrotome, Model LKB 4800A. Manufacturer: LKB Produkter A.B., Sweden. Intended use of article: The article will be used to produce thin sections of nerve and muscle tissue for study with the electron microscope. Research projects concern the reactions of the central nervous system to tumor homograft implantation and the accurate identification of the cells participating in the rejection reaction utilizing radioautographic techniques; and growth and atrophy studies of muscle tissue, in which the increase or decrease in the total number of myofibrils and/or changes in fibrillar/interfibrillar dimensions need to be ascertained. Application received by Commissioner of Customs: July 6, 1970.

Docket No. 71–00004–33–46500. Applicant: Puerto Rico Nuclear Center, Bio-Medical Building, Caparra Heights Station, San Juan, P.R. 00935. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter, Sweden. Intended use of article: The article will be used for research projects concerning sectional study of radiation damage to the membranes of the central nervous system and cells; ultramicrotome study of the penetration of cells by trypanosoma cruzi; a study of the effect of radiation on the latency of coxsackie virus in wild rats; and a study of solid state phenomenon in crystals. Application received by Commissioner of Customs: July 6, 1970.

Docket No. 71–00005–33–46500. Applicant: University of Oregon, Biology Department, Eugene, Oreg. 97403. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden. Intended use of article: The liquid endosperm of the African Blood Lilly, *Haemanthus katherinae* Baker, and primary spermatocytes of *Drosophila melanogaster*, the fruit fly, will be the primary tissues for which the article will be used in the investigation of the chromosome movements and spindle fine structure of cell division. Application received by Commissioner of Customs: July 6, 1970.

Docket No. 71–00006–01–77030. Applicant: Tennessee Technological University, Cookeville, Tenn. 38501. Article: NMR spectrometer, Model JNM–MH–60. Manufacturer: Japan Electron Optics Lab. Co., Ltd., Japan. Intended use of article: The article will be used for research on the structure elucidation of

organic compounds. Included are preparation and identification of substituted isatin compounds photolysis of gem-dihalogen compounds, oxidation of oximes, and preparation and characterization of certain substituted cyclic and bicyclic compounds. Courses in physical, organic and analytical chemistry will use the article at the undergraduate level. Application received by Commissioner of Customs: July 6, 1970.

Docket No. 71-00007-98-26000. Applicant: Los Angeles Southwest College, 11514 South Western Avenue, Los Angeles, Calif. 90047. Article: Standard construction device for the theory of electricity, Model EG ZA/ZT. Manufacturer: Dr. Clemenz, West Germany. Intended use of article: The article will be used in classes in electricity for teaching the basic theory of electricity and enabling students to construct electrical articles. Application received by Commissioner of Customs: July 6, 1970.

Docket No. 71-00008-33-46040. Applicant: Albert Einstein College of Medicine, 1300 Morris Park Avenue, Bronx, N.Y. 10461. Article: Electron microscope, Model HU-12. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article will be used to study the central nervous system of both vertebrates and invertebrates in relation to understanding nervous function. A study of the developing brain in terms of changes which take place in the ultramicroscopic range, i.e., the fine structure of the neurons and the development of their processes is planned. Application received by Commissioner of Customs: July 6, 1970.

Docket No. 71-00009-56-73700. Applicant: Texas A. & M. University, Department of Oceanography, College Station, Tex. 77843. Article: Auto-Lab Model 601 MKIII inductive salinometer. Manufacturer: Auto-Lab Industries Pty. Ltd., Australia. Intended use of article: The article will be used on board various research vessels to gather in situ data relating to the general circulation of the eastern Gulf of Mexico and western Caribbean. Samples are taken with the instrument for salinity determinations which are logged with related data required for laboratory analysis. This information then serves as basis for thesis and dissertation research for graduate students in oceanography. Application received by Commissioner of Customs: July 6, 1970.

Docket No. 71-00010-91-46500. Applicant: Ohio University, Department of Purchases, Administrative Annex Building, Smith Street, Athens, Ohio 45701. Article: Ultramicrotome, Model OmU2. Manufacturer: C. Reichert Optische Werke A.G., Austria. Intended use of article: The article will be used for sectioning specimens of woody and/or herbaceous plant tissue for electron microscopy. The research is investigating plant development and genetic organization in order to better understand plant growth, development and differentiation. Application received by Commissioner of Customs: July 6, 1970.

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

[F.R. Doc. 70-9773; Filed, July 28, 1970; 8:49 a.m.]

# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## Food and Drug Administration

[DESI 5316]

## CERTAIN PENICILLIN-CONTAINING DRUGS

### Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following antibiotic drug preparations:

I. Sodium Methicillin for injection, marketed as Staphcillin; by Bristol Laboratories, Division of Bristol-Myers Co., Post Office Box 657, Syracuse, N.Y. 13201 (NDA 50-117).

II. Sodium Oxacillin for oral use, marketed as:

1. Prostaphlin Capsules; by Bristol Laboratories (NDA 50-118).

2. Prostaphlin Tablets; by Bristol Laboratories (NDA 50-119).

3. Resistopen Capsules; by E. R. Squibb and Sons, Inc., Georges Road, New Brunswick, N.J. 08903 (NDA 50-120).

III. Phenoxymethyl Penicillin for oral use, marketed as:

1. Compocillin-VK Filmtabs; by Abbott Laboratories, 14th Street and Sheridan Road, North Chicago, Ill. 60064 (NDA 50-121).

2. Compocillin-V Oral Suspension; by Abbott Laboratories (NDA 50-177).

3. Compocillin-VK Granules for Aqueous Suspension; by Abbott Laboratories (NDA 50-123).

4. V-Cillin Pulvules; by Eli Lilly and Co., Post Office Box 618, Indianapolis, Ind. 46206 (NDA 60-001).

5. V-Cillin Drops; by Eli Lilly and Co. (NDA 60-002).

6. V-Cillin Pediatric for Oral Suspension; by Eli Lilly and Co. (NDA 60-002).

7. V-Cillin K Tablets; by Eli Lilly and Co. (NDA 60-003).

8. V-Cillin K Pediatric for Oral Suspension; by Eli Lilly and Co. (NDA 60-004).

9. Pen-Vee-Oral Tablets; by Wyeth Laboratories, Inc., Post Office Box 8299, Philadelphia, Pa. 19101 (NDA 60-005).

10. Pen-Vee-K Tablets; by Wyeth Laboratories, Inc. (NDA 60-006).

11. Pen-Vee-K for Oral Solution; by Wyeth Laboratories, Inc. (NDA 60-007).

IV. Benzathine Penicillin G for oral use or Benzathine Phenoxymethyl Penicillin for oral use, marketed as:

1. Bicillin Drops; by Wyeth Laboratories, Inc. (NDA 50-126).

2. Bicillin Oral Suspension; by Wyeth Laboratories, Inc. (NDA 50-126).

3. Bicillin Tablets; by Wyeth Laboratories, Inc. (NDA 50-128).

4. Pediatric Pen Vee for Oral Suspension; by Wyeth Laboratories, Inc. (NDA 50-129).

5. Pediatric Pen Vee Drops; by Wyeth Laboratories, Inc. (NDA 50-129).

6. Pen Vee Suspension; by Wyeth Laboratories, Inc. (NDA 50-129).

V. Sodium Penicillin O for injection; marketed as Cer-O-Cillin Sodium; by The Upjohn Co., 7171 Portage Road, Kalamazoo, Mich. 49002 (NDA 50-137).

VI. Benzathine Penicillin G for aqueous intramuscular injection, marketed as:

1. Permapen Isoject Aqueous Suspension; by Charles Pfizer and Co., Inc., 235 East 42d Street, New York, N.Y. 10017 (NDA 60-014).

2. Bicillin Long-Acting Aqueous Suspension; by Wyeth Laboratories, Inc. (NDA 50-141).

VII. Potassium Penicillin G, oral forms, marketed as:

1. a. Penicillin Powder for Oral Use (NDA 60-307); and

b. Penicillin Soluble Tablets (NDA 60-306); and

c. Buffered Penicillin Tablets; by Biocraft Laboratories, Inc., 92 Route 46, East Paterson, N.J. 07407 (NDA 60-306).

2. a. Soluble Potassium Penicillin G Tablets (NDA 60-065); and

b. Buffered Potassium Penicillin G Tablets; by Bryant Pharmaceutical Corp., 70 MacQuesten Parkway South, Mount Vernon, N.Y. 10550 (NDA 60-065).

3. Steri-Med Tablets; by Ketchum Laboratories, Inc., 800 Hinsdale Street, Brooklyn, N.Y. 11207 (NDA 60-064).

4. Hyasorb Tablets; by Key Pharmaceuticals, Inc., 300 North East 59th Street, Miami, Fla. 33137 (NDA 60-078).

5. a. Soluble Potassium Penicillin G Tablets (NDA 60-403); and

b. Buffered Potassium Penicillin G Tablets; by Eli Lilly and Co. (NDA 60-403).

6. Penisem Powder for Oral Solution; by the S. E. Massengill Co., 527 Fifth Street, Bristol, Tenn. 37620 (NDA 60-187).

7. a. Potassium Penicillin G Capsules (NDA 60-085); and

b. Buffered Potassium Penicillin G Powder for Syrup (NDA 60-087); and

c. Buffered Potassium Penicillin G Tablets; by Nysco Laboratories, Inc., 34-24 Vernon Boulevard, Long Island City, N.Y. 11106 (NDA 60-086).

8. Potassium Penicillin G Tablets; by Chas. Pfizer and Co., Inc., 235 East 42d Street, New York, N.Y. 10017 (NDA 60-075).

9. a. Buffered Potassium Penicillin G Tablets (NDA 60-071); and

b. Flavocillin Oral Powder and Penicillin Oral Powder; by Philadelphia Laboratories, Inc., 9815 Roosevelt Boulevard, Philadelphia, Pa. 19114 (NDA 60–063).

10. a. Buffered Potassium Penicillin G Tablets (NDA 60–084); and

b. Premocillin Powder for Oral Solution; by Premo Laboratories, Inc., 111 Leuning Street, South Hackensack, N.J. 07606 (NDA 60–083).

11. Potassium Penicillin G Tablets; by Pure Laboratories, Inc., 50 Intervale Road, Parsippany, N.J. 07054 (NDA 60–126).

12. a. Potassium Penicillin G Oral Powder (NDA 60–066); and

b. Soluble Potassium Penicillin G Tablets (NDA 60–070); and

c. Buffered Potassium Penicillin G Tablets (NDA 60–070); and

d. Potassium Penicillin G Capsules; by Richlyn Laboratories, Inc., Castor Avenue at Kensington Avenue, Philadelphia, Pa. 19124 (NDA 60–327).

13. a. Pentids Tablets; and

b. Pentids Soluble Tablets; and

c. Pentids Capsules; and

d. Pentids Powder for Syrup; and

e. Potassium Penicillin G Tablets; by E. R. Squibb and Sons, Inc., Georges Road, New Brunswick, N.J. 08903 (NDA 60–392).

14. a. Soluble Penicillin Tablets; and

b. Buffered Penicillin Tablets; by Supreme Pharmaceutical Co., Inc., 354 Mercer Street, Jersey City, N.J. 07302 (NDA 60–079).

15. Sugracillin Flavored Granules; by The Upjohn Co. (NDA 60–062).

16. a. Soluble Potassium Penicillin G Tablets (NDA 60–069); and

b. Flavored Penicillin G Powder for Oral Solution (NDA 60–081); and

c. Buffered Potassium Penicillin G Tablets; by Vitamix Pharmaceuticals, Inc., 2900 North 17th Street, Philadelphia, Pa. 19132 (NDA 60–069).

17. Dramcillin Powder for Oral Solution; by White Laboratories, Inc., Galloping Hill Road, Kenilworth, N.J. 07033 (NDA 90–078).

18. Buffered Potassium Penicillin G Tablets; by Wyeth Laboratories, Inc., Post Office 8299, Philadelphia, Pa. 19101 (NDA 60–413).

19. a. Buffered Potassium Penicillin G Tablets (NDA 60–073) (NDA 60–404); and

b. Flavored Penicillin G Powder for Oral Solution; by Zenith Laboratories, Inc., 150 South Dean Street, Englewood, N.J. 07631 (NDA 60–072).

VIII. Procaine Penicillin G Intramuscular Injection marketed as:

1. Abbocillin-DC Aqueous Injection and Procaine Penicillin G Suspension; by Abbott Laboratories (NDA 60–098).

2. a. Duracillin A.S. Aqueous Injection (NDA 60–093); and

b. Duracillin Injection in Oil; by Eli Lilly and Co. (NDA 50–158).

3. a. Procaine Penicillin G in Aqueous Suspension (NDA 60–099); and

b. Procaine Penicillin G for Aqueous Injection; by Chas. Pfizer and Co., Inc. (NDA 60–286).

4. a. Procaine Penicillin G for Aqueous Injection (NDA 60–358); and

b. Procaine Penicillin G Injection in Aqueous Suspension (NDA 60–357); and

c. Procaine Penicillin G Injection in Oil; by Philadelphia Laboratories, Inc. (NDA 60–088).

5. a. Procaine Penicillin G Powder for Aqueous Injection (NDA 90–455); and

b. Procaine Penicillin G in Aqueous Suspension (NDA 60–420); and

c. Procaine Penicillin G Injection in Oil (NDA 60–092); by Pure Laboratories, Inc.

6. Procaine Penicillin G in Aqueous Suspension; by Roehr Products Co., Inc., 2010 New Daytona Road, De Land, Fla. 32720 (NDA 60–102).

7. a. Crysticillin Aqueous Injection (NDA 60–100); and

b. Pentids-P Aqueous Injection (NDA 60–100); and

c. Procaine Penicillin G Injection in Oil; by E. R. Squibb and Sons, Inc. (NDA 60–090).

8. a. Diurnal-Penicillin Readimixed Aqueous Injection (NDA 60–094); and

b. Depo-Penicillin Injection in Oil; by The Upjohn Co. (NDA 60–089).

9. a. Wycillin Aqueous Injection (NDA 60–101); and

b. Lentopen Injection in Oil; by Wyeth Laboratories, Inc. (NDA 60–091).

IX. Potassium or Sodium Penicillin G (Aqueous Parenteral Use), marketed as:

1. Potassium Penicillin G Powder for Injection; by Abbott Laboratories (NDA 60–292).

2. Potassium Penicillin G Powder for Injection; by Eli Lilly and Co. (NDA 60–384).

3. a. Merpen Powder for Injection (NDA 60–183); and

b. Sopen Powder for Injection; by Merck and Co., Inc. Rahway, N.J. 07065 (NDA 60–182).

4. Potassium Penicillin G Powder for Injection; by Chas. Pfizer and Co., Inc. (NDA 60–074).

5. a. Sodium Penicillin G Powder for Injection (NDA 90–278); and

b. Potassium Penicillin G Powder for Injection; by Philadelphia Laboratories, Inc. (NDA 90–277).

6. a. Potassium Penicillin G Powder for Injection; and

b. Sodium Penicillin G Powder for Injection; by Pure Laboratories, Inc. (NDA 60–417).

7. a. Sodium Penicillin G Powder for Injection; and

b. Potassium Penicillin G Powder for Injection; by E. R. Squibb and Sons, Inc. (NDA 60–362).

8. Sodium Penicillin G Powder for Injection; by The Upjohn Co. (NDA 5–316).

X. Chloroprocaine Penicillin O for Aqueous Injection, marketed as Depo-Cer-O-Cillin; by The Upjohn Co. (NDA 50–159).

XI. Potassium Phenethicillin oral, marketed as:

1. a. Syncillin Tablets (NDA 50–133); and

b. Syncillin Powder for Oral Solution (NDA 50–134); and

c. Syncillin Powder for Pediatric Drops; by Bristol Laboratories Inc. (NDA 50–134).

2. Semopen Powder for Oral Solution; by The S. E. Massengill Co., 527 Fifth Street, Bristol, Tenn. 37620 (NDA 60–009).

3. a. Maxipen Tablets (NDA 60–010); and

b. Maxipen Powder for Oral Solution; by J. B. Roerig & Co., Division, Chas. Pfizer and Co. (NDA 60–008).

4. a. Ro-Cillin Powder for Oral Solution; and

b. Ro-Cillin Tablets; by Rowell Laboratories, Inc., Baudette, Minn. 56623 (NDA 60–409).

5. a. Darcil Tablets (NDA 60–013); and

b. Darcil Powder for Oral Solution; by Wyeth Laboratories, Inc. (NDA 60–012).

Preparations containing penicillin are subject to the antibiotic certification procedures pursuant to section 507 of the Federal Food, Drug, and Cosmetic Act. Batches of the drugs for which certification is requested, or which are exempt from certification, should be labeled with full information in accord with labeling guidelines developed on the basis of this reevaluation of the drugs and published in this announcement. The above-named firms and any other holders of applications approved for drugs of the kinds described above are requested to submit, within 60 days following publication of this announcement in the FEDERAL REGISTER, amendments to their antibiotic applications to provide for revised labeling. Reasonable quantities of products affected by this announcement may be certified in the interim period prior to approval of such labeling.

Batches of drugs which bear labeling with claims evaluated as probably effective or possibly effective (see "Effectiveness Classification" paragraphs below) and are otherwise in accord with the labeling conditions herein will be accepted for release or certification by the Food and Drug Administration for a period of 12 months, for probably effective claims, and 6 months, for possibly effective claims, from the publication date of this announcement, to allow any applicant to obtain and submit data to provide substantial evidence of effectiveness of the drug for use in such conditions.

Any person who would be adversely affected by deletion of the claims for which a drug lacks substantial evidence of effectiveness, as described in this announcement, may within 30 days following the publication date of this announcement submit pertinent data bearing on the effectiveness of the drug for such use. To be acceptable for consideration in support of the effectiveness of a drug, any such data must be previously unsubmitted, well-organized, and include data from adequate and well-controlled clinical investigations (identified for ready review) as described in § 130.12(a)(5) of the regulations published as a final order in the FEDERAL

REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or partially controlled situations are not acceptable as a sole basis for the approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

I. *Sodium methicillin for injection*—A. *Effectiveness classification.* The Food and Drug Administration concludes that sodium methicillin is effective in the treatment of infections known to be due to penicillinase-producing staphylococci which have been shown to be sensitive to it.

B. *Labeling conditions.* Those parts of the labeling indicated below should be substantially as follows (optional additional information applicable to the drug may be proposed under other appropriate paragraph headings and should follow the information given below):

DESCRIPTION

Methicillin is a semisynthetic penicillin: 2,6 dimethyloxyphenyl penicillin. It is supplied as the sodium salt in a parenteral dosage form. (Other descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

ACTIONS AND PHARMACOLOGY

This drug is a bactericidal penicillin, highly resistant to staphylococcal penicillinase and equally active against penicillin-sensitive and penicillinase-producing strains of *Staphylococci aureus*. Methicillin is considerably less active than penicillin G against streptococci and pneumococci. It is not acid resistant and must be administered by intramuscular or intravenous injection. A 1 gram dose gives a peak blood level of approximately 10 mcg./ml. which drops off to about 3 mcg. ml. within a 4-hour period. Methicillin is excreted unchanged in the urine, about two thirds of a 1 gram dose being excreted within 4 hours in individuals with normal kidney function. Impairment in kidney function results in elevated blood levels which require downward adjustment of dosage and treatment intervals. Protein binding of methicillin is approximately 40%. The drug penetrates body tissues well, and diffuses readily into pleural, pericardial and synovial fluids.

INDICATIONS

The principal indication for sodium methicillin is in the treatment of infections known to be due to penicillinase-producing staphylococci which have been shown to be sensitive to it.

Bacteriologic studies to determine the causative organisms and their sensitivity to sodium methicillin should be performed.

If antibiotic therapy is considered necessary in potentially serious infections while awaiting reports of cultures and sensitivity studies, sodium methicillin may be used to initiate therapy in such patients in whom a penicillinase-producing staphylococcus is suspected (see Important Note below).

In serious, life threatening infections, oral preparations of the penicillinase-resistant penicillins should not be relied on for initial therapy.

IMPORTANT NOTE

When it is judged necessary that treatment be initiated before definitive culture and sensitivity results are known, the choice of sodium methicillin should take into consideration the fact that it has been shown to be effective only in the treatment of infections caused by pneumococci, Group A beta-hemolytic streptococci and penicillin G-resistant and penicillin G-sensitive staphylococci. If the bacteriology report later indicates the infection is due to an organism other than a penicillin G-resistant staphylococcus sensitive to sodium methicillin, the physician is advised to continue therapy with a drug other than sodium methicillin or any other penicillinase-resistant semisynthetic penicillin.

Strains of staphylococci resistant to methicillin have existed in nature and it is known that the number of these strains reported has been increasing. Such strains of staphylococci have been capable of producing serious disease, in some instances resulting in fatality. Because of this, there is concern that widespread use of the penicillinase-resistant penicillins may result in the appearance of an increasing number of staphyloccal strains which are resistant to these penicillians.

Methicillin-resistant strains are almost always resistant to all other penicillinase-resistant penicillins (cross resistance with cephalosporin derivatives also occurs frequently). Resistance to any penicillinase-resistant penicillin should be interpreted as evidence of clinical resistance to all, in spite of the fact that minor variations in in vitro sensitivity may be encountered when more than one penicillinase-resistant penicillin is tested against the same strain of staphylococus.

Routine methods of antibiotic sensitivity testing may fail to detect strains of organisms resistant to the penicillinase-resistant penicillins. For this reason, the use of large inocula and 48-hour incubation periods may be needed to obtain accurate sensitivity studies with these antibiotics.

CONTRAINDICATIONS

A previous hypersensitivity reaction to any penicillin is a contraindication.

WARNING

Serious and occasionally fatal hypersensitivity (anaphylactoid) reactions have been reported in patients on penicillin therapy. Although anaphylaxis is more frequent following parenteral therapy it has occurred in patients on oral penicillins. These reactions are more apt to occur in individuals with a history of sensitivity to multiple allergens.

There have been well documented reports of individuals with a history of penicillin hypersensitivity reactions who have experienced severe hypersensitivity reactions when treated with a cephalosporin. Before therapy with a penicillin, careful inquiry should be made concerning previous hypersensitivity reactions to penicillins, cephalosporins, and other allergens. If an allergic reaction occurs, the drug should be discontinued and the patient treated with the usual agents e.g., pressor amines, antihistamines and corticesteroids.

PRECAUTIONS

Penicillin should be used with caution in individuals with histories of significant allergies and/or asthma.

As with any potent drug, periodic assessment of organ system function, including renal, hepatic and hematopoietic, should be made during prolonged therapy.

The possibility of bacterial and/or fungal overgrowth should be kept in mind during long-term therapy. If overgrown of resistant organisms occurs, appropriate measures should be taken.

Safety for use in pregnancy has not been established.

Because of incompletely developed renal function in infants, methicillin may not be completely excreted, with abnormally high blood levels resulting. Frequent blood levels are advisable in this age group with dosage adjustments when necessary.

ADVERSE REACTIONS

Skin rashes.
Urticaria and serum sickness.
Anaphylactic reactions.
Oral lesions—glossitis and stomatitis.
Fever.
Eosinophilia.
Neutropenia.
Granulocytopenia.
Nephrotoxicity with oliguria, albuminuria, hematuria, pyuria and cylindruria.
Oral and rectal moniliasis.
Hemolytic anemia.
Thrombocytopenia.
Neuropathy.

DOSAGE AND ADMINISTRATION

Intramuscular Route:

Adult Dose: 1 Gm. every 4–6 hours.

Infants' and Children's Dose: 25 mg./kg. (12 mg./lb.) every 6 hours.

Intravenous Route:

Usual Adult Dose: 1 Gm. every 6 hours. Use 50 ml. of sterile saline solution and inject at the rate of 10 ml. per minute.

Infants' and Children's Dose: Because of an insufficient number of cases, no specific recommendation.

In serious systemic infection, therapy should be continued for at least 1–2 weeks after the patient is afebrile and cultures are sterile.

Treatment of osteomyelitis may require several months of intensive therapy.

Oral penicillinase-resistant penicillins may be of special value in followup therapy because of the difficulty of maintaining prolonged parenteral treatment.

Instructions for preparations and storage of solution:

(To be included by manufacturer or distributor.)

Special instructions:

If another agent is used in conjunction with methicillin therapy, *it should not be physically mixed* with methicillin, but should be administered separately.

II. *Sodium oxacillin capsules and tablets*—A. *Effectiveness classification.* The Food and Drug Administration concludes that sodium oxacillin intended for oral use is effective in the treatment of infections known to be due to penicillinase-forming staphylococci which have been shown to be sensitive to it.

B. *Labeling conditions.* Those parts of the labeling indicated below should be substantially as follows (optional additional information applicable to the drug may be proposed under other appropriate paragraph headings and should follow the information given below):

DESCRIPTION

Sodium oxacillin is sodium 5-methyl-3-phenyl-4-isoxazolyl penicillin, a penicillinase-resistant, acid-resistant semisynthetic penicillin suitable for oral administration. (Other descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

ACTIONS

Clinical and laboratory studies show this drug to be active against staphylococci (both penicillin-G—sensitive and resistant), pneumococci and streptococci.

It is stable in the presence of staphylococcal penicillinase and is not inactivated in the acid medium of the stomach.

INDICATIONS

The principal indication for sodium oxacillin is in the treatment of infections known to be due to penicillinase-producing staphylococci which have been shown to be sensitive to it.

Bacteriologic studies to determine the causative organisms and their sensitivity to sodium oxacillin should be performed.

If antibiotic therapy is considered necessary in potentially serious infections while awaiting reports of cultures and sensitivity studies, sodium oxacillin may be used to initiate therapy in such patients in whom a penicillinase-producing staphylococcus is suspected (See Important Note below).

In serious, life-threatening infections, oral preparations of the penicillinase-resistant penicillins should not be relied on for initial therapy.

IMPORTANT NOTE

When it is judged necessary that treatment be initiated before definitive culture and sensitivity results are known, the choice of sodium oxacillin should take into consideration the fact that it has been shown to be effective only in the treatment of infections caused by pneumococci, Group A beta-hemolytic streptococci and penicillin-G resistant and penicillin G-sensitive staphylococci. If the bacteriology report later indicates that the infection is due to an organism other than a penicillin G-resistant staphylococcus sensitive to sodium oxacillin, the physician is advised to continue therapy with a drug other than sodium oxacillin or any other penicillinase-resistant semisynthetic penicillin.

Methicillin is a compound that acts through a mechanism similar to that of sodium oxacillin against penicillin G-resistant staphylococci. Strains of staphylococci resistant to methicillin have existed in nature and it is known that the number of these strains reported have been increasing. Such strains of staphylococci have been capable of producing serious disease, in some instances resulting in fatality. Because of this, there is concern that widespread use of the penicillinase-resistant penicillins may result in the appearance of an increasing number of staphylococcal strains which are resistant to these penicillins.

Methicillin-resistant strains are almost always resistant to all other penicillinase-resistant penicillins (cross resistance with cephalosporin derivatives also occurs frequently). Resistance to any penicillinase-resistant penicillin should be interpreted as evidence of clinical resistance to all, in spite of the fact that minor variations in in vitro sensitivity may be encountered when more than one penicillinase-resistant penicillin is tested against the same strain of staphylococcus.

Routine methods of antibiotic sensitivity testing may fail to detect strains of organisms resistant to the penicillinase-resistant penicillins. For this reason, the use of large inocula and 48-hour incubation periods may be needed to obtain accurate sensitivity studies with these antibiotics.

CONTRAINDICATIONS

A previous hypersensitivity reaction to any penicillin is a contraindication.

WARNINGS

(This section should be identical to the "Warning" section for Sodium Methicillin.)

PRECAUTIONS

Penicillin should be used with caution in individuals with histories of significant allergies and/or asthma.

The oral route of administration should not be relied upon in patients with severe illness, or with nausea, vomiting, gastric dilatation, cardiospasm or intestinal hypermobility.

Occasional patients will not absorb therapeutic amounts of orally administered penicillin.

As with any potent drug, periodic assessment of organ system function, including renal, hepatic and hematopoietic, should be made during prolonged therapy.

The possibility of bacterial and fungal overgrowth should be kept in mind during long-term therapy. If overgrowth of resistant organisms occurs, appropriate measures should be taken.

Safety for use in pregnancy has not been established.

ADVERSE REACTIONS

Skin rash, pruritus, urticaria.
Anaphylactic reactions.
Serum sickness-like reactions.
Gastrointestinal disturbances (nausea, vomiting, diarrhea).

A few instances of moderate elevation of SGOT have been observed; the significance of this is not known.

A rare case of reversible hepato-cellular dysfunction has been reported and tentatively interpreted as a hypersensitivity reaction.

Hemolytic anemia.
Thrombocytopenia.
Neuropathy.

DOSAGE

Usual Adult Dose: For mild to moderate infections of the skin, soft tissues or upper respiratory tract: 500 mg. every 4 to 6 hours for a minimum of 5 days.

NOTE: In serious or life-threatening infections, such as staphylococcal septicemia or other deep-seated severe infections, oral preparations of the penicillinase-resistant penicillins should not be relied upon for initial therapy: oral absorption may be unreliable; the patient may vomit the medication or may not actually take it. Parenteral sodium methicillin or parenteral sodium oxacillin is advisable for initial treatment of these conditions if they are due to penicillinase-producing staphylococci. Following initial control of the infections with the parenteral preparations, oral sodium oxacillin may be given for followup therapy in a dose of 1 Gm. every 4 to 6 hours.

Pediatric Dose: Children weighing more than 40 kg. should receive adult dosage. Children weighing less than 40 kg.: For mild to moderately severe infections of the skin, soft tissues or upper respiratory tract: 50 mg./kg./day in equally divided doses at 6 hour intervals for at least 5 days.

See Note under Adult dose with respect to serious or life-threatening infections. For followup therapy, the dose of sodium oxacillin is 100 mg./kg./day or greater in equally divided doses at 4- to 6-hour intervals.

In serious systemic infection, therapy should be continued for at least 1–2 weeks after the patient is afebrile and cultures are sterile. Treatment of osteomyelitis may require several months of intensive therapy. The best use for this oral medication is in the prolonged followup therapy following successful initial treatment with parenterally administered penicillinase-resistant penicillin.

This medication is best taken on an empty stomach, preferably 1 to 2 hours before meals.

Infections caused by Group A beta-hemolytic streptococci: the use of penicillin G, phenoxymethyl penicillin or phenethicillin is the preferred treatment, because of their greater activity against this agent. Such infections should be treated for at least 10 days to help prevent the occurrence of rheumatic fever or acute glomerulonephritis.

III. *Phenoxymethyl penicillin for oral use*—A. *Effectiveness classification.* The Food and Drug Administration concludes that phenoxymethyl penicillin and its potassium and hydrabamine salts administered orally:

1. Are effective for the conditions described in the following labeling guidelines.

2. Lack substantial evidence of effectiveness for their claimed indications for meningococcal infections; gonococcal infections; and prevention of secondary bacterial infections that accompany or follow viral infections of the upper and lower respiratory tract.

B. *Labeling conditions.* Those parts of the labeling indicated below should be substantially as follows (optional additional information applicable to the drug may be proposed under other appropriate paragraph headings and should follow the information given below):

DESCRIPTION

Phenoxymethyl penicillin is the phenoxymethyl analog of penicillin G. (Other descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

ACTION AND PHARMACOLOGY

Phenoxymethyl penicillin exerts a bactericidal action against penicillin sensitive microorganisms during the stage of active multiplication. It acts through the inhibition of biosynthesis of cell wall mucopeptide. It is not active against the penicillinase producing bacteria, which include many strains of staphylococci. The drug exerts high in vitro activity against staphylococci (except penicillinase-producing strains), streptococci (groups A, C, G, H, I, and M) and pneumococci. Other organisms sensitive in vitro to phenoxymethyl penicillin are *Corynebacterium diphtheriae, Bacillus anthracis,* Clostridia, *Actinomyces bovis, Streptobacillus moniliformis, Listeria monocytogenes,* Leptospira and *N. gonorrhoeae. Treponema pallidum* is extremely sensitive.

Phenoxymethyl penicillin has the distinct advantage over penicillin G in resistance to inactivation by gastric acid. It may be given with meals; however, blood levels are slightly higher when the drug is given on an empty stomach. Average blood levels are two to five times higher than the levels following the same dose of oral penicillin G and also show much less individual variation.

Once absorbed, phenoxymethyl penicillin is about 80% bound to serum protein. Tissue levels are highest in the kidneys, with lesser amounts in the liver, skin and intestines. Small amounts are found in all other body tissues and the cerebrospinal fluid. The drug is excreted as rapidly as it is absorbed in individuals with normal kidney function; however, recovery of the drug from the urine indicates that only about 25% of the dose given is absorbed. In neonates, young infants and individuals with impaired kidney function, excretion is considerably delayed.

INDICATIONS

Phenoxymethyl penicillin is indicated in the treatment of mild to moderately severe infections due to penicillin-G sensitive microorganisms that are sensitive to the low serum levels common to this particular dosage form. Therapy should be guided by bacteriological studies (including sensitivity tests) and by clinical response.

NOTE: Severe pneumonia, empyema, bacteremia, pericarditis, meningitis, and arthritis should not be treated with phenoxymethyl penicillin during the acute stage.

Indicated surgical procedures should be performed.

The following infections will usually respond to adequate dosage of phenoxymethyl penicillin.

*Streptococcal infections* (without bacteremia). Mild to moderate infections of the upper respiratory tract, scarlet fever, and mild erysipelas.

NOTE: Streptococci in groups A, C, H, G, L, and M are very sensitive to penicillin. Other groups, including group D (enterococcus) are resistant.

*Pneumococcal infections.* Mild to moderately severe infections of the respiratory tract.

*Staphylococcal infections*—penicillin G sensitive. Mild infections of the skin and soft tissues.

NOTE: Reports indicate an increasing number of strains of staphylococci resistant to penicillin G, emphasizing the need for culture and sensitivity studies in treating suspected staphylococcal infections.

*Fusospirochetosis* (Vincent's gingivitis and pharyngitis)—Mild to moderately severe infections of the oropharynx usually respond to therapy with oral penicillin.

NOTE: Necessary dental care should be accomplished in infections involving the gum tissue.

Medical conditions in which oral penicillin therapy is indicated as prophylaxis:

For the prevention of recurrence following rheumatic fever and/or chorea: Prophylaxis with oral penicillin on a continuing basis has proven effective in preventing recurrence of these conditions.

To prevent bacterial endocarditis in patients with congential and/or rheumatic heart lesions in patients to undergo dental procedures or minor upper respiratory tract surgery or instrumentation. Prophylaxis should be instituted the day of the procedure and for 2 or more days following. Patients who have a past history of rheumatic fever and are receiving continuous prophylaxis may harbor increased numbers of penicillin-resistant organisms; use of another prophylactic anti-infective agent should be considered. If penicillin is to be used in these patients at surgery, the regular rheumatic fever program should be interrupted 1 week prior to the contemplated surgery. At the time of surgery, penicillin may be reinstituted as a prophylactic measure against the hazards of surgically induced bacteremia.

NOTE: Oral penicillin should not be used as adjunctive prophylaxis for genitourinary instrumentation or surgery, lower intestinal tract surgery, sigmoidoscopy and childbirth.

CONTRAINDICATIONS

A previous hypersensitivity reaction to any penicillin is a contraindication.

WARNING

(This section should be identical to the "Warning" section for Sodium Methicillin.)

PRECAUTIONS

Penicillin should be used with caution in individuals with histories of significant allergies and/or asthma.

The oral route of administration should not be relied upon in patients with severe illness, or with nausea, vomiting, gastric dilatation, cardiospasm or intestinal hypermotility.

Occasional patients will not absorb therapeutic amounts of orally administered penicillin.

In streptococcal infections, therapy must be sufficient to eliminate the organism (10 days minimum); otherwise the sequelae of streptococcal disease may occur. Cultures should be taken following completion of treatment to determine whether streptococci have been eradicated.

Prolonged use of antibiotics may promote the overgrowth of nonsusceptible organisms, including fungi. Should superinfection occur, appropriate measures should be taken.

ADVERSE REACTIONS

Although the incidence of reactions to oral penicillins has been reported with much less frequency than following parenteral therapy, it should be remembered that all degrees of hypersensitivity including fatal anaphylaxis, have been reported with oral penicillin.

The most common reactions to oral penicillin are nausea, vomiting, epigastric distress, diarrhea, and black hairy tongue. The hypersensitivity reactions reported are skin eruptions (maculo-papular to exfoliative dermatitis), urticaria and other serum sickness reactions, laryngeal edema and anaphylaxis. Fever and eosinophilia may frequently be the only reaction observed. Hemolytic anemia, leucopenia, thrombocytopenia, neuropathy, and nephropathy are infrequent reactions and usually associated with high doses of parenteral penicillin.

ADMINISTRATION AND DOSAGE

The dosage of phenoxymethyl penicillin should be determined according to the sensitivity of the causative microorganisms and the severity of infection, and adjusted to the clinical response of the patient.

The usual dosage recommendations for adults and children 12 years and over are as follows:

*Streptococcal infections*—mild to moderately severe—of the upper respiratory tract and including scarlet fever and erysipelas: 200,000–500,000 units every 6–8 hours for 10 days.

*Pneumococcal infections*—mild to moderately severe—of the respiratory tract, including otitis media: 400,000–500,000 units every 6 hours until the patient has been afebrile for at least 2 days.

*Staphylococcal infections*—mild infections of skin and soft tissue (culture and sensitivity tests should be performed): 400,000–500,000 units every 6–8 hours.

*Fusospirochetosis (Vincent's infection)* of the oropharynx. Mild to moderately severe infections: 400,000–500,000 units every 6–8 hours.

For the prevention of recurrence following rheumatic fever and/or chorea: 200,000–250,000 units twice daily on a continuing basis.

To prevent bacterial endocarditis in patients with rheumatic or congenital heart lesions who are to undergo dental or upper respiratory tract surgery or instrumentation: 500,000 units given the day of the procedure, 500,000 aqueous penicillin G I.M. units 1 hour before the procedure and 500,000 units every 6 hours for 2 days.

NOTE: Therapy for children under 12 years of age is calculated on the basis of body weight. For infants and small children the suggested dose is 25,000 to 90,000 units per kg. per day in three to six divided doses.

IV. *Benzathine penicillin G for oral use and benzatheine phenoxymethyl penicillin for oral use*—A. *Effectiveness classification.* The Food and Drug Administration concludes that oral benzathine penicillin G and oral benzathine phenoxymethyl penicillin:

1. Are effective or probably effective for the indications described in the following labeling guidelines. The indication regarded as probably effective is: the prevention of bacterial endocarditis in patients with congenital or rheumatic heart lesions.

2. Lack substantial evidence of effectiveness for the following indications: gonococcal infections; prophylaxis in conditions in which secondary infection is likely to occur such as surgical operations; and prophylaxis to prevent bacterial upper respiratory infections in unusually susceptible patients (from early childhood through first few grades of school).

B. *Labeling conditions.* Those parts of the labeling indicated below should be substantially as follows (optional additional information applicable to the drug may be proposed under other appropriate paragraph headings and should follow the information given below):

DESCRIPTION

(Descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

ACTIONS AND PHARMACOLOGY

Benzathine penicillin G and benzathine phenoxymethyl penicillin exert a bactericidal action against penicillin sensitive microorganisms during the stage of active multiplication. They act through the inhibition of biosynthesis of cell wall mucopeptide. They are not active against the penicillinase-producing bacteria, which include many strains of streptococci. Benzathine penicillins exert high in vitro activity against staphylococci (except penicillinase-producing strains), streptococci (groups A, C, G, H, L and M), and pneumococci. Other organisms sensitive to penicillin are *N. gonorrhoeae, Corynebacterium diphtheriae, Bacillus anthracis,* Clostridia, *Actinomyces bovis, Streptobacillus moniliformis, Listeria monocytogenes,* and *Leptospira. Treponema pallidum* is extremely sensitive to the bactericidal action of penicillin.

INDICATIONS

Oral benzathine penicillin is indicated in the treatment of mild to moderately severe infections due to benzathine penicillin sensitive micro-organisms that are sensitive to the low serum levels common to this particular dosage form. Therapy should be guided by bacteriological studies (including sensitivity tests) and by clinical response.

NOTE: Severe pneumonia, empyema, bacteremia, pericarditis, meningitis, and arthritis should not be treated with oral benzathine penicillin during the acute stage.

Indicated surgical procedures should be performed.

The following infections will usually respond to adequate dosage of oral benzathine penicillin.

*Streptococcal infections* (without bacteremia). Mild to moderate infections of the upper respiratory tract, scarlet fever, and mild erysipelas.

NOTE: Streptococci in groups A, C, H, G, L, and M are very sensitive to penicillin. Other groups, including group D (enterococcus) are resistant.

*Pneumococcal infections.* Mild to moderately severe infections of the respiratory tract.

*Staphylococcal infections.* Benzathine penicillin sensitive. Mild infections of the skin and soft tissues.

NOTE: Reports indicate an increasing number of strains of staphylococci resistant to benzathine penicillin emphasizing the need for culture and sensitivity studies in treating suspected staphylococcal infections.

Medical conditions in which oral penicillin therapy is indicated as prophylaxis:

For the prevention of recurrence following rheumatic fever and/or chorea. Prophylaxis with oral benzathine penicillin on a continuing basis has proven effective in preventing recurrence of these conditions.

To prevent bacterial endocarditis in patients with congenital and/or rheumatic heart lesions who are to undergo dental procedures or minor upper respiratory tract surgery or instrumentation. Prophylaxis should be instituted the day of the procedure and for 2 or more days following. Patients who have a past history of rheumatic fever and are receiving continuous prophylaxis may harbor increased numbers of penicillin-resistant organisms; use of another prophylactic anti-infective agent should be considered. If penicillin is to be used in these patients at surgery, the regular rheumatic fever program should be interrupted one week prior to the contemplated surgery. At the time of surgery, penicillin may be reinstituted as a prophylactic measure against the hazards of surgically induced bacteremia.

NOTE: Oral benzathine penicillin should not be used as adjunctive prophylaxis for genito-urinary instrumentation or surgery, lower intestinal tract surgery, sigmoidoscopy and childbirth.

CONTRAINDICATIONS

A previous hypersensitivity reaction to any of the penicillins is a contraindication.

WARNING

(This section should be identical to the "Warning" section for Sodium Methicillin.)

PRECAUTIONS

(This section should be identical to the "Precautions" section for Phenoxymethyl Penicillin for Oral Use.)

ADVERSE REACTIONS

(This section should be identical to the "Adverse Reactions" section for Phenoxymethyl Penicillin for Oral Use.)

ADMINISTRATION AND DOSAGE

The dosage of benzathine penicillin or benzathine phenoxymethyl penicillin (oral) should be determined according to the sensitivity of the causative microorganisms and the severity of infection, and adjusted to the clinical response of the patient. Parenteral penicillin is advised as initial therapy for moderately severe infections. The usual dosage recommendations for adults and children 12 years and over are as follows:

*Streptococcal infections*—mild to moderately severe—of the upper respiratory tract and including scarlet fever and erysipelas.

400,000–600,000 units every 4–6 hours for 10 days.

*Pneumococcal infections*—mild to moderately severe—of the respiratory tract, including otitis media.

400,000–600,000 units every 4–6 hours until the patient has been afebrile for at least 2 days.

*Staphylococcal infections*—mild infections of skin and soft tissue. (culture and sensitivity tests are extremely important).

400,000–600,000 units every 4–6 hours.

For the prevention of recurrence following rheumatic fever and/or chorea:

200,000 units twice daily on a continuing basis.

To prevent bacterial endocarditis in patients with rheumatic or congenital heart lesions who are to undergo dental or upper respiratory tract surgery or instrumentation:

500,000 units given orally the day of the procedure, 500,000 units aqueous penicillin I.M. 1 hour before the procedure and 500,000 units orally every 6 hours for 2 days.

Therapy for children under 12 years of age is calculated on the basis of body weight. For infants and small children the suggested dose is 25,000 to 90,000 units per kg. per day in 3 to 6 divided doses.

V. *Sodium penicillin O for injection*—A. *Effectiveness classification.* The food and Drug Administration concludes that sodium penicillin O is effective for the indications in the labeling guidelines which follow.

B. *Labeling conditions.* Those parts of the labeling indicated below should be substantially as follows (optional additional information applicable to the drug may be proposed under other appropriate paragraph headings and should follow the information given below):

DESCRIPTION

(Descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

ACTIONS AND PHARMACOLOGY

Penicillin O exhibits the same in vitro and in vivo activity as penicillin G. Penicillin O exerts a bactericidal action against penicillin sensitive microorganisms during the stage of active multiplication. It acts through the inhibition of biosynthesis of cell wall mucopeptide. It is not active against the penicillinase producing bacteria, which include many strains of streptococci. Penicillin O exerts high in vitro activity against staphylococci (except penicillinase-producing strains), streptococci (groups A, C, G, H, L, and M) and pneumococci. Other organisms sensitive to penicillin O or *N. gonorrhoeae, Corynebacterium diphtheriae, Bacillus anthracis, Clostridia, Actinomyces bovis, Streptobacillus moniliformis, Listeria monocytogenes* and *Leptospira. Treponema pallidum* is extremely sensitive to the bactericidal action of penicillin O. Some species of gram negative bacilli are sensitive to moderate to high concentrations of the drug obtained with intravenous administration. These include most strains of *Escherichia coli,* all strains of *Proteus mirabilis,* Salmonella and Shigella and some strains of *Aerobacter aerogenes* and *Alcaligenes fecalis.*

Sensitivity plate testing: If the Kirby-Bauer method of disc sensitivity is used, a 10-unit penicillin disc should give a zone greater than 28 mm. when tested against a penicillin-sensitive bacterial strain.

Penicillin O is rapidly absorbed following intramuscular injection. A high peak level comparable to an equal dosage of penicillin G intramuscular is reached within 30 minutes following administration. This level declines at a fairly constant rate over a 4–5-hour period. For this reason high and frequent doses are required to maintain the elevated serum levels desirable in treating certain severe infections in individuals with normal kidney function. In neonates, young infants and individuals with impaired kidney function serum levels usually persist for a longer time period than 4–5 hours because of retarded kidney excretion of the drug.

INDICATIONS

Aqueous penicillin O (parenteral) is indicated in the therapy of severe infections caused by penicillin O sensitive microorganisms when rapid and high penicillinemia is required. Therapy should be guided by bacteriological studies (including sensitivity tests) and by clinical response.

The following infections will usually respond to adequate dosage of aqueous penicillin O (parenteral):

*Streptococcal infections*—

NOTE: Streptococci in groups A, C, H, G, L, and M are very sensitive to penicillin O. Some group D organisms are sensitive to the high serum levels obtained with aqueous penicillin O.

Aqueous penicillin (parenteral) is the penicillin dosage form of choice for bacteremia, empyema, severe pneumonia, pericarditis, endocarditis, meningitis and other severe infections caused by sensitive strains of the gram positive species listed above.

*Pneumococcal infections.*

*Staphylococcal infections*—penicillin O sensitive.

*Other infections*—

Anthrax.

Actinomycosis.

Clostridial infections (including tetanus).

Diphtheria (to prevent carrier state).

Erysipeloid (Erysipelothrix insidiosa) endocarditis.

Fusospirochetal infections—severe infections of the oropharynx (Vincent's), lower respiratory tract and genital area due to *Fusobacterium fusiformisans* spirochetes.

Gram-negative bacillary infections (bacteremias) (*E. coli, A. aerogenes, A. faecalis,* Salmonella, Shigella and *P. mirabilis.*)

Listeria infections (*Listeria monocytogenes*).

Meningitis and endocarditis.

Pasteurella infections (*Pasteurella multocida*).

Bacteremia and meningitis.

Rat-bite fever (*Spirillum minus* or *Streptobacillus moniliformis*).

Gonorrheal endocarditis and arthritis (*N. gonorrhoeae*).

Syphilis (*T. pallidum*) including congenital syphilis.

Meningococcic meningitis.

Prophylaxis against bacterial endocarditis in patients with rheumatic or congenital heart disease when undergoing dental or upper respiratory tract surgery or instrumentation, surgery of the lower intestinal tract, childbirth, and instrumentation of the genitourinary tract.

NOTE: Because patients who have a past history of rheumatic fever and are receiving continuous prophylaxis may harbor increased numbers of penicillin resistant organisms, use of another prophylactic anti-infective agent should be considered. If penicillin is to be used in these patients at surgery, the regular rheumatic fever program should be interrupted 1 week prior to the contemplated surgery. At the time of surgery, penicillin may be reinstituted as a prophylactic measure against the hazards of surgically induced bacteremia.

CONTRAINDICATIONS

A history of a previous hypersensitivity reaction to any of the penicillins is a contraindication.

WARNING

(This section should be identical to the "Warning" section for Sodium Methicillin.)

PRECAUTIONS

Penicillin should be used with caution in individuals with histories of significant allergies and/or asthma.

In streptococcal infections, therapy must be sufficient to eliminate the organism (10 days minimum) otherwise the sequelae of streptococcal disease may occur. Cultures should be taken following the completion of treatment to determine whether streptococci have been eradicated.

Sodium penicillin O, by the intravenous route in high doses (above 10 million units)

should be administered slowly because of the adverse effects of electrolyte imbalance from the sodium content (each 200,000 units contain 8 mg.). The patient's renal, cardiac and vascular status should be evaluated and if impairment is suspected or known to exist, a reduction in the total dosage should be considered. Frequent evaluation of electrolyte balance, renal and hematopoietic function is recommended during therapy when high doses of intravenous sodium penicillin O are given.

Prolonged use of antibiotics may promote overgrowth of nonsusceptible organisms, including fungi. Should superinfection occur, appropriate measures should be taken. Indwelling intravenous catheters encourage superinfections and should be avoided whenever possible.

Therapy of susceptible infections should be accompanied by any indicated surgical procedures.

ADVERSE REACTIONS

Penicillin is a substance of low toxicity but does have a significant index of sensitization. The following hypersensitivity reactions have been reported; skin rashes ranging from maculopapular eruptions to exfoliative dermatitis; urticaria and reactions resembling serum sickness, including chills, fever, edema, arthralgia and prostration. Severe and occasionally fatal anaphylaxis has occurred (see Warnings). Hemolytic anemia, leucopenia, thrombocytopenia, nephropathy and neuropathy are rarely observed adverse reactions and are usually associated with high intravenous dosage. Patients given continuous intravenous therapy with sodium penicillin O in high dosage (10 million to 100 million units daily) may suffer congestive heart failure particularly if renal insufficiency is present.

The Jarisch-Herxheimer reaction has been reported in patients treated for syphilis.

ADMINISTRATION AND DOSAGE

To be administered parenterally.

*Severe infections due to susceptible strains of Streptococci, Pneumococci, and Staphylococci*—Bacteremia, pneumonia, endocarditis, pericarditis, empyema, meningitis and other severe infections—a minimum of 5 million units daily.

*Syphilis*—Aqueous penicillin O may be used in the treatment of acquired and congenital syphilis, but because of the necessity of frequent dosage, hospitalization is recommended. Dosage and duration of therapy will be determined by age of patient and stage of the disease.

*Gonorrheal endocarditis*—A minimum of 5 million units daily.

*Meningococcic meningitis*—1–2 million units I.M. every 2 hours or continuous I.V. drip of 20–30 million units/day.

*Actinomycosis*—1–6 million units/day for cervico-facial cases.

10–20 million units/day for thoracic and abdominal disease.

*Clostridial infections*—20 million units/day; penicillin is adjunctive therapy to antitoxin.

*Fusospirochetal infections*—Severe infections of oropharynx, lower respiratory tract and genital area—5–10 million units/day.

*Rat-bite fever* (*Spirillum minus* or *streptobacillus moniliformis*). 12–15 million units/day for 3–4 weeks.

*Listeria infections* (*Listeria monocytogenes*): Neonates—500,000 to 1,000,000 units/day.

Adults with meningitis—15–20 million units/day for 2 weeks.

Adults with endocarditis—15–20 million units/day for 4 weeks.

*Pasteurella infections* (*Pasteurealla multocida*): Bacteremia and meningitis—4–6 million units/day for 2 weeks.

*Erysipeloid* (*Erysipelothrix insidiosa*): Endocarditis 2–20 million units/day for 4–6 weeks.

*Gram-negative bacillary infections* (*E. coli, A. aerogenes, A. faecalis*, Salmonella, Shigella, and *Proteus mirabilis*): Bacteremia—20–80 million units/day.

*Diphtheria* (*carrier state*): 300,000–400,000 units of penicillin/day in divided doses for 10–12 days.

*Anthrax*: A minimum of 5,000,000 units of penicillin/day in divided doses until cure is effected.

Prophylaxis against bacterial endocarditis in patients with rheumatic or congenital heart disease when undergoing dental or upper respiratory tract surgery or instrumentation—

600,000 units of sodium penicillin O the day of operation.

600,000 units of sodium penicillin O 1–2 hours before operation.

600,000 units of sodium penicillin O daily for 2 days following operation.

Preparation and Storage of Solution: (To be included by manufacturer or distributor.)

VI. *Benzathine penicillin G injection*—A. *Effectiveness classification.* The Food and Drug Administration concludes that benzathine penicillin G for intramuscular injection:

1. Is effective for the indications described in the labeling guidelines which follow.

2. Is probably effective for the treatment of gonorrhea.

3. Is possibly effective for prevention and treatment of secondary infections following tonsillectomy and tooth extraction in patients with a history of rheumatic fever, in rheumatic or congenital heart disease, and whenever prolonged penicillin protection is indicated; treatment of secondary bacterial infections; and general prophylaxis.

4. Lacks substantial evidence of effectiveness for the treatment of staphylococcal infections and pneumococcal infections and in prophylaxis against upper respiratory and surgical infections.

B. *Labeling conditions.* Those parts of the labeling indicated below should be substantially as follows (optional additional information applicable to the drug may be proposed under other appropriate paragraph headings and should follow the information given below):

DESCRIPTION

(Descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

ACTIONS AND PHARMACOLOGY

Penicillin G exerts a bactericidal action against penicillin-sensitive microorganisms during the stage of active multiplication. It acts through the inhibition of biosynthesis of cell wall mucopeptide. It is not active against the penicillinase-producing bacteria, which include many strains of streptococci. Penicillin G exerts high in vitro activity against staphlococci (except penicillinase-producing strains), streptococci (groups A, C, G, H, L and M), and pneumococci. Other organisms sensitive to penicillin G are: *N. gonorrhoeae Corynebacterium diphtheriae, Bacillus anthracis*, Clostridia, *Actinomyces bovis, Streptobacillus moniliformis, Listeria monocytogenes*, and Leptospira. *Treponema pallidum* is extremely sensitive to the bactericidal action of penicillin G.

Intramuscular benzathine penicillin G is absorbed very slowly into the blood stream from the intramuscular site and converted by hydrolysis to penicillin G. This combination of hydrolysis and slow absorption results in blood serum levels much lower than other parenteral penicillins.

Approximately 60% of penicillin G is bound to serum protein. The drug is distributed throughout the body tissues in widely varying amounts. Highest levels are found in the kidneys with lesser amounts in the liver, skin and intestines. Penicillin G penetrates into all other tissues and the spinal fluid to a lesser degree. With normal kidney function the drug is excreted rapidly by tubular excretion. In neonates and young infants and in individuals with impaired kidney function, excretion is considerably delayed.

INDICATIONS

Intramuscular benzathine penicillin G is indicated in the treatment of infections due to penicillin G sensitive micro-organisms that are susceptible to the low and very prolonged serum levels common to this particular dosage form. Therapy should be guided by bacteriological studies (including sensitivity tests) and by clinical response.

The following infections will usually respond to adequate dosage of intramuscular benzathine penicillin G.

*Streptococcal infections* (Group A—without bacteremia). Mild to moderate infections of the upper respiratory tract (pharyngitis).

*Venereal infections*—Syphilis, yaws, bejel, pinta and gonorrhea (acute and chronic).

Medical Conditions in Which Benzathine Penicillin G Therapy Is Indicated as Prophylaxis:

Rheumatic fever and/or chorea—Prophylaxis with benzathine penicillin G has proven effective in preventing recurrence of these conditions. It has also been used as followup prophylactic therapy for rheumatic heart disease and acute glomerulonephritis.

CONTRAINDICATIONS

A history of a previous hypersensitivity reaction to any of the penicillins is a contraindication.

WARNING

(This section should be identical to the "Warning" section for Sodium Methicillin.)

PRECAUTIONS

Penicillin should be used with caution in individuals with histories of significant allergies and/or asthma.

In intramuscular therapy, care should be taken to avoid accidental intravenous administration.

In streptococcal infections, therapy must be sufficient to eliminate the organism; otherwise the sequelae of streptococcal disease may occur. Cultures should be taken following completion of treatment to determine whether streptococci have been eradicated.

Prolonged use of antibiotics may promote the overgrowth of nonsusceptible organisms, including fungi. Should superinfection occur, appropriate measures should be taken.

ADVERSE REACTIONS

The hypersensitivity reactions reported are skin eruptions (maculo-papular to exfoliative dermatitis), urticaria and other serum sickness reactions, laryngeal edema and anaphylaxis. Fever and eosinophilia may frequently be the only reaction observed. Hemolytic anemia, leucopenia, thrombocytopenia, neuropathy and nephropathy are infrequent reactions and usually associated with high doses of parenteral penicillin.

ADMINISTRATION AND DOSAGE

Streptococcal infections (group A) pharyngitis—A single injection of—900,000 units for older children; 1,200,000 units for adults.

Veneral infections—

*Syphilis*—Primary, secondary and latent—2.4 million units (1 dose).

*Late* (tertiary and neurosyphilis) 3 million units at 7 day intervals for a total of 6–9 million units.

*Congenital*—under 2 years of age 50,000 units/kg. body weight; ages 2–12 years—adjust dosage based on adult dosage schedule.

*Yaws, Bejel and Pinta*—1.2 million units (1 injection).

*Prophylaxis*—for rheumatic fever and glomerulonephritis.

Following an acute attack, benzathine penicillin G (parenteral) may be given in doses of 1,200,000 units once a month or 600,000 units every 2 weeks.

VII. *Potassium penicillin G oral*—A. *Effectiveness classification.* The Food and Drug Administration concludes that oral potassium penicillin G:

1. Is effective or probably effective for those indications described in the labeling guidelines which follow. The indications regarded as probably effective are: For prevention of bacterial endocarditis in patients with congenital or rheumatic heart lesions, who are to undergo dental procedures or minor upper respiratory tract surgery or instrumentation; and prevention of bacteremia following tooth extraction.

2. Is possibly effective for rat-bite fever, erysipeloid, Borrelia infection, prevention of possible secondary infection after tonsillectomy if tonsils are infected or after tooth extraction in patients with a history of rheumatic fever or in whom secondary infection might occur.

3. Lacks substantial evidence of effectiveness for gonorrheal arthritis; gonococcal infections; epididymitis, endocarditis; salpingitis, prostatitis; meningitis; acute peritonitis; brucellosis, typhoid fever; dysentery; *E. coli* infections; leptospirosis; hemolytic streptococcal mastoiditis; prophylactically in other operative procedures in which secondary infection is likely to occur; and staphylococcic infections (without bacteremia): abscesses, wound infections, and burn infections due to susceptible organisms.

B. *Labeling conditions.* Those parts of the labeling indicated below should be substantially as follows (optional additional information applicable to the drug may be proposed under other appropriate paragraph headings and should follow the information given below):

DESCRIPTION

(Descriptive information to be included by manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

ACTIONS AND PHARMACOLOGY

Penicillin G exerts a bactericidal action against penicillin-sensitive microorganisms during the stage of active multiplication. It acts through the inhibition of biosynthesis of cell wall mucopeptide. It is not active against the penicillinase producing bacteria, which include many strains of staphylococci. Penicillin G exerts high in vitro activity against the nonpenicillinase producing bacteria, which include many strains of staphylococci. Penicillin G exerts high in vitro activity against staphylococci (except penicillinase-producing strains), streptococci (groups A, C, G, H, L, and M) and pneumococci. Other organisms sensitive to penicillin G are *Neisseria gonorrhoeae, Corynebacterium diphtheriae, Bacillus anthracis,* Clostridia, *Actinomyces bovis, Streptobacillus moniliformis, Listeria monocytogenes,* and Leptospira. *Treponema pallidum* is extremely sensitive to the bactericidal action of penicillin G. Some species of gram negative bacilli are sensitive to moderate to high concentrations of the drug obtained with intravenous administration. These include most strains of *Escherichia coli,* all strains of *Proteus mirabilis,* Salmonella and Shigella and some strains of *Aerobacter aerogenes* and *Alcaligenes fecalis.*

Oral preparations of penicillin G are only slightly affected by normal gastric acidity (pH of 2–3.5); however a pH below 2.0 may partially or totally inactivate penicillin G. Oral penicillin G is absorbed in the upper small intestine, chiefly the duodenum; however, based on serum level and urinary excretion data, only approximately 30% of the dose is absorbed. For this reason 4–5 times the dose of oral penicillin G must be given to obtain a blood level comparable to that obtained with parenteral penicillin G. Since gastric acidity, stomach emptying time and other factors affecting absorption may vary considerably, serum levels may be appreciably reduced to non-therapeutic levels in certain individuals.

Approximately 60% of penicillin G is bound to serum protein. The drug is distributed throughout the body tissues in widely varying amounts. Highest levels are found in the kidneys with lesser amounts in the liver, skin, and intestines. Penicillin G penetrates into all other tissues to a lesser degree with very limited amounts found in the cerebrospinal fluid. With normal kidney function the drug is excreted rapidly by tubular excretion. In neonates and young infants and in individuals with impaired kidney function, excretion is considerably delayed. Approximately 20% of a dose of oral penicillin G is excreted in the urine under normal circumstances.

INDICATIONS

Oral penicillin G is indicated in the treatment of mild to moderately severe infections due to penicillin-G sensitive micro-organisms that are sensitive to the low serum levels common to this particular dosage form. Therapy should be guided by bacteriological studies (including sensitivity tests) and by clinical response.

NOTE: Severe pneumonia, empyema, bacteremia, pericarditis, meningitis, and arthritis should not be treated with oral penicillin during the acute stage.

Indicated surgical procedures should be performed.

The following infections will usually respond to adequate dosage of oral penicillin G.

1. *Streptococcal infections* (Group A) (without bacteremia). Mild to moderate infections of the upper respiratory tract, skin and soft tissue infections, scarlet fever, and mild erysipelas.

NOTE: Streptococci in groups A, C, H, G, L, and M are very sensitive to penicillin G. Other groups, including group D (enterococcus) are resistant.

2. *Pneumococcal infections.* Mild to moderately severe infections of the respiratory tract.

3. *Staphylococcal infections.* Penicillin G sensitive. Mild infections of the skin and soft tissues.

NOTE: Reports indicate an increasing number of strains of staphylococci resistant to penicillin G, emphasizing the need for culture and sensitivity studies in treating suspected staphylococcal infections.

4. *Fusospirochetosis* (Vincent's gingivitis and pharyngitis)—Mild to moderately severe infections of the oropharynx usually respond to thereapy with oral penicillin G.

NOTE: Necessary dental care should be accomplished in infections involving the gum tissue.

5. *Medical conditions in which oral penicillin G therapy is indicated as prophylaxis:*

(a) *For the prevention of recurrence following rheumatic fever and/or chorea.* Prophylaxis with oral penicillin G on a continuing basis has proven effective in preventing recurrence of these conditions.

(b) To prevent bacterial endocarditis in patients with congenital and/or rheumatic heart lesions who are to undergo dental procedures or minor upper respiratory tract surgery or instrumentation. Prophylaxis should be instituted the day of the procedure and for 2 or more days following. Patients who have a past history of rheumatic fever and are receiving continuous prophylaxis may harbor increased numbers of penicillin-resistant organisms; use of another prophylactic anti-infective agent should be considered. If penicillin is to be used in these patients at surgery, the regular rheumatic fever program should be interrupted 1 week prior to the contemplated surgery. At the time of surgery, penicillin may be reinstituted as a prophylactic measure against the hazards of surgically induced bacteremia.

NOTE: Oral penicillin G should not be used as adjunctive prophylaxis for genitourinary instrumentation or surgery, lower intestinal tract surgery, sigmoidoscopy and childbirth.

(c) Prevention of bacteremia following tooth extraction.

CONTRAINDICATIONS

A previous hypersensitivity reaction to any penicillin is a contraindication.

WARNING

(This section should be identical to the "Warning" section for Sodium Methicillin.)

PRECAUTIONS

(This section should be identical to the "Precautions" section for Phenoxymethyl Penicillin for Oral Use.)

ADVERSE REACTIONS

(This section should be identical to the "Adverse Reactions" section for Phenoxymethyl Penicillin for Oral Use.)

DOSAGE AND ADMINISTRATION

The dosage of penicillin G (oral) should be determined according to the sensitivity of the causative micro-organism and the severity of infection, and adjusted to the clinical response of the patient.

Oral Penicillin G should be given at least 1 hour before or 2 hours after meals.

The usual dosage recommendation for adults and children 12 years and over is as follows:

*Streptococcal infections*—Mild to moderately severe—of the upper respiratory tract and including scarlet fever and mild erysipelas.

200,000–250,000 units q. 6–8 hours for 10 days for mild infections.

400,000–500,000 units q. 8 hours for 10 days for moderately severe infections.

*Pneumococcal infections*—Mild to moderately severe—of the respiratory tract, including otitis media.

400,000–500,000 units q. 6 hours until the patient has been afebrile for at least 2 days.

*Staphylococcal infections*—Mild infections of skin and soft tissue (culture and sensitivity tests should be performed).

200,000–500,000 units q. 6–8 hours until infection is cured.

*Fusospirochetosis (Vincent's infection)* of the oropharynx—Mild to moderately severe infections.

400,000–500,000 units q. 6–8 hours.

For the prevention of recurrence following rheumatic fever and/or chorea:

200,000–250,000 units twice daily on a continuing basis.

To prevent bacterial endocarditis in patients with rheumatic or congenital heart lesions who are to undergo dental or minor upper respiratory tract surgery or instrumentation:

500,000 units given the day of the procedure, 500,000 units aqueous penicillin G I.M. 1 hour before the procedure and 500,000 units every 6 hours for 2 or more days.

NOTE: Therapy for children under 12 years of age is calculated on the basis of body weight. For infants and small children the suggested dose is 25,000 to 90,000 units per kg. per day in 3 to 6 divided doses.

VIII. *Procaine penicillin G injection*—A. *Effectiveness classification.* The Food and Drug Administration concludes that procaine penicillin-G injection (oil or aquecus):

1. Is effective for the indications described in the labeling guidelines which follow.

2. Lacks substantial evidence of effectiveness for the claimed indications: treatment of pneumococcal, meningococcal, streptococcal and staphylococcal meningitis; clostridial infections; antinomycosis infections; prophylaxis; prophylaxis before and after amputations and other surgical procedures; prophylaxis of infections caused by organisms that are susceptible to penicillin therapy; treatment of leptospirosis; and treatment of Borrelia infections (relapsing fever).

B. *Labeling conditions.* Those parts of the labeling indicated below should be substantially as follows (optional additional information applicable to the drug may be proposed under other appropriate paragraph headings and should follow the information given below):

DESCRIPTION

(Descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

ACTIONS AND PHARMACOLOGY

Penicillin G exerts a bactericidal action against penicillin sensitive micro-organisms during the stage of active multiplication. It acts through the inhibition of biosynthesis of cell wall mucopeptide. It is not active against the penicillinase producing bacteria, which include many strains of streptococci. Penicillin G exerts high in vitro activity against staphylococci (except penicillinase-producing strains), streptococci (groups A, C, G, H, L, and M) and pneumococci. Other organisms sensitive to penicillin G are *N. gonorrhoeae, Corynebacterium diphtheriae, Bacillus anthracis,* Clostridia, *Actinomyces bovis, Streptobacillus moniliformis, Listeria monocytogenes* and Leptospira. *Treponema pallidum* is extremely sensitive to the bactericidal action of penicillin G.

Sensitivity plate testing: If the Kirby-Bauer method of disc sensitivity is used, a 10-unit penicillin disc should give a zone greater than 28 mm. when tested against a penicillin-sensitive bacterial strain.

Procaine penicillin G is an equimolecular compound of procaine and penicillin G administered intramuscularly as a suspension. It dissolves slowly at the site of injection, giving a plateau type of blood level at about 4 hours which falls slowly over a period of the next 15–20 hours.

Approximately 60% of penicillin G is bound to serum protein. The drug is distributed throughout the body tissues in widely varying amounts. Highest levels are found in the kidneys with lesser amounts in the liver, skin and intestines. Penicillin G penetrates into all other tissues to a lesser degree with a very small level found in the cerebrospinal fluid. With normal kidney function the drug is excreted rapidly by tubular excretion. In neonates and young infants and in individuals with impaired kidney functions, excretion is considerably delayed. Approximately 60–90 percent of a dose of parenteral penicillin G is excreted in the urine within 24–36 hours.

INDICATIONS

Procaine penicillin G is indicated in the treatment of moderately severe infections due to penicillin-G-sensitive microorganisms that are sensitive to the low and persistent serum levels common to this particular dosage form. Therapy should be guided by bacteriological studies (including sensitivity tests) and by clinical response.

NOTE: When high sustained serum levels are required, aqueous penicillin G either IM or IV should be used.

The following infections will usually respond to adequate dosages of intromuscular procaine penicillin G.

*Streptococcal infections* Group A (without bacteremia). Moderately severe to severe infections of the upper respiratory tract, skin and soft tissue infections, scarlet fever, and erysipelas.

NOTE: Streptococci in groups A, C, H, G, L, and M are very sensitive to penicillin G. Other groups, including group D (enterococcus) are resistant. Aqueous penicillin is recommended for streptococcal infections with bacteremia.

*Pneumococcal infections.* Moderately severe infections of the respiratory tract.

NOTE: Severe pneumonia, empyema, bacteremia, pericarditis, meningitis, peritonitis, and arthritis of pneumococcal etiology are better treated with aqueous penicillin G during the acute stage.

*Staphylococcal infections*—penicillin G sensitive. Moderately severe infections of the skin and soft tissues.

NOTE: Reports indicate an increasing number of strains of staphylococci resistant to penicillin G emphasizing the need for culture and sensitivity studies in treating suspected staphylococcal infections.

Indicated surgical procedures should be performed.

*Fusospirochetosis* (Vincent's gingivitis and pharyngitis). Moderately severe infections of the oropharynx respond to therapy with procaine penicillin G.

*Note:* Necessary dental care should be accomplished in infections involving the gum tissue.

*Treponema pallidum* (syphilis); all stages.

*N. gonorrhoeae;* acute and chronic (without bacteremia).

*Yaws, Bejel, Pinta.*

*C. diphtheriae*—procaine penicillin G as an adjunct to antitoxin for prevention of the carrier stage.

*Anthrax.*

*Streptobacillus moniliformis* and *Spirillum minus* infections (rat bite fever).

*Erysipeloid.*

*Subacute bacterial endocarditis* (group A streptococcus) only in extremely sensitive infections.

*Prophylaxis Against Bacterial Endocarditis*—Procaine penicillin G may be given to patients with congenital and/or rheumatic heart lesions who are to undergo dental or upper respiratory tract surgery or instrumentation. Prophylaxis should be instituted the day of the procedure and continued for 2 or more days following.

NOTE: Since patients who have a past history of rheumatic fever and are receiving continuous prophylaxis may harbor increased numbers of penicillin-resistant organisms, use of another prophylactic anti-infective agent should be considered. If penicillin is to be used in these patients at surgery, the regular rheumatic fever program should be interrupted 1 week prior to the contemplated surgery. At the time of surgery, penicillin may be reinstituted as a prophylactic measure against the hazards of surgically induced bacteremia.

CONTRAINDICATIONS

A previous hypersensitivity reaction to any penicillin is a contraindication.

WARNING

(This should be identical to the "Warning" section for Sodium Methicillin.)

PRECAUTIONS

Penicillin should be used with caution in individuals with histories of significant allergies and/or asthma.

In intramuscular therapy, care should be taken to avoid accidental intravenous administration.

In suspected staphylococcal infections, proper laboratory studies, including sensitivity tests, should be performed.

A small percentage of patients are sensitive to procaine. If there is a history of sensitivity make the usual test: Inject intradermally 0.1 c.c. of a 1 to 2 percent procaine solution. Development of an erythema, wheal, flare or eruption indicates procaine sensitivity. Sensitivity should be treated by the usual methods, including barbiturates, and procaine penicillin preparations should not be used. Antihistamines appear beneficial in treatment of procaine reactions.

The use of antibiotics may result in overgrowth of nonsusceptible organisms. Constant observation of the patient is essential. If new infections due to bacteria or fungi appear during therapy, the drug should be discontinued and appropriate measures taken. Whenever allergic reactions occur, penicillin should be withdrawn unless, in the opinion of the physician, the condition being treated is life threatening and amenable only to penicillin therapy.

In prolonged therapy with penicillin, and particularly with high dosage schedules, periodic evaluation of the renal and hematopoietic systems are recommended.

When treating gonococcal infections in which primary or secondary syphilis may be suspected, proper diagnostic procedures, including darkfield examinations should be done. In all cases in which concomitant syphilis is suspected, monthly serological tests should be made for at least four months.

ADVERSE REACTIONS

Penicillin is a substance of low toxicity, but does possess a significant index of sensitization. The following hypersensitivity reactions associated with use of penicillin have been reported; skin rashes, ranging from maculopapular eruptions to exfoliative dermatitis; urticaria; serum sickness-like reactions, including chills, fever, edema, arthralgia and prostration. Severe and often fatal anaphylaxis has been reported (see "Warnings").

As with other treatments for syphilis, the Jarisch-Herxheimer reaction has been reported.

ADMINISTRATION AND DOSAGE

Procaine penicillin G (aqueous) and procaine penicillin G with aluminum monostearate are for intramuscular injection only.

*Recommended dosage for procaine penicillin G aqueous:*

Pneumonia (pneumococcal) moderately severe (uncomplicated). 600,000–1,000,000 units daily.

Streptococcal infections (group A), moderately severe to severe tonsillitis, erysipelas, scarlet fever, upper respiratory tract, skin and soft tissue. 600,000–1,000,000 units daily for 10 day minimum.

Staphylococcal infections, moderately severe to severe. 600,000–1,000,000 units daily.

Bacterial endocarditis (group A streptococci) only in extremely sensitive infections. 600,000–1,000,000 units daily.

To prevent bacterial endocarditis in patients with rheumatic or congenital heart lesions who are to undergo dental or upper respiratory tract surgery or instrumentation:

600,000 units procaine penicillin G aqueous the day of the procedure.

600,000 units aqueous penicillin G 1–2 hours before surgery.

600,000 units procaine penicillin G aqueous daily for 2 days following surgery.

Syphilis—

Primary, secondary and latent with a negative spinal fluid in adults and children over 12 years of age. 600,000 units daily for 8 days—total 4,800,000 units.

Late (tertiary, neurosyphilis and latent syphilis with positive spinal fluid examination or no spinal fluid examination). 600,000 units daily for 10–15 days—total 6–9 million units.

Congenital syphilis under 70 lb. body weight. 10,000 units/kg./day for 10 days.

Yaws, Bejel, and Pinta—Treatment as syphilis in corresponding stage of disease.

Gonorrheal infections (uncomplicated).

2.4 million units in 1 day treatment for males.

4.8 million units in 1 day treatment for females.

NOTE: gonorrheal endocarditis should be treated intensively with aqueous penicillin G.

Diphtheria—adjunctive therapy with antitoxin.

300,000–600,000 units daily.

Diphtheria carrier state—300,000 units daily for 10 days.

Anthrax - cutaneous. 600,000 – 1,000,000 units/day.

Vincent's infection (fusospirochestosis). 600,000–1,000,000 units/day.

Erysipeloid. 600,000–1,000,000 units/day.

Streptobacillus moniliformis and spirillum minus (rat bite fever). 600,000–1,000,000 units/day.

*Recommended dosage for procaine penicillin G with aluminum monostearate.* (For intramuscular use only).

Pneumonia (pneumococcal) moderately severe (uncomplicated). 300,000–600,000 units daily.

Streptococcal infections (group A) (without bacteremia)—moderately severe to severe tonsillitis, erysipelas, scarlet fever, upper respiratory tract, skin and soft tissue. 600,000 units every 3 days for a minimum of 10 day period.

Syphilis—

Primary, secondary, and latent syphilis (with negative cerebrospinal fluid). 2.4 million units initially and 1.2 million units 3 days later followed by an additional 1.2 million units dose 3 days later for a total of 4.8 million units.

Late syphilis or latent syphilis without a spinal fluid examination.

1.2 million units at 3 day intervals for a total of 6 to 9 million units.

Early congenital syphilis.

100,000 units/kg. at 3 day intervals for 3 doses.

Late congenital syphilis.

100,000 units/kg. at 3 day intervals for 3 doses with a total dose not exceeding 3 million units.

Late congenital syphilis in individuals over 12 years of age or over 70 pounds in weight treat as latent syphilis. Yaws, Bejel and Pinta.

1.2 million units—one dose for disease in early stages.

3.6–4.8 million units total in 1.2 million unit doses every 3 days.

Erysipeloid. 600,000 units daily for 2–3 doses every 3rd day.

Vincent's Infection (fusospirochetosis). 300,000–600,000 units every 3 days for 2–3 doses.

Diphtheria. 300,000–600,000 units every 3 days as adjunctive therapy with diphtheria antitoxin to prevent the carrier state.

*For prophylaxis against bacterial endocarditis* in patients with rheumatic or congenital heart disease when undergoing dental or other minor operative procedures or instrumentation in the oropharynx. 300,000–600,000 units on the day prior, 500,000 units aqueous penicillin G 1 hour prior and 300,000–600,000 units 2 days after the procedure.

IX. *Potassium or sodium penicillin G for (aqueous) injection*—A. *Effectiveness classification.* The Food and Drug Administration concludes that potassium or sodium penicillin G powder for aqueous injection:

1. Is effective for the indications described in the labeling guidelines which follow.

2. Is possibly effective for treatment of yaws, bejel, pinta, and Borrelia infections (relapsing fever).

3. Lacks substantial evidence of effectiveness for its claimed indications: prophylaxis in major and minor surgery to prevent secondary infection; prophylaxis against infections caused by organisms that are susceptible to penicillin therapy; and treatment of leptospirosis.

B. *Labeling conditions.* Those parts of the labeling indicated below should be substantially as follows (optional additional information applicable to the drug may be proposed under other appropriate paragraph headings and should follow the information given below):

DESCRIPTION

(Descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

(The milliequivalents of sodium or potassium per million units of penicillin should be stated.)

ACTIONS AND PHARMACOLOGY

Penicillin G exerts a bactericidal action against penicillin sensitive micro-organisms during the stage of active multiplication. It acts through the inhibition of biosynthesis of cell wall mucopeptide. It is not active against the penicillinase-producing bacteria, which include many strains of streptococci. Penicillin G exerts high in vitro activity against staphylococci (except penicillinase-producing strains), streptococci (groups A, C, G, H, L, and M) and pneumococci. Other organisms sensitive to penicillin G are *N. gonorrhoeae, Corynebacterium diphtheriae, Bacillus anthracis,* Clostridia, *Actinomyces bovis, Streptobacillus moniliformis, Listeria monocytogenes* and Leptospira. *Treponema pallidum* is extremely sensitive to the bactericidal action of penicillin G. Some species of gram negative bacilli are sensitive to moderate to high concentrations of the drug obtained with intravenous administration. These include most strains of *Escherichia coli,* all strains of *Proteus mirabilis,* Salmonella and Shigella and some strains of *Aerobacter aerogenes* and *Alcaligenes fecalis.*

Sensitivity Plate Testing: If the Kirby-Bauer method of disc sensitivity is used, a 10 unit penicillin disc should give a zone greater than 28 mm. when tested against a penicillin-sensitive bacterial strain.

Aqueous penicillin G is rapidly absorbed following both intramuscular and subcutaneous injection. Approximately 60 percent of the total dose of 300,000 units is excreted in the urine within this 5-hour period. For this reason high and frequent doses are required to maintain the elevated serum levels desirable in treating certain severe infections in individuals with normal kidney function. In neonates and young infants and in individuals with impaired kidney function, excretion is considerably delayed.

INDICATIONS

Aqueous penicillin G (parenteral) is indicated in the therapy of severe infections caused by penicillin G sensitive microorganisms when rapid and high penicillinemia is required. Therapy should be guided by bacteriological studies (including sensitivity tests) and by clinical response.

The following infections will usually respond to adequate dosage of aqueous penicillin G (parenteral):

*Streptococcal infections.*

NOTE: Streptococci in groups A, C, H, G, L, and M are very sensitive to penicillin G. Some group D organisms are sensitive to the high serum levels obtained with aqueous penicillin G.

Aqueous penicillin (parenteral) is the penicillin dosage form of choice for bacteremia, empyema, severe pneumonia, pericarditis, endocarditis, meningitis and other severe infections caused by sensitive strains of the gram positive species listed above.

*Pneumococcal infections.*

*Staphylococcal infections*—penicillin G sensitive.

*Other infections:*

Anthrax.

Actinomycosis.

Clostridial infections (including tetanus).

Diphtheria (to prevent carrier state).

Erysipeloid (Erysipelothrix insidiosa) endocarditis.

Fusospirochetal infections—severe infections of the oropharynx (Vincent's), lower respiratory tract and genital area due to *Fusobacterium fusiformisans* spirochetes.

Gram-negative bacillary infections (bacteremias)—(*E. coli, A. aerogenes, A. faecalis,* Salmonella, Shigella and *P. mirabilis.*)

Listeria infections (*Listeria monocytogenes*).

Meningitis and endocarditis.

Pasteurella infections (*Pasteurella multocida*).

Bacteremia and meningitis.

Rat-bite fever (*Spirillum minus* or *Streptobacillus moniliformis*).

Gonorrheal endocarditis and arthritis (*N. gonorrhoeae*).

Syphilis (*T. pallidum*) including congenital syphilis.

Meningococcic meningitis.

*Prophylaxis* against bacterial endocarditis in patients with rheumatic or congenital heart disease when undergoing dental or upper respiratory tract surgery or instrumentation, surgery of the lower intestinal tract, childbirth, and instrumentation of the genitourinary tract.

NOTE: Because patients who have a past history of rheumatic fever and are receiving continuous prophylaxis may harbor increased numbers of penicillin resistant organisms, use of another prophylactic antiinfective agent should be considered. If penicillin is to be used in these patients at surgery, the regular rheumatic fever program should be

interrupted 1 week prior to the contemplated surgery. At the time of surgery, penicillin may be reinstituted as a prophylactic measure against the hazards of surgically induced bacteremia.

CONTRAINDICATIONS

A history of a previous hypersensitivity reaction to any of the penicillins is a contraindication.

WARNING

(This section should be identical to the "Warning" section for Sodium Methicillin).

PRECAUTIONS

Penicillin should be used with caution in individuals with histories of significant allergies and/or asthma.

In streptococcal infections, therapy must be sufficient to eliminate the organism (10 days minimum) otherwise the sequelae of streptococcal disease may occur. Cultures should be taken following the completion of treatment to determine whether streptococci have been eradicated.

Aqueous penicillin G by the intravenous route in high doses (above 10 million units), should be administered slowly because of the adverse effects of electrolyte imbalance from either the potassium or sodium content of the penicillin. The patient's renal, cardiac and vascular status should be evaluated and if impairment of function is suspected or known to exist a reduction in the total dosage should be considered. Frequent evaluation of electrolyte balance, renal and hematopoietic function is recommended during therapy when high doses of intravenous aqueous penicillin G are used.

Prolonged use of antibiotics may promote overgrowth of nonsusceptible organisms, including fungi. Should superinfection occur, appropriate measures should be taken. Indwelling intravenous catheters encourage superinfections and should be avoided whenever possible.

Therapy of susceptible infections should be accompanied by any indicated surgical procedures.

ADVERSE REACTIONS

Penicillin is a substance of low toxicity but does have a significant index of sensitization. The following hypersensitivity reactions have been reported: Skin rashes ranging from maculopapular eruptions to exfoliative dermatitis; urticaria and reactions resembling serum sickness, including chills, fever, edema, arthralgia and prostration. Severe and occasionally fatal anaphylaxis has occurred (see Warnings).

Hemolytic anemia, leucopenia, thrombocytopenia, nephropathy, and neuropathy are rarely observed adverse reactions and are usually associated with high intravenous dosage. Patients given continuous intravenous therapy with potassium penicillin G in high dosage (10 million to 100 million units daily) may suffer severe or even fatal potassium poisoning, particularly if renal insufficiency is present. Hyperreflexia, convulsions and coma may be indicative of this syndrome. (High dosage of sodium penicillin G may result in congestive heart failure due to high sodium intake.)

The Jarisch-Herxheimer reaction has been reported in patients treated for syphilis.

ADMINISTRATION AND DOSAGE

*Severe infections due to Susceptible Strains of Streptococci, Pneumococci and Staphylococci*—bacteremia, pneumonia, endocarditis, petricarditis, empyema, meningitis and other severe infections—a minimum of 5 million units daily.

*Syphilis*—Aqueous penicillin G may be used in the treatment of acquired and congenital syphilis, but because of the necessity of frequent dosage hospitalization is recommended. Dosage and duration of therapy will be determined by age of patient and stage of the disease.

*Gonorrheal Endocarditis*—a minimum of 5 million units daily.

*Meningococcic meningitis*—1–2 million units intramuscularly every 2 hours or continuous I.V. drip of 20–30 million units/day.

*Actinomycosis*—1–6 million units/day for cervico-facial cases; 10–20 million units/day for thoracic and abdominal disease.

*Clostridial infections*—20 million units/day; penicillin is adjunctive therapy to antitoxin.

*Fusospirochetal infections*—severe infections of oropharynx, lower respiratory tract and genital area—5–10 million units/day.

*Rat-bite Fever* (*Spirillum minus* or *streptobacillus moniliformis*)—12–15 million units/day of 3–4 weeks.

*Listeria infections* (*Listeria monocytogenes*).

Neonates—500,000 to 1 million units/day.

Adults with meningitis—15–20 million units/day for 2 weeks.

Adults with endocarditis—15–20 million units/day for 4 weeks.

*Pasteurella infections* (*Pasteurella Multocida*).

Bacteremia and meningitis—4–6 million units/day for 2 weeks.

*Erysipeloid* (*Erysipelothrix insidiosa*).

Endocarditis 2–20 million units/day for 4–6 weeks.

*Gram-negative bacillary infections* (*E. coli, A. aerogenes, A. faecalis,* Salmonella, Shigella and *Proteus mirabilis*).

Bacteremia—20–80 million units/day.

*Diphtheria* (carrier state).

300,000–400,000 units of penicillin/day in divided doses for 10–12 days.

*Anthrax*—

A minimum of 5 million units of penicillin/day in divided doses until cure is effected.

Prophylaxis *Against Bacterial Endocarditis* in patients with rheumatic or congenital heart disease when undergoing dental or other operative procedures.

600,000 units of procaine penicillin G the day of operation.

600,000 units of aqueous penicillin G (K or Na) 1–2 hours before operation.

600,000 units of procaine penicillin G daily for 2 days following operation.

*Preparation and Storage of Solution:* (To be included by manufacturer or distributor.)

X. *Chloroprocaine penicillin O for (aqueous) injection*—A. *Effectiveness classification.* The Food and Drug Administration concludes that chloroprocaine penicillin O for injection:

1. Is effective or probably effective for the indications described in the labeling guidelines which follow. The indications regarded as probably effective are: Anaerobic streptococcal infection and prevention of bacterial endocarditis in patients with rheumatic or congenital heart disease who are undergoing dental manipulation, oral surgery, or bronchoscopy.

2. Is possibly effective for: prophylaxis of infections caused by organisms that are susceptible to penicillin therapy; Borrelia infections; and leptospirosis.

3. Lacks substantial evidence of effectiveness for its claimed indications: Actinomycosis; clostridial infections; and treatment of pneumococcal, meningococcal, streptococcal and staphylococcal meningitis.

B. *Labeling conditions.* Those parts of the labeling indicated below should be substantially as follows (optional additional information applicable to the drug may be proposed under other appropriate paragraph headings and should follow the information given below):

DESCRIPTION

(Descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

ACTIONS AND PHARMACOLOGY

Penicillin O exerts a bactericidal action against penicillin sensitive microorganisms during the stage of active multiplication. It acts through the inhibition of biosynthesis of cell wall mucopeptide. It is not active against the penicillinase-producing bacteria, which include many strains of staphylococci. Penicillin O exerts high in vitro activity against staphylococci (except penicillinase-producing strains), streptococci (groups A, C, G, H, L, and M) and pneumococci. Other organisms sensitive to penicillin O are *N. gonorrhoeae, Corynebacterium diphtheriae, Bacillusanthracis, Clostridia, Actinomyces bovis, Streptobacillus moniliformis, Listeria monocytogenes* and Leptospira. *Treponema pallidum* is extremely sensitive to the bactericidal action of penicillin O.

Sensitivity Plate Testing: If the Kirby-Bauer method of disc sensitivity is used, a 10-unit penicillin disc should give a zone greater than 28 mm. when tested against a penicillin-sensitive bacterial strain.

Chloroprocaine penicillin O is an equimolecular compound of procaine and allylmercaptomethyl penicillin administered intramuscularly as a suspension. It dissolves slowly at the site of injection, giving a plateau type of blood level at about 4 hours which falls slowly over a period of the next 15–20 hours. Blood levels attained with chloroprocaine penicillin O approximate those of an equal dose of procaine penicillin G; however, they usually persist slightly longer. This additional persistence of the very low blood level is of no particular clinical significance.

Approximately 60% of penicillin O is bound to serum protein. The drug is distributed throughout the body tissues in widely varying amounts. Highest levels are found in the kidneys with lesser amounts in the liver, skin, and intestines. Penicillin O penetrates into all other tissues to a lesser degree with a very small level found in the cerebrospinal fluid. With normal kidney function the drug is excreted rapidly by tubular excretion. In neonates and young infants and in individuals with impaired kidney function, excretion is considerably delayed. Approximately 60–90 percent of a dose of parenteral chloroprocaine penicillin O is excreted in the urine within 24–36 hours.

INDICATIONS

Chloroprocaine penicillin O is indicated in the treatment of moderately severe infections due to penicillin O sensitive microorganisms that are sensitive to the low and persistent serum levels common to this particular dosage form. Therapy should be guided by bacteriological studies (including sensitivity tests) and by clinical response.

NOTE: When high sustained serum levels are required, an aqueous penicillin either I.M. or I.V. should be used.

Severe pneumonia, empyema, bacteremia, pericarditis, meningitis, peritonitis and arthritis of pneumococcal etiology are better treated with an aqueous penicillin during the acute stage.

Indicated surgical procedures should be performed.

The following infections will usually respond to adequate dosage of parenteral chloroprocaine penicillin O.

*Streptococcal infections* (without bacteremia). Moderately severe to severe infections of the upper respiratory tract, scarlet fever, and erysipelas.

NOTE: Streptococci in groups A, C, H, G, L, and M are very sensitive to penicillin O. Other groups, including group D (enterococcus) are resistant. Aqueous penicillin in high doses is recommended for streptococcal infections with bacteremia.

*Pneumococcal infections.* Moderately severe infections of the respiratory tract.

*Staphylococcal infections*—Penicillin O sensitive. Moderately severe infections of the skin and soft tissues.

NOTE: Reports indicate an increasing number of strains of staphylococci resistant to penicillin emphasizing the need for culture and sensitivity studies in treating suspected staphylococcal infections.

*Fusospirochetosis* (Vincent's gingivitis and pharyngitis). Moderately severe infections of the oropharynx respond to therapy with chloroprocaine penicillin O.

NOTE: Necessary dental care should be accomplished in infections involving the gum tissue.

*Treponema pallidum* (syphilis); all stages.

*N. gonorrhoeae;* acute and chronic (without bacteremia).

*Yaws, Bejel, Pinta.*

*C. diphtheriae*—Chloroprocaine penicillin O as an adjunct to antitoxin for prevention of the carrier stage.

*Anthrax.*

*Streptobactillusmoniliformis* and *Spirillum minus* (rat-bite fever).

*Erysipeloid.*

*Subacute bacterial endocarditis* (Group A streptococcus) only in extremely sensitive infections.

*Prophylaxis against bacterial endocarditis.* Chloroprocaine penicillin O may be given to patients with congenital and/or rheumatic heart lesions who are to undergo dental or upper respiratory tract surgery or instrumentation. Prophylaxis should be instituted the day of the procedure and continued for 2 or more days following.

NOTE: Because patients who have a past history of rheumatic fever and are receiving continuous prophylaxis may harbor increased numbers of penicillin-resistant organisms, use of another prophylactic anti-infective agent should be considered. If penicillin is to be used in these patients at surgery, the regular rheumatic fever program should be interrupted 1 week prior to the contemplated surgery. At the time of surgery, penicillin may be reinstituted as a prophylactic measure against the hazards of surgically induced bacteremia.

CONTRAINDICATIONS

A history of a previous hypersensitivity reaction to any penicillin is a contraindication.

WARNING

(This section should be identical to the "Warning" section for Sodium Methicillin.)

PRECAUTIONS

(This section should be identical to the "Precautions" section for Procaine Penicillin G Injection.)

ADVERSE REACTIONS

(This section should be identical to the "Adverse Reactions" section for Procaine Penicillin G Injection.)

ADMINISTRATION AND DOSAGE

Chloroprocaine penicillin O is for intramuscular injection only.

*Recommended dosage for chloroprocaine penicillin O:*

Pneumonia (pneumococcal) moderately severe (uncomplicated).

600,000–1 million units daily.

*Streptococcal infections* (group A), moderately severe to severe tonsilitis, erysipelas, scarlet fever, upper respiratory tract, skin and soft tissue.

600,000–1 million units daily for 10-day minimum.

*Staphylococcal infections,* moderately severe to severe.

600,000–1 million units daily.

*Bacterial endocarditis* (group A streptococci), only in extremely sensitive infections.

600,000–1 million units daily.

To prevent bacterial endocarditis in patients with rheumatic or congenital heart lesions who are to undergo dental or upper respiratory tract surgery or instrumentation.

600,000 units chloroprocaine penicillin O aqueous the day of the procedure.

600,000 units aqueous penicillin O 1–2 hours before surgery.

600,000 units chloroprocaine penicillin O aqueous daily for 2 days following surgery.

*Syphilis.* Primary, secondary and latent with a negative spinal fluid in adults and children of 12 years of age.

600,000 units daily for 8 days—total 4,800,000 units.

Late (tertiary, neurosyphilis and latent syphilis with positive spinal fluid examination or no spinal fluid examination).

600,000 units daily for 10–15 days total 6–9 million units.

Congenital syphilis under 70-pound body weight.

10,000 units/kg./day for 10 days.

*Yaws, Bejel, and Pinta*—Dosage same as therapy for late syphilis.

*Gonococcal infections* (uncomplicated).

2.4 million units in 1-day treatment for males.

4.8 million units in 1-day treatment for females.

NOTE: Gonococcus endocarditis should be treated intensively with aqueous penicillin O.

*Diphtheria*—Adjunctive therapy with antitoxin.

300,000–600,000 units daily.

*Diphtheria carrier state.*

300,000 units daily for 10 days.

*Anthrax-cutaneous.*

600,000–1 million units/day.

*Vincent's infection (fusospirochetosis).*

600,000–1 million units/day.

*Erysipeloid.*

600,000–1 million units/day.

*Streptobacillus moniliformis and spirillum minus* (rat-bite fever).

600,000–1 million units/day.

*Preparation and storage of suspension:* (To be included by manufacturer or distributor.)

XI. *Potassium phenethicillin (oral)*—A. *Effectiveness classification.* The Food and Drug Administration concludes that oral potassium phenethicillin:

1. Is effective for the indications described in the labeling guidelines which follow.

2. Is possibly effective for prostatitis and for the broad claim, for other infections caused by susceptible organisms.

3. Lacks substantial evidence of effectiveness for its claimed indications: the treatment of gonorrheal urethritis, other gonococcal infections, and puerperal sepsis.

B. *Labeling conditions.* Those parts of the labeling indicated below should be substantially as follows (optional additional information applicable to the drug may be proposed under other appropriate paragraph headings and should follow the information given below):

DESCRIPTION

(Descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

ACTIONS AND PHARMACOLOGY

Phenethicillin exerts a bactericidal action against penicillin sensitive microorganisms during the stage of active multiplication. It acts through the inhibition of biosynthesis of cell wall mucopeptide. It is not active against the penicillinase producing bacteria, which include many strains of staphylococci.

Phenethicillin exerts high in vitro activity against staphylococci (except penicillinase-producing strains), streptococci (groups A, C, G, H, L, and M) and pneumococci. Other organisms sensitive in vitro to phenethicillin are *N. gonorrhoeae, Corynebacterium diphtheriae, Baccillus anthracis,* Clostridia, *Actinomyces bovis, Streptobacillus moniliformis, Listeria monocytogenes* and Leptospira. *Treponema pallidum* is extremely sensitive.

Phenethicillin exhibits exceptional stability in high gastric acidity and can be given without regard to meals. Slightly higher peak serum levels are found when it is given on an empty stomach. When given with food, absorption is slightly delayed and prolonged. Based on urinary excretion data, approximately 40–50% of the dose is absorbed in the upper intestinal tract. For this reason, 2–3 times the oral dose of phenethicillin must be given to obtain a blood level compared to that obtained with parenteral penicillin G.

Approximately 80% of the drug is bound to serum protein. It is distributed throughout the body tissues in widely varying amounts. Highest levels are found in the kidneys with lesser amounts in the liver, skin and intestines. Phenethicillin penetrates into all other tissues to a lesser degree; however, spinal fluid levels are extremely low. With normal kidney function the drug is excreted rapidly by tubular excretion. In neonates and young infants and in individuals with impaired kidney function, excretion is considerably delayed. Approximately 30 percent of a dose of phenethicillin is excreted in the urine under normal circumstances.

INDICATIONS

Oral phenethicillin is indicated in the treatment of mild to moderately severe infections due to penicillin G sensitive microorganisms that are sensitive to the lower serum levels common to this particular dosage form. Therapy should be guided by bacteriological studies (including sensitivity tests) and by clinical response.

NOTE: Severe pneumonia, empyema, bacteremia, pericarditis, meningitis, and arthritis should not be treated with phenethicillin during the acute stage.

Indicated surgical procedures should be performed.

The following infections will usually respond to adequate dosage of phenethicillin.

*Streptococcal infections* (without bacteremia). Mild to moderate infections of the upper respiratory tract, scarlet fever, and mild erysipelas.

NOTE: Streptococci in groups A, C, H, G, L, and M are very sensitive to penicillin. Other groups, including group D (enterococcus) are resistant.

*Pneumococcal infections.* Mild to moderately severe infections of the respiratory tract.

*Staphylococcal infections*—penicillin sensitive. Mild infections of the skin and soft tissues.

NOTE: Reports indicate an increasing number of strains of staphylococci resistant to penicillin G, emphasizing the need for culture and sensitivity studies in treating suspected staphylococcal infections.

*Fusospirochetosis* (Vincent's gingivitis and pharyngitis)—Mild to moderately severe infections of the oropharynx usually respond to therapy with oral penicillin.

NOTE: Necessary dental care should be accomplished in infections involving the gum tissue.

*Medical conditions in which oral penicillin therapy is indicated as prophylaxis:*

*For the Prevention of Recurrence Following Rheumatic Fever and/or Chorea*—Prophylaxis with oral penicillin on a continuing basis has proven effective in preventing recurrence of these conditions.

*To Prevent Bacterial Endocarditis in Patients with Congenital and/or Rheumatic Heart Lesions* who are to undergo dental procedures or minor upper respiratory tract surgery or instrumentation. Prophylaxis should be instituted the day of the procedure and for 2 or more days following. Patients who have a past history of rheumatic fever and are receiving continuous prophylaxis may harbor increased numbers of penicillin-resistant organisms. Use of another prophylactic anti-infective agent should be considered. If penicillin is to be used in these patients at surgery, the regular rheumatic fever program should be interrupted one week prior to the contemplated surgery. At the time of surgery, penicillin may be reinstituted as a prophylactic measure against the hazards of surgically induced bacteremia.

NOTE: Oral penicillin should not be used as adjunctive prophylaxis for genitourinary instrumentation or surgery, lower intestinal tract surgery, sigmoidoscopy and childbirth.

CONTRAINDICATIONS

A history of a previous hypersensitivity reaction to any penicillin is a contraindication.

WARNING

(This section should be identical to the "Warning" section for Sodium Methicillin.)

PRECAUTIONS

(This section should be identical to the "Precautions" section for Phenoxymethyl Penicillin for oral use.)

ADVERSE REACTIONS

(This section should be identical to the "Adverse Reactions" section for Phenoxymethyl Penicillin for oral use.)

ADMINISTRATION AND DOSAGE

The dosage of phenethicillin should be determined according to the sensitivity of the causative microorganisms and the severity of infection, and adjusted to the clinical response of the patient.

The usual dosage recommendations for adults and children 12 years and over are as follows:

*Streptococcal infections*—mild to moderately severe—of the upper respiratory tract and including scarlet fever and erysipelas.

125–250 mg. (200,000–400,000 units) q. 6–8 hours for 10 days.

*Pneumococcal infections*—mild to moderately severe—of the respiratory tract, including otitis media.

125–250 mg. (200,000–400,000 units) q. 4–6 hours until the patient has been afebrile for at least 2 days.

*Staphylococcal infections*—mild infections of skin and soft tissue (culture and sensitivity tests should be performed).

125–250 mg. (200,000–400,000 units) q. 6–8 hours.

*Fusospirochetosis (Vincent's infection)* of the oropharynx. Mild to moderately severe infections.

125–250 mg. (200,000–400,000 units) q. 6–8 hours.

For the prevention of recurrence following rheumatic fever and/or chorea:

125 mg. (200,000 units) twice daily on a continuing basis.

To prevent bacterial endocarditis in patients with rheumatic or congenital heart lesions who are to undergo dental or minor upper respiratory tract surgery or instrumentation.

375 mg. (600,000 units) given the day of the procedure, 500,000 units aqueous penicillin G I.M. one hour before the procedure and 375 mg. (600,000 units) every 6 hours for 2 days.

NOTE: Therapy for children under 12 years of age is calculated on the basis of body weight. For infants and small children the suggested dose is 12.5–50 mg. (20,000–100,000 units) per kg. per day in 3 to 6 divided doses.

Representatives of the Administration are willing to meet with any interested person who desires to have a conference concerning proposed changes in the labeling set forth in this announcement. Requests for such meetings should be made to the Division of Anti-Infective Drugs (BD–140) at the address given below, within 30 days after the publication of this notice in the FEDERAL REGISTER.

A copy of the NAS-NRC report has been furnished to each firm referred to above. Any other interested person may obtain a copy by request to the appropriate office named below.

Communications forwarded in response to this announcement should be identified with the reference number DESI 5316 and be directed to the attention of the following appropriate office and addressed unless otherwise specified to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852:

Amendments: (Identify with NDA number) Division of Anti-Infective Drugs (BD–140), Office of New Drugs, Bureau of Drugs.

Other communications regarding this announcement: Special Assistant for Drug Efficacy Study Implementation (BD–201), Bureau of Drugs.

Requests for NAS-NRC Report: Press Relations Staff (CE–200), 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050–51, as amended, 59 Stat. 463, as amended; 21 U.S.C. 352, 357) and under authority delegated to the Commissioner of Food and Drug (21 CFR 2.120).

Dated: July 6, 1970.

CHARLES C. EDWARDS,
*Commissioner of Food and Drugs.*

[F.R. Doc. 70–9718; Filed, July 28, 1970; 8:45 a.m.]

# CIVIL AERONAUTICS BOARD

[Docket No. 22387; Order 70–7–109]

## RAILWAY EXPRESS AGENCY, INC., ET AL.

### Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 23d day of July 1970.

By tariff revisions filed June 25 and marked to become effective July 27, 1970, Railway Express Agency, Inc. (REA), and air carriers participating in the tariffs with REA propose to revise the structure of air express rates and charges in the United States and between the United States and Canada. The proposal involves increasing the minimum charge from $8.00 to $8.50 per shipment under both general and most specific commodity rates. It also involves significant revisions in general commodity rates, both increases and decreases. The increases would typically affect the rates for relatively small shipments and short hauls while rates for larger shipments and longer hauls would be reduced.

Complaints requesting investigation and suspension were submitted by Muzak, a Division of Wrather Corp. (Muzak), and by the Air Freight Forwarders Association, representing nine member forwarders (AFFA). Muzak's complaint protests the increases in rates proposed, and claims that, without REA's services at reasonable rates, Muzak would suffer serious and irreparable injury.

AFFA protests the rate reductions proposed, inter alia, on the grounds that the proposals would eliminate air freight forwarder participation in the "historic" forwarder markets, that the proposed rates would involve destructive competition since they would be below the apparent total cost of the service, that REA's returns would be below its own costs, and that the reduced rates would be maintained through the revenues gained from sharp rate increases proposed in the short-haul, small-shipment markets and through the airlines' subsidy of REA in these markets. The complaint also asserts that the proposal would place REA in the forwarding business without reexamination of the statutory and policy problems involved, such as REA's monopoly "priority" in airlift not available to independent forwarders.

In support of their filings and in answer to the complaints, REA and the participating airlines variously assert, among other things, that (1) the proposed rates will reflect changes consistent with operating costs for both REA and the airlines, (2) the reduced rates for long-haul shipments will be responsive to the Board's expressed desires to have such rates more nearly reflect operating costs, (3) the revenues to REA will cover no more than costs plus a fair return, considering the sharp inflation that has occurred in labor and other costs, (4)

the cost justification presented by REA actually understates its actual costs, (5) the airlines' revenues from express traffic have not kept pace with cost increases, (6) the airlines' express revenues per ton-mile reflect the value of priority service for express shipments and higher airline costs of rendering such service, (7) that the forwarders' complaint contains certain factual errors, and (8) the airlines' revenues from express must be evaluated in the light of the circuitous mileage actually flown and the interline handling required by many express shipments.

Upon consideration of all relevant factors, the Board finds that the proposals listed in Appendix A[1] may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. Furthermore, to the extent that the tariff provisions would apply to shipments within the United States, the tariff provisions should be suspended pending investigation.

The proposed revisions involve both significant increases and decreases in costs to the public but we do not believe that they have been adequately justified. The minimum air express charge for both general and specific commodity rated air express shipments would rise from $8.00 to $8.50 per shipment. It should be noted, however, that REA filed its $8.00 minimum charge effective May 28, 1970, representing an increase from $6.00 per shipment. Thus, the proposed minimum charge represents an increase of almost 42 percent above the charge in effect approximately 2 months ago. It should be noted, furthermore, that the $6.00 minimum charge has been in effect only since June 18, 1969, while the prior charge was $5.50, which in turn had been in effect less than 3 years. Previously, the charge was $4.70.

REA's proposed increases in general commodity rates involve increases for small shipments, especially in markets involving short hauls. For markets below 250 miles the increases would be as much as 85 percent over current levels. For the foregoing markets, the rates proposed will involve increases by as much as 138 percent above the rates quoted prior to May 28, 1970. For the longer hauls and larger shipments, reductions are proposed as high as 24 percent. The forwarders, in their complaints, claim that those reductions will threaten their existence.

In the current air express rate, structure rates are published for each pound of shipment weight for various lengths of haul up to 100 pounds, with larger shipments rated on the basis of the 100-pound rate. The proposal would involve lower rates per pound for larger shipments in 10-pound groups up to and including 300 pounds. The proposed revisions would make REA more competitive in the larger shipment market and raise certain fundamental questions of great import to both forwarders and the general public.

We are of the opinion that the justifications presented by REA and the airlines are not adequate to support the proposed rate structure. REA, for example, includes a return element based upon an operating ratio of 90 percent. The use of an operating ratio to calculate the earnings element has not been accepted by the Board, which has generally considered that the appropriate method of computing earnings element is in terms of a return on investment capital. An investigation would be a proper vehicle to determine the appropriate rate of return on investment and other costs presented by REA, including the allowance made for inflation.

We shall also suspend, pending investigation, the increase proposed in the excess value rate from 18 cents to 30 cents per $100 of excess valuation. Excess valuation declarations apply to the value of the shipment above 50 cents per pound or $50 per shipment, which is the assumed liability of REA and the airlines for loss or damage and which is covered by the basic air express charges. Airlines typically charge 10 cents per $100 of excess valuation, while most forwarders charge 10 or 15 cents. The Board does not believe that the charges should exceed the costs of the additional coverage. No support has been advanced for this proposed increase and accordingly this proposal will be suspended pending investigation.

The tariff rates must be reasonably related to the total costs of the service, embracing those of the direct air carriers as well as those of REA. In order to assure that the rates and charges cover the costs and a reasonable profit element to both the direct air carriers and to REA but not in excess thereof, it will be necessary that the investigation be directed to both the rates and charges proposed and the divisions of such rates and charges between the air carriers and REA.[2]

Accordingly, pursuant to provisions of the Federal Aviation Act of 1958:

*It is ordered*, That:

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

2. Pending hearing and decision by the Board, the rates, minimum charges, and provisions described in Appendix A attached hereto[1] (except rates, minimum charges, and provisions applying to or from Canadian points) are suspended and their use deferred to and including October 24, 1970, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The scope of the investigation instituted by ordering paragraph 1 above shall include the issue as to whether the divisions of the rates and charges described in Appendix A[1] are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the Railway Express Agency, Inc., and the air carriers and foreign air carriers parties thereto, and if so, to prescribe the just, reasonable, and equitable divisions thereof to be received by the several air carriers.

4. The complaints of the Air Freight Forwarders Association, in Docket 22352, and Muzak, a Division of Wrather Corp., in Docket 22347, are hereby dismissed except to the extent granted herein;

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

6. A copy of this order shall be filed with the tariffs and served upon the carriers listed in Appendix B,[3] which are hereby made parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
*Secretary.*

[F.R. Doc. 70-9763; Filed, July 28, 1970; 8:49 a.m.]

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[Docket No. 22096, etc.; Order 70-7-110]

## RAILWAY EXPRESS AGENCY, INC., ET AL.

### Order Deferring Action on Agreement and Instituting Investigation

Petition and complaint of REA Express, Inc., Docket 22096; agreement filed pursuant to section 412 of the Federal Aviation Act of 1958, as amended, between Allegheny Airlines, Inc., certain other air carriers, foreign air carriers, and Railway Express Agency, Inc., relating to air express service, Agreement CAB 17935-A5; Express service investigation, Docket 22388.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 23d day of July 1970.

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

[2] By Order 70-7-110, issued concurrently herewith, action on the Air Express Agreement C.A.B. 17935 A5 is deferred. This action of deferral, however, should not be construed as deferring action on the investigation of the rates and charges or of the divisions thereof.

[3] Appendix B filed as part of the original document.

On June 25, 1970, the parties[1] to the air express agreement filed pursuant to section 412 of the Act a further amendment to that agreement.[2] On the same date the parties filed a new air express tariff, to become effective July 27, 1970. The effectiveness of the amended agreement is tied to that of the proposed tariff and will become effective on the same date that the tariff becomes effective. The agreement will terminate at midnight, June 30, 1971.

The amended agreement establishes a new formula for the division of gross air express revenues, and places greater responsibility on the airlines for the movement of air express where substitute service is necessary because of unavailable, inadequate, or interrupted air transportation, and for loss and damage claims.

During the past year revenues were divided on the basis of a formula allowing REA approximately 59 percent and the airlines 41 percent. The new division of revenue appended to the agreement changes this percentage division. REA will receive as its share of the revenues a relatively constant dollar amount, regardless of length of haul. The airline revenue, on the other hand, is based on a ton-mile yield, subject to a minimum return of $2.50 per shipment. The effect of this is to give REA a relatively high percentage of the revenues on short-haul and small-sized shipments where terminal and shipment costs account for a high percentage of the total costs, and to give the airlines a higher percentage of the revenues on large-volume and longer-haul movements where flight costs represent a higher proportion of the total costs. In the overall, REA will receive approximately 65 percent of gross air express revenues and the airlines 35 percent.

Comments opposing the amended agreement and the tariff to which it is keyed were filed by the Air Freight Forwarders Association (AFFA), to which REA filed an answer.

Upon consideration thereof, the Board has decided to defer taking action on Agreement CAB 17935–A5. We would be disposed to approve the concepts embodied in Agreement CAB 17935–A5. However, the division of revenue provisions of that agreement are keyed, in specific dollar terms, to the provision of the express tariff contemporaneously filed by REA. As noted in Order 70–7–109, issued concurrently herewith, we are suspending that tariff and setting it for investigation. In such circumstances it would serve no useful purpose to approve the amended express agreement now before us. Instead we shall defer acting on Agreement CAB 17935–A5, and invite the parties either to agree to extend the existing agreement pending the outcome of the Express Service Investigation, infra, or to embody in an amended agreement their new revenue division formula in terms of the existing express tariff. In either event, by so acting the parties' action will allow the continuation of the air express service during the time in which the Board and the parties will be exploring the longer-range future of this service in the Express Service Investigation.

It has been some time since the Board explored the role of REA Express in the national air transportation network. This was last done in the Airfreight Forwarder Investigation decided in 1955,[3] where the Board agreed generally with the Examiner's conclusion that despite its monopoly of the air express business no change in its status was warranted.[4] Thus, we believe with this passage of time a formal review of REA's role in the movement of air express, as well as the current relationships between REA and the direct air carriers, is required by the public interest. Therefore, the Board has decided to institute an investigation to determine what the future role in air transportation should be with regard to express or priority type cargo service, and what Board action should be taken with regard thereto, including but not limited to (a) whether the public convenience and necessity require the alteration amendment, or modification of the certificates of the scheduled air carriers to authorize the provision by the certificated scheduled airlines of a distinct class of priority cargo service (such as air express) either directly or indirectly by the airlines or through indirect air carriers, or both; (b) whether licenses for such air express service should be issued to one or more indirect air carriers (such as REA or air freight forwarders) to conduct such service independently of any joint agreement with the airlines; and (c) whether the existing concept of an air express agreement between the direct air carriers and an air express company should be maintained.

We conceive this investigation to be broad in scope, and that it will explore such underlying questions, inter alia, as whether the service currently being provided by REA is actually an express or priority service differentiated from other airfreight services; whether such a priority service is susceptible of actually being provided—by REA or by anybody else; whether there is a need for separate express service; who, if anybody, should provide such service; whether the direct air carriers should establish a special tariff (and corresponding special service) for express traffic; whether such a tariff should be available to any shipper, or just to the authorized express company; and depending on how such issues are resolved, whether REA should be granted authorization under Part 296 of our economic regulations (14 CFR Part 296) to be a domestic airfreight forwarder, and whether the Board should terminate its approval of Agreement CAB 12866.[5]

Concurrently herewith we are instituting an investigation to determine the lawfulness of the new express tariff filed by REA and the carriers.[6] The issues to be tried therein, and those to be determined herein, encompass in broader scope many of the matters raised by REA in its petition and complaint in Docket 22096. We shall, therefore, dismiss REA's petition and complaint in Docket 22096, without prejudice to any subsequent filing by REA with respect to matters not within the scope of the investigations referred to above.

*Accordingly, it is ordered*, That:

1. Action on Agreement CAB 17935–A5 be and it hereby is deferred;

2. An investigation, to be known as Express Service Investigation, be instituted for the purpose of exploring the future role of express or priority cargo service in air transportation, and what Board action should be taken with regard thereto, including, but not limited to:

(a) Whether the public convenience and necessity require alteration, amendment, or modification of the certificates of the scheduled air carriers to authorize the provision by the scheduled certificated airlines of a distinct class of priority cargo service (such as air express) either directly by the airlines or through indirect air carriers, or both;

(b) Whether licenses for such express service should be issued to one or more indirect air carriers (such as REA or air freight forwarders) to conduct such service independently of any joint agreement with the airlines; and

[1] See the following list:
Air Canada.
Airlift International, Inc.
Air West, Inc.
Alaska Airlines, Inc.
Allegheny Airlines, Inc.
American Airlines, Inc.
Aspen Airways, Inc.
Braniff Airways, Inc.
Caribbean-Atlantic Airlines, Inc.
Compagnie Nationale Air France.
Continental Air Lines, Inc.
Delta Air Lines, Inc.
Eastern Air Lines, Inc.
The Flying Tiger Line, Inc.
Frontier Airlines, Inc.
Los Angeles Airways, Inc.
Mohawk Airlines, Inc.
National Airlines, Inc.
New York Airways, Inc.
North Central Airlines, Inc.
Northeast Airlines, Inc.
Northwest Airlines, Inc.
Ozark Air Lines, Inc.
Pan American World Airways, Inc.
Piedmont Aviation, Inc.
San Francisco and Oakland Helicopter Airlines, Inc.
Seaboard World Airlines, Inc.
Southern Airways, Inc.
Texas International Airlines, Inc.
Trans Caribbean Airways, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.
Western Air Lines, Inc.
REA Express, Inc.

[2] Under amendments approved by Order 69–11–130, Nov. 26, 1969, and Order 70–7–39, dated July 8, 1970, the present air express agreement is in effect until July 31, 1970.

[3] 21 CAB 536.

[4] REA now operates pursuant to an individual exemption from section 401(a) of the Act last modified by Order E–22273, June 4, 1965. Such exemption by its terms is tied to the air express agreement with the airlines herein discussed.

[5] Agreement among certain air carriers relating to Air Express Service, approved in Order E–13764, Apr. 21, 1959, as modified by Order E–13944, May 28, 1959.

[6] Order 70–7–109, July 23, 1970, Docket 22387.

(c) Whether the existing concept of an air express agreement between the direct air carriers and an express company should be maintained;

3. All parties to the Air Express Agreement between REA Express and Certain Air Carriers, Agreement CAB 17935, as amended, and the Air Freight Forwarders Association be and they hereby are made parties to this proceeding, and will be served with a copy of this order;

4. This proceeding be set down for hearing before an Examiner of the Board at a time and place hereafter to be designated, and will be assigned Docket 22388;

5. Motions to consolidate applications herewith be filed within 30 days after the date of this order; and

6. The petition and complaint of REA Express in Docket 22096 be and it hereby is dismissed.

This order will be served on the Post Office Department and on the Departments of Defense, Justice, and Transportation, and will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
*Secretary.*

[F.R. Doc. 70-9764; Filed, July 28, 1970; 8:49 a.m.]

# CIVIL SERVICE COMMISSION

## DEPARTMENT OF AGRICULTURE

### Notice of Revocation 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 revokes the authority of the Department of Agriculture to fill by noncareer executive assignment in the excepted service the position of Deputy General Sales Manager, Foreign Agricultural Service.

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

[F.R. Doc. 70-9723; Filed, July 28, 1970; 8:45 a.m.]

# FEDERAL MARITIME COMMISSION

## FORWARDERS INTERMODAL CONTAINER ORGANIZATION

### Notice of Agreement Filed; Correction

On July 21, 1970, at 35 F.R. 11642, notice of the filing of Agreement No. 9646-1 was published. The notice is corrected as follows: (1) The reference to "Consolidated Forwarders Intermodal Corp." appearing in the heading, should be to "Forwarders Intermodal Container Organization"; (2) the reference to "Consolidated Forwarders Intermodal Corp." and/or "CONFICO" appearing in the fifth paragraph and the final sentence of the sixth paragraph should be to "Forwarders Intermodal Container Organization"; and (3) the reference to "(Consolidated Forwarders Intermodal Corp.)" in the first sentence of the sixth paragraph is correct.

The purpose of this correction is to clarify that the Forwarders Intermodal Container Organization Agreement (No. 9646) will be terminated upon approval of Agreement No. 9646-1. However, the Consolidated Forwarders Intermodal Corp. (CONFICO) will not be terminated by this action.

The notice is correct in all other respects. Time for comments remains unchanged.

Dated: July 24, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
*Secretary.*

[F.R. Doc. 70-9756; Filed, July 28, 1970; 8:48 a.m.]

[Docket No. 70-26]

## SOPAC TRANSPORT CORP. AND ALLPORTS FREIGHT FORWARDING, INC.

### Order To Show Cause

Sopac Transport Corp. (Sopac), 1 Whitehall Street, New York, N.Y. 10004, was issued Independent Ocean Freight Forwarder License No. 832 in October 1964. Allports Freight Forwarding, Inc. (Allports) is a newly incorporated firm located at 1040 Biscayne Boulevard, Miami, Fla. 33132, which has applied to the Commission for an independent ocean freight forwarder license.

Sopac and Allports are wholly owned by a stockholder and director of Proteus Foods & Industries, Inc. (Proteus). A division of Proteus, Pacmarine Products (Pacmarine), is a shipper of seafoods and vegetables to Puerto Rico and other Caribbean areas.

Section 1, Shipping Act, 1916 (46 U.S.C. 801) provides that:

> An "independent ocean freight forwarder" is a person carrying on the business of forwarding for a consideration who is not a shipper or consignee or a seller or purchaser of shipments to foreign countries, nor has any beneficial interest therein, nor directly or indirectly controls or is controlled by such shipper or consignee or by any person having such a beneficial interest.

Section 44(b) of the Act (46 U.S.C. 841(b)) provides that the Commission shall grant a license to an otherwise qualified applicant therefor if such applicant is or will be an independent ocean freight forwarder as defined in section 1 of the Act.

The owner of Sopac and Allports proposes to assign his shares of the Proteus stock to a trustee if the Commission finds that such assignment would negate the beneficial interest in Proteus within the meaning of sections 1 and 44 of the Act, and § 510.21(1) of Federal Maritime Commission General Order 4 (46 CFR). The draft agreement provides that (1) the owner would resign as a director of Proteus; (2) that the trustee would receive and retain all income, options, warrants, stock, or other rights derived from the shares of stock held in trust; and (3) that the trust agreement could not be modified without written approval by the Commission, or terminated until either the owner surrendered the freight forwarder licenses or Pacmarine terminated its export activity. The owner has proposed that such trust agreement might be modified to provide that none of the profits of Pacmarine which might be paid to Proteus would be paid into the trust and could in no way inure to the benefit of the owner.

It appears, however, that pursuant to the proposed agreement the owner will be the beneficiary of the trust and ultimately inherit all of its proceeds. This type trust does not appear to satisfy the statutory requirements of sections 1 and 44 of the Shipping Act, 1916.

*Therefore, it is ordered,* Pursuant to sections 1, 22 and 44 of the Act (46 U.S.C. 801, 821, 841b), that Sopac and Allports show cause why the Commission should not revoke Sopac's independent ocean freight forwarder license and deny Allports' application for an independent ocean freight forwarder license, even though the owner executes the trust agreement he has proposed.

*It is further ordered,* That this proceeding shall be limited to the submission of affidavits of fact, memoranda of law, replies and oral argument. Should the respondents feel that an evidentiary hearing be required, the respondents must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, and why such proof cannot be submitted through affidavit. Request for hearing shall be filed on or before August 17, 1970. Affidavits of fact and memoranda of law shall be filed by the respondent, unless otherwise ordered by the Commission, no later than close of business August 17, 1970. Replies thereto shall be filed by Hearing Counsel and intervenors, if any, no later than the close of business September 1, 1970. Respondents shall be given a further opportunity to answer the reply of Hearing Counsel and intervenors, if any, no later than the close of business September 1, 1970. An original and 15 copies of affidavits of fact, memoranda of law, and replies are required to be filed with the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Copies of any papers filed with the Secretary should also be served upon all parties hereto. Time and date of oral argument will be announced at a later date.

*It is further ordered,* That Sopac Transport Corp. and Allports Freight Forwarding, Inc., be made respondents in this proceeding.

*It is further ordered,* That notice of this order be published in the FEDERAL REGISTER and a copy thereof be served upon respondents.

*It is further ordered,* That any person other than those named as respondents

herein who desires to become a party to this proceeding and participate therein, shall file a petition to intervene in accordance with Rule 5(1) (46 CFR 502.72) of the Commission's rules of practice and procedure.

*It is further ordered*, That all future notices issued by or on behalf of the Commission in this proceeding, shall be mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[F.R. Doc. 70-9755; Filed, July 28, 1970; 8:48 a.m.]

# FEDERAL POWER COMMISSION

[Docket No. E-7476]

## BALTIMORE GAS AND ELECTRIC CO.

### Notice of Application

JULY 23, 1970.

Take notice that on July 13, 1970 Baltimore Gas and Electric Co. (Applicant), filed a Supplemental Application with the Federal Power Commission seeking authority to increase from $65 million to $85 million the amount of short-term unsecured promissory notes including commercial paper notes which it may have outstanding and to extend from December 31, 1972 to December 31, 1973, the latest maturity date of notes to be issued pursuant thereto.

The Commission on June 13, 1969 authorized the Applicant to have outstanding $65 million of such notes to mature not later than December 31, 1972.

Applicant is incorporated under the laws of the State of Maryland with its principal business office at Baltimore, Md., and is engaged in the electric, gas and steam utility businesses within the State of Maryland.

The notes are to be issued from time to time to banking institutions and/or sold to or through dealers in commercial paper of which the aggregate amount to be outstanding at any one time as commercial paper is not to exceed 25 percent of the Applicant's gross revenues during the preceding 12 months. The notes in the form of commercial paper will mature in no more than 270 days and all other notes will have maturities of up to 1 year from the date of issuance.

The proceeds from the issuance of the notes will be used as interim financing of the Applicant's $652 million 1970-72 construction program.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 10, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

GORDON M. GRANT, *Secretary.*

[F.R. Doc. 70-9734; Filed, July 28, 1970; 8:46 a.m.]

[Docket No. CP71-13]

## EL PASO NATURAL GAS CO.

### Notice of Application

JULY 23, 1970.

Take notice that on July 15, 1970, El Paso Natural Gas Co. (applicant), Post Office Box 1492, El Paso, Tex. 79999, filed in Docket No. CP71-13 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate approximately 14.3 miles of 12¾-inch O.D. pipeline looping a portion of its Northwest Division System Wenatchee Lateral in Benton County, Wash. Applicant states the proposed loopline will provide increased lateral capacity to serve the firm requirements of Cascade Natural Gas Corp. and the city of Ellensburg, Wash. The estimated firm peak day requirements are 52,674 Mcf of natural gas for the 1970-71 heating season and 53,840 Mcf of natural gas for the 1971-72 heating season. Applicant further states that the proposed loopline is dependent upon the grant of authorization in Docket No. CP71-6 and the Canadian authorization for the sale and exportation of natural gas pending in the application of Westcoast Transmission Co., Ltd.

The total estimated cost of the proposed facilities is $814,270, which will be financed by working funds and short-term borrowings.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 17, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

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

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

GORDON M. GRANT, *Secretary.*

[F.R. Doc. 70-9735; Filed, July 28, 1970; 8:46 a.m.]

[Docket No. RP70-31]

## GREAT LAKES GAS TRANSMISSION CO.

### Order Granting Rehearing in Part, Modifying Prior Order, Providing for Hearing, and Suspending Proposed Rate Increase Filing

JULY 23, 1970.

The Commission, by order issued in this proceeding on June 12, 1970, approved a rate increase filed on April 30, 1970, by Great Lakes Gas Transmission Co. (Great Lakes) in the annual amount of $7.4 million, and accepted the proposed revised tariff sheets for filing to be effective June 15, 1970, without suspension.

Consumers Gas Co. and St. Lawrence Gas Co. on June 23 jointly, and Northern and Central Gas Corp., and Union Gas Company of Canada, Ltd., on July 1, jointly, filed applications for rehearing and stay of the Commission's June 12 order. Great Lakes, on June 30 and July 10, filed answers to both applications for rehearing, together with motions for permission to file such answers. Consumers on July 8 and Union on July 20 filed answers to Great Lakes' motions for such permission. Answers to applications for rehearing are not permitted by our rules of practice and procedure, § 1.34(d), unless rehearing is granted. In light of our action herein, those pleadings should be accepted for filing.

Consumers' and Union's applications for rehearing essentially restate their arguments set forth in their petitions to intervene and protests which were discussed in our January 12 order. However, the pleadings now before us inferentially raise a point not fully considered in our prior action, and that is, the affiliation between the seller and each of the purchasers under the rate schedules sought to be changed.

Reconsideration of the arguments advanced by Consumers and Union with respect to the interpretation of the contract provisions in the light of the affiliation between the contracting parties indicates that filing herein raises a number of issues which can be resolved only on a record made during hearing. For example, and without limitation, whether it is proper and in the public interest that the affiliated purchasers under Rate Schedules CQ-1 and T-4 be required to pay monthly charges which are higher than the contract year average rate specified in those rate schedules to be applicable through November 1, 1971. Further, whether such higher payments,

temporarily made, and subsequently refunded to the purchasers at the end of the contract year constitute an improper and unwarranted economic burden on the customers of the affiliated purchasers.

We adhere to our conclusion set forth in the June 12 order that on the basis of the cost studies and data available to us the level of the proposed rates have been adequately justified and supported. However, we do not preclude any party to this proceeding, in addition to presenting its views on the questions referred to above, to also present pertinent and relevant data with respect to the level of the proposed rates.

Based on the pleadings and the foregoing we conclude that our order issued June 12 should be modified to provide that a hearing be held on the issues discussed herein and that the proposed rate increase here involved be suspended for 1 day.

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 issues discussed above and concerning the lawfulness of the rates, charges, classifications, and services contained in Great Lakes' FPC Gas Tariff, Original Volumes Nos. 1 and 2, as proposed to be amended by the revised tariff sheets filed April 30, 1970, and that said proposed revised tariff sheets (First Revised Sheet Nos. 4 and 7 to Original Volume No. 1, and Second Revised Sheet No. 53 to Original Volume No. 2) be suspended and the use thereof deferred as hereinafter 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 proposed changes in rates and charges contained in the revised tariff sheets listed in paragraph (1) above, be made effective as hereinafter provided and that Great Lakes be required to file a motion and an undertaking as hereinafter ordered and conditioned.

(3) To carry out the purposes set forth in paragraphs (1) and (2) above, the order issued June 12, 1970, in this docket should be modified as hereinafter provided.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 15 and 16 thereunder, the Commission's rules of practice and procedure and the regulations under the Natural Gas Act (18 CFR Ch. I) a public hearing, commencing with a prehearing conference, be held on September 1, 1970, at 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 issues discussed above and concerning the lawfulness of the rates, charges, classifications, and services contained in Great Lakes' FPC Gas Tariff, as proposed to be amended herein.

(B) Pending such hearing and decision thereon, Great Lakes' proposed revised tariff sheets listed in paragraph (1) above, hereby are suspended for one (1) day from the proposed effective date and their use is deferred until June 16, 1970: *Provided, however,* That within 20 days from the date of this order Great Lakes shall file a motion as required by section 4(e) of the Natural Gas Act and concurrently execute and file with the Secretary of the Commission the agreement and undertaking described in paragraph (I) below. Unless Great Lakes is advised to the contrary within 15 days after the filing of such agreement and undertaking, the agreement and undertaking shall be deemed to have been accepted.

(C) Great Lakes shall file with the Commission and serve on the parties to this proceeding on or before August 21, 1970, its Statement P (explanatory text and prepared testimony) on the issues discussed herein, as required by § 154.63 (f) of our regulations under the Natural Gas Act.

(D) The pleadings filed by Great Lakes on June 30 and July 10, by Consumers on July 8 and by Union on July 20, hereby are accepted.

(E) Presiding Examiner Allen C. Lande or any other designated by the Chief Examiner for that purpose (see Delegation of Authority, 18 CFR 3.5(d)) shall preside at, and control this proceeding in accordance with the policies expressed in the Commission's rules of practice and procedure and the purposes expressed in this order.

(F) At the hearing on September 1, 1970, Great Lakes prepared testimony (Statement P) to be filed and served on August 21, 1970, together with its entire rate filing as submitted and served on April 30, 1970, be admitted to the record as Great Lakes' complete case-in-chief as provided by § 154.63(e) (1) of the regulations under the Natural Gas Act, and Order No. 254, 28 FPC 495, subject to appropriate motions, if any, by parties to the proceeding.

(G) Following admission of Great Lakes' complete case-in-chief, the parties shall proceed to effectuate the intent and purposes of § 2.59 of the Commission's rules of practice and procedure and of this order as set forth above.

(H) Great Lakes shall refund at such times and in such amounts to persons entitled thereto, and in such manner as may be required by final order of the Commission, the portion of rates and charges found by the Commission in this proceeding not justified, together with interest thereon at the rate of 8% per annum from the date of payment to Great Lakes until refunded; shall bear all costs of any such refunding; shall keep accurate accounts in detail of all amounts received by reason of the tariff sheets made effective as of June 16, 1970, and each billing period, specifying by whom and in whose behalf such amounts were paid, and shall report (original and four copies) in writing and under oath, to the Commission monthly, for each billing period and for each purchaser, the billing determinants of natural gas sales to such purchasers, and the revenues resulting therefrom as computed under the tariff sheets in effect immediately prior to June 16, 1970, and under the tariff sheets herein allowed to become effective, together with the differences in the revenues so computed.

(I) As a condition of this order, Great Lakes shall execute and file in triplicate with the Secretary of this Commission, its written agreement and undertaking to comply with the terms of paragraph (H) hereof, signed by a responsible officer of the corporation, evidenced by proper authority from the board of directors, and accompanied by a certificate showing service of copies thereof upon all purchasers under the tariff sheet involved as follows:

AGREEMENT AND UNDERTAKING OF GREAT LAKES GAS TRANSMISSION COMPANY TO COMPLY WITH THE TERMS AND CONDITIONS OF PARAGRAPH (H) OF FEDERAL POWER COMMISSION'S ORDER ISSUED ----------, 1970, IN DOCKET NO. RP70-31.

In conformity with the requirements of the order issued ----------, 1970, in Docket No. RP70-31, Great Lakes Gas Transmission Co. hereby agrees and undertakes to comply with the terms and conditions of Paragraph (H) of said order, and has caused this agreement and undertaking to be executed and sealed in its name by its officers, thereupon duly authorized in accordance with the terms of the resolution of its Board of Directors, a certified copy of which is appended hereto this ------ day of ----------, 1970.

Great Lakes Gas Transmission Co.

By ----------
(President)

Attest:

----------
(Secretary)

(J) If Great Lakes shall, in conformity with the terms and conditions of its agreement and undertaking, make the refunds as may be required by order of the Commission in this proceeding, the undertaking shall be discharged, otherwise it shall remain in full force and effect.

(K) Except to the extent modified by this order, our order issued June 12, 1970, in this docket shall remain in full force and effect.

By the Commission.

[SEAL] GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 70-9738; Filed, July 28, 1970; 8:46 a.m.]

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[Docket No. RI71-40]

## MOBIL OIL CORP.

### Order Providing for Hearing on and Suspension of Proposed Change in Rates

JULY 22, 1970.

The respondent named herein has filed a proposed increased rate and charge of a currently effective rate schedule for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed change, and that the supplement herein be suspended and its use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, a public hearing shall be held concerning the lawfulness of the proposed change.

(B) Pending hearing and decision thereon, the rate supplement herein is suspended and its use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Unless otherwise ordered by the Commission, neither the suspended supplement, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period.

(D) Notices of intervention of petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before September 8, 1970.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

APPENDIX A

| Docket No. | Respondent | Rate schedule No. | Supplement No. | Purchaser and producing area | Amount of annual increase | Date filing tendered | Effective date unless suspended | Date suspended until— | Cents per Mcf: Rate in effect | Cents per Mcf: Proposed increased rate | Rate in effect subject to refund in dockets Nos. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| RI71-40 | Mobil Oil Corp., Post Office Box 1774, Houston, Tex. 77001. | 463 | 2 | Northern Natural Gas Co. (Vacuum Field, Lea County, N. Mex.) (Permian Basin Area). | $46,999 | 6-22-70 | 7-23-70 | 12-23-70 | [1] [2] 16.6034 | [1] 18.40825 | |

[1] Pressure base is 14.65 p.s.i.a.

[2] Applicant has not filed a quality statement as yet.

Mobil requests waiver of notice and acceptance of the proposed increase without a refund obligation or, in the alternative, that the suspension period be limited to one day. In support of such requests Mobil states:

"Mobil requests the Commission to waive the notice preceding effectiveness of the instant rate increase inasmuch as the Commission has ordered a new Area Rate Proceeding for the express purposes of reviewing rates in the Permian Basin.[1] In such order, and for the express purpose of inducing producers to dedicate supplies to the interstate market, the Commission recognized the necessity for reversing the trend of the past decade in exploration for and interstate commitments of gas. Such order calls attention to Docket No. R-389, a notice of new rulemaking proceeding issued concurrently with said order, in which the Commission noted that the conservative Bureau of Natural Gas estimates cost increases experienced by producers range to 5 cents per Mcf above the Opinion No. 468 findings, before modification of the rate of return. The subject contract under which the instant increase is sought is dated April 6, 1970, and represents a substantial commitment of gas to the interstate market. It is apparent that Mobil did not, and could not possibly, develop its properties committed to said contract at cost incurrences as low as the findings in first Permian. The opportunity here exists for the Commission to evidence its determination to reverse the disastrous trends in the gas industry by recognizing the inequity to producers of a 6-month delay in effecting rate increases which are well within the range of preliminary cost analyses of pending area rate cases.

"[1] Order issued June 17, 1970, in Docket No. AR70-1."

Mobil's proposed rate increase exceeds the applicable area just and reasonable base rate ceiling determined in Opinions Nos. 468 and 468-A. The Commission's general policy in such circumstances is to suspend a proposed rate for 5 months from the expiration of the 30 days statutory notice period.[2]

Mobil was issued a temporary certificate on May 18, 1970 and a permanent certificate on June 22, 1970 in Docket No. CI70-923 authorizing the subject sale at a conditioned initial base rate of 15.5 cents per Mcf plus applicable State and local taxes in effect on September 1, 1965, subject to quality adjustment, in accordance with the provisions of Opinions Nos. 468 and 468-A. The rulemaking proceeding in Docket No. R-389, as enlarged by order issued July 17, 1970 in Docket No. R-389-A, pertains to new jurisdictional sales of gas in the Permian Basin area, as well as other areas, under contracts dated after June 17, 1970 (the date of issuance of the notice in Docket No. R-389). Phase I in the Area Rate Proceeding (Permian Basin Area) in Docket No. AR70-1 is confined to evidence relating to price ceilings for contracts entered into after the date of final order therein, but contracts dated after June 17, 1970 (the date of issuance of the order instituting Docket No. AR70-1) will also be entitled to the same ceilings as contracts entered into after the date of such final order. The rulemaking proceeding and Phase I in Docket No. AR70-1 thus have no applicability to Mobil's sale under a contract dated April 6, 1970, which has previously been certificated. Furthermore, the commencement of these proceedings do not justify either acceptance of Mobil's proposed above ceiling increase or a lesser suspension period than 5 months for such increase.

[2] See order issued Sept. 5, 1967, denying motion for reconsideration in Placid Oil Company (Operator), et al., Docket No. RI67-474, et al., 38 FPC 575. The Commission's action was affirmed in Hunt Oil Company, et al. v. F.P.C., 398 F. 2d 746 (CA5, 1968).

[F.R. Doc. 70-9739; Filed, July 28, 1970; 8:46 a.m.]

[Docket No. E-7541]

## NEW ENGLAND POWER CO.

### Notice of Extension of Time

JULY 21, 1970.

On July 14, 1970, Counsel for Power Planning Committee, Municipal Electric Association of Massachusetts filed a request for an extension of time to and including August 1, 1970, within which to file protests or petitions to intervene pursuant to the notice of proposed rate schedule changes issued June 26, 1970, in the above-designated matter.

Upon consideration, notice is hereby given that the time is extended to and including August 3, 1970, within which protests or petitions to intervene in the above-designated matter may be filed by any person.

GORDON M. GRANT, *Secretary.*

[F.R. Doc. 70-9733; Filed, July 28, 1970; 8:46 a.m.]

[Docket No. CP71-14]

## SHENANDOAH GAS CO.

### Notice of Application

JULY 23, 1970.

Take notice that on July 16, 1970, Shenandoah Gas Co. (Applicant), 1100 H Street NW., Washington, D.C. 20005, filed in Docket No. CP71-14 an application pursuant to section 7(c) of the Natural Gas Act and § 157.7 of the regulations thereunder for a certificate of public convenience and necessity authorizing the construction during the 12-month period following the issuance of the certificate and operation of certain natural gas facilities to enable Applicant to deliver gas to domestic, commercial, and industrial customers adjacent to its certificated pipeline system located in Shenandoah, Warren, Clarke, and Frederick Counties, Va., and Berkeley and Jefferson Counties, W. Va., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to enable Applicant to serve its proposed customers more economically than by extension of its distribution facilities from existing communities to which Applicant now renders service.

The total cost of the proposed facilities will not exceed $100,000, and will be financed by open account advances from Washington Gas Light Co.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 17, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the

Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

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

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

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 70-9736; Filed, July 28, 1970; 8:46 a.m.]

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[Docket No. CP71-10]

## TRANSCONTINENTAL GAS PIPE LINE CORP.

### Notice of Application

JULY 23, 1970.

Take notice that on July 10, 1970, Transcontinental Gas Pipe Line Corp. (Applicant), Post Office Box 1396, Houston, Tex. 77001, filed in Docket No. CP71-10 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing certain minor modifications of a portion of Applicant's existing Trenton Lateral in Mercer County, N.J., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to substitute 3,200 feet of 12-inch pipeline for the same length of 6-inch pipeline presently in use and to relocate the facilities due to highway construction. Applicant states that the proposed substitution is necessary to meet the growth in requirements served by this portion of the Trenton Lateral.

The total estimated cost of the proposed modifications is $168,000, which will be initially financed by available company funds with ultimate reimbursement by the State of New Jersey for $75,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 17, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

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

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

GORDON M. GRANT,
*Secretary.*

[F.R. Doc. 70-9737; Filed, July 28, 1970; 8:46 a.m.]

# FEDERAL RESERVE SYSTEM

## FIRST ALABAMA BANCSHARES, INC.

### Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(1)), by First Alabama Bancshares, Inc., Birmingham, Ala., for prior approval by the Board of Governors of action whereby Applicant would become a bank holding company through the acquisition of 80 percent or more of the voting shares of The First National Bank of Montgomery; Exchange Security Bank, Birmingham; and The First National Bank of Huntsville, all in Alabama.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 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 section 3 whose effect in any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board 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 Atlanta.

By order of the Board of Governors, July 24, 1970.

[SEAL] KENNETH A. KENYON,
*Deputy Secretary.*

[F.R. Doc. 70-9765; Filed, July 28, 1970; 8:49 a.m.]

# SECURITIES AND EXCHANGE COMMISSION

[File No. 1-5765]

## FOUR SEASONS NURSING CENTERS OF AMERICA, INC.

### Order Suspending Trading

JULY 21, 1970.

The common stock, 50 cents par value, of Four Seasons Nursing Centers of America, Inc., being traded on the American Stock Exchange, the Philadelphia-Baltimore-Washington Stock Exchange and the Boston Stock Exchange, pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Four Seasons Nursing Centers of America, Inc., being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such Exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

*It is ordered,* Pursuant to sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the above mentioned

exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period July 22, 1970, through July 24, 1970, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-9729; Filed, July 28, 1970; 8:46 a.m.]

[70-4900]

## MIDDLE SOUTH SERVICES, INC., AND LOUISIANA POWER & LIGHT CO.

### Notice of Proposed Intrasystem Sale of Land

JULY 22, 1970.

In the matter of Middle South Services, Inc., 225 Baronne Street, New Orleans, La. 70160, and Louisiana Power & Light Co., 142 Delaronde Street, New Orleans, La. 70114.

Notice is hereby given that Middle South Services, Inc. (Services) and Louisiana Power & Light Co. (Louisiana), subsidiary companies of Middle South Utilities, Inc. (Middle South), a registered holding company, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 10 and 12 of the Act and Rules 43 and 44 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Services owns a tract of land in Gretna, La., upon part of which is located the centralized electronic data processing center which Services operates for the Middle South system. Services proposes to sell to Louisiana, and Louisiana proposes to acquire from Services, a part of such tract of land, measuring approximately 326 feet by 337 feet, upon which Louisiana proposes to erect a control center for its South Louisiana operations. The cash purchase price is $129,579.35, which is the cost to Services of the land to be conveyed to Louisiana.

It is stated that the fees and expenses to be incurred in connection with the proposed transactions are estimated at not to exceed $2,325 for Louisiana and $750 for Services. It is stated that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than August 20, 1970, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. 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, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-9776; Filed, July 28, 1970; 8:50 a.m.]

[54-246]

## WASHINGTON GAS LIGHT CO.

### Notice of Filing of and Order for Hearing on Plan, Notice of and Order Instituting Proceedings and Directing Hearing and Order Consolidating Such Proceedings

JULY 15, 1970.

I. Notice is hereby given that Washington Gas Light Co. (Washington), 1100 H Street NW., Washington, D.C. 20005, a registered holding company, has filed a plan pursuant to section 11(e) of the Public Utility Holding Company Act of 1935 (Act) providing for the elimination by Washington of the publicly held shares of common stock of its public-utility subsidiary company, Shenandoah Gas Co. (Shenandoah). All interested persons are referred to the plan, which is summarized below, for a complete statement of the proposed terms and transactions.

On May 1, 1970, Washington owned 336,961 of the 339,325 outstanding shares of common stock of Shenandoah, the remaining 2,364 shares (0.7 percent) being publicly held. The plan provides for the cash payment by Washington of $6.50 per share to the public holders of shares of common stock of Shenandoah.

The plan will become effective on a date set by Washington (effective date), which date shall not exceed 30 days from the entry of an order by a District Court of the United States approving and enforcing the plan. On and after the effective date, the public holders of shares of Shenandoah stock will cease to have any rights as shareholders of such company and, upon the surrender of their stock certificates, will be entitled to receive only the sum of $6.50 for each share.

At the end of 15 years from the effective date of the plan, public holders of common stock of Shenandoah who have not surrendered their certificates will cease to have any rights or claims against Washington or Shenandoah, and sums theretofore payable to holders of unsurrendered certificates of Shenandoah will become the property of Washington.

The carrying out of the plan is subject to all necessary approvals by the Commission under the Act and to the approval and enforcement of the plan by a District Court of the United States having jurisdiction as fair and equitable and as appropriate to effectuate the provisions of section 11 of the Act.

II. The Commission has been advised by its Division of Corporate Regulation (Division) that the Division, pursuant to sections 11(a), 18(a), and 18(b) of the Act, has made a preliminary examination of the corporate structure of the Washington system; and it appears to the Division from such examination that:

1. Washington, primarily a gas utility company, is also a holding company, which is exempt from the Act pursuant to an order of the Commission issued under section 3(a)(2) (Holding Company Act Release No. 16706 (May 1, 1970)). Washington is incorporated both in the District of Columbia and the State of Virginia and is engaged in the distribution and sale of natural gas at retail in the metropolitan Washington, D.C., area, including adjacent sections of Maryland and Virginia. As of December 31, 1969, Washington's corporate net plant was $260,397,000 and its corporate operating revenues (after intercompany eliminations) for the 12 months then ended were $122,236,000. Consolidated operating revenues for the 12 months ended December 31, 1969, were $126,349,000. As of June 30, 1969, it had outstanding 3,593,071 shares of common stock, no par value, and 444,841 shares of preferred stock, no par value, all of which are held by the public.

2. Washington has four subsidiary companies, three of which sell natural gas at retail. Washington owns all of the common stock of its subsidiary companies except for Shenandoah, as described below. Frederick Gas Co., Inc. (Frederick), incorporated under the laws of the State of Maryland, sells natural gas at retail in the city of Frederick, Md., and areas adjacent thereto. It also sells at wholesale to Washington to supply such of the latter's customers in Montgomery County, Md., as are contiguous to the Frederick transmission lines. Martinsburg Gas & Heating Co. (Martinsburg), incorporated under the laws of the State of West Virginia, distributes and sells natural gas at retail in the city of Martinsburg, W. Va., and adjacent areas. Natural gas sold by Martinsburg is purchased from Shenandoah. Hampshire Gas Co., a West Virginia corporation, was organized for the purpose

of acquiring oil and gas leases, and it now has 12 wells which are considered productive. It sells no natural gas at retail.

3. Shenandoah, a Virginia corporation, is a gas utility company engaged in the purchase, distribution, and sale of natural gas at retail in Winchester, Middletown, Strasburg, Stephens City, and New Market, Va., and at wholesale to Martinsburg. Shenandoah also serves certain industrial and retail customers from its transmission pipelines in Virginia and West Virginia. As of December 31, 1969, Shenandoah's net plant was $4,459,000, and its operating revenues (after intercompany eliminations) for the 12 months then ended were $2,167,000.

III. It being the duty of the Commission, pursuant to section 11(b)(2) of the Act, to require by order, after notice and opportunity for hearing, that each registered holding company and each subsidiary company thereof take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in a holding-company system does not, among other things, unfairly or inequitably distribute voting power among security holdings of such holding-company system; and

The Commission being required by the provisions of section 11(e) of the Act, before approving any plan filed thereunder, to find, after notice and opportunity for hearing, that such plan, as submitted or as modified, is necessary to effectuate the provisions of section 11(b) and is fair and equitable to the persons affected thereby; and

The Commission deeming it appropriate that notice be given and a hearing held for the purpose of determining what action should be ordered under section 11(b)(2) and for the purpose of ascertaining whether the plan should be approved; and

It appearing that common issues of fact and law arise in connection with the section 11(e) plan and in connection with the issues involved under section 11(b)(2), making it appropriate that the two proceedings be consolidated and that Washington and Shenandoah should be parties to the consolidated proceedings:

*It is hereby ordered:*

(a) That a proceeding be, and it hereby is, instituted in respect of Washington and Shenandoah pursuant to section 11(b)(2) of the Act.

(b) That said proceeding be, and it hereby is, consolidated with the proceeding in connection with the section 11(e) plan of Washington.

(c) That Washington and Shenandoah be, and they hereby are, made parties to said consolidated proceeding.

The Division having advised the Commission that, upon the basis of its preliminary examination of the affairs and of the corporate structure of Washington and Shenandoah and of a preliminary study of said plan of Washington, the following matters and questions are presented for consideration at such hearing, without prejudice, however, to the presentation of additional matters and questions upon further examination:

1. Whether the voting power is unfairly and inequitably distributed among the holders of the capital stock of Shenandoah, and, if so, what steps, if any, are necessary and should be required to be taken to distribute fairly and equitably the voting power among such holders;

2. Whether the plan of Washington, as submitted or as it may be modified or amended, is necessary to effectuate the provisions of section 11(b) of the Act;

3. Whether the plan is fair and equitable to the persons affected thereby;

4. Whether, in general, the transactions proposed in the plan satisfy the applicable provisions of the Act; and

5. Whether the accounting entries proposed to be made in connection with the plan are proper and in accord with sound accounting principles.

*It is further ordered,* That a hearing in the consolidated proceeding be held, on a date to be specified by the Secretary of the Commission, at the office of the Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, in such room as may be designated on such date by the hearing room clerk. Any person desiring to be heard in connection with this proceeding or proposing to intervene therein shall file with the Secretary of the Commission, on or before August 6, 1970, a written request relative thereto as provided in Rule 9 of the Commission's rules of practice. Persons filing an application to participate or be heard will receive notice of any adjournment of the hearing as well as other actions of the Commission involving the subject matter of these proceedings.

*It is further ordered,* That a Hearing Examiner, hereafter to be designated, shall preside at said hearing. The officer so designated is hereby authorized to exercise all the powers granted to the Commission under section 18(c) of the Act and to a hearing officer under the Commission's rules of practice.

*It is further ordered,* That at said hearing evidence shall be adduced with respect to the foregoing matters and questions.

*It is further ordered,* That jurisdiction be, and it hereby is, reserved to separate, in whole or in part, either for hearing or for disposition, any issues or questions which may arise in these proceedings and to take such other action as may appear conducive to an orderly, prompt, and economical disposition of the matters involved.

*It is furtherer ordered,* That the Secretary of the Commission shall serve notice of such hearing by mailing a copy of this notice and order by registered mail to Washington and Shenandoah, to the Federal Power Commission, the Public Service Commission of the District of Columbia, and to the Virginia State Corporation Commission; that Washington mail a copy of this notice and order to all public holders of record of the capital stock of Shenandoah at least 15 days prior to the date of hearing; and that notice of said hearing be given to all other interested persons by a general release of the Commission and by publication of this notice and order in the FEDERAL REGISTER.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
*Secretary.*

[F.R. Doc. 70-9731; Filed, July 28, 1970; 8:46 a.m.]

# SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 781]

## NEW MEXICO

### Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of July 1970, because of the effects of certain disasters, damage resulted to residences and business property located in Bernalillo County, N. Mex.;

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 Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in the aforesaid county, and areas adjacent thereto, suffered damage or destruction resulting from floods occurring on July 15 and 16, 1970.

OFFICE

Small Business Administration District Office, 500 Gold Avenue SW., Albuquerque, N. Mex. 87101.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to January 31, 1971.

Dated: July 17, 1970.

HILARY SANDOVAL, JR.,
*Administrator.*

[F.R. Doc. 70-9732; Filed, July 28, 1970; 8:46 a.m.]

# INTERSTATE COMMERCE COMMISSION

[Notice 14]

## MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

JULY 24, 1970.

The following letter-notices of proposals to operate over deviation routes

for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Passengers, 1969 (49 CFR 1042.2(c)(9)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c)(9)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIER OF PASSENGERS

No. MC 1515 (Deviation No. 553) (Cancels Deviation No. 52), GREYHOUND LINES, INC. (Eastern Division), 1400 West Third Street, Cleveland, Ohio, filed July 13, 1970. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers, over a deviation route as follows: From Cincinnati, Ohio, over Interstate Highway 75 to Dayton, Ohio, with the following access routes: (1) from Sharonville, Ohio, over city streets to junction Interstate Highway 75, and (2) from Lebanon, Ohio, over Ohio Highway 63 to junction Interstate Highway 75, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1) from Cincinnati, Ohio, over U.S. Highway 42 via Lebanon, Xenia, and London, Ohio, to Delaware, Ohio, and (2) from Lebanon, Ohio, over Ohio Highway 48 via Centerville to Dayton, Ohio, and return over the same routes.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[F.R. Doc. 70-9746; Filed, July 28, 1970; 8:47 a.m.]

[Notice 26]

## MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

JULY 24, 1970.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIER OF PROPERTY

No. MC 49387 (Deviation No. 8), ORSCHELN BROS. TRUCK LINES, INC., Highway 24 East, Box 658, Moberly, Mo. 65270, filed July 2, 1970. Carrier proposes to operate as a *common carrier*, by motor vehicle, of general commodities, with certain exceptions, over a deviation route as follows: Between Warrensburg, Mo., and Springfield, Mo., over Missouri Highway 13, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) from Sedalia, Mo., over U.S. Highway 65 to Springfield, Mo., and (2) from Kansas City, Kans., over U.S. Highway 50 to Jefferson City, Mo., and return over the same route.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[F.R. Doc. 70-9747; Filed, July 28, 1970; 8:47 a.m.]

[Notice 69]

## MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

JULY 24, 1970.

The following publications are governed by the new Special Rule 247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

No. MC 115162 (Sub-No. 183) (republication), filed August 13, 1969, published in the FEDERAL REGISTER issue of September 5, 1969, and republished this issue. Applicant: POOLE TRUCK LINE, INC., Post Office Box 310, Evergreen, Ala. 36401. Applicant's representative: Robert E. Tate (same address as applicant). The modified procedure has been followed in this proceeding, and a Report and Order of the Commission, Review Board No. 4, decided March 24, 1970, and served March 31, 1970, finds: that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle over irregular routes, (1) of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) from points in Florida, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee, to the stores, warehouses and facilities of American Salvage Co., at Evergreen and Monroeville, Ala., and the stores, warehouses and facilities of Surplus and Salvage Sales, Inc., at Dothan, Ala., restricted to traffic destined to such stores, warehouses and facilities; (2) poles and piling, from Pensacola, Fla., to points in Alabama, Arkansas, Mississippi, New York, North Carolina, South Carolina, Virginia, and West Virginia;

(3) Wallboard and tile board, from De Kalb County, Ga., to points in Indiana (except Indianapolis and its commercial zone), Louisiana (except Baton Rouge and points within 15 miles thereof and Lake Charles and points within 15 miles thereof), Kansas, Wisconsin, Mississippi, Kentucky (except Louisville and its commercial zone), and Tennessee; and (4) roofing and roofing materials (except commodities in bulk), from Tuscaloosa, Ala., Meridian, Miss., and New Orleans, La., to points in Escambia County, Okaloosa County, and Bay County, Fla. (restricted to traffic originating at Tuscaloosa, Ala., Meridian, Miss., and New Orleans, La.); that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and Commission's regulations thereunder. Because it is possible that other parties who have relied upon the notice as previously published may have an interest in and would be prejudiced by the lack of proper notice of the authority granted herein, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen the proceeding, or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 118159 (Sub-No. 91) (republication) filed February 11, 1970, published in FEDERAL REGISTER issue of March 19, 1970, and republished this issue. Applicant: EVERETT LOWRANCE, INC., 4916 Jefferson Highway, New Orleans, La. Applicant's representative: David D. Brunson, 419 Northwest Sixth Street, Oklahoma City, Okla. 73102. The modified

procedure has been followed in this proceeding and an order of the Commission, Operating Rights Board, dated June 30, 1970, and served July 17, 1970, finds: that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of glass containers and accessories, for glass containers, from Palestine, Tex., to Tulsa, Okla.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the appendix to this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 119493 (Sub-No. 50) (Republication), filed September 2, 1969, published in the FEDERAL REGISTER issue of October 2, 1969, and republished this issue. Applicant: MONKEM COMPANY, INC., West 20th Street Road, Post Office Box 1196, Joplin, Mo. 64801. Applicant representative: Ray F. Kempt (same address as above). A report and recommended order of the Hearing Examiner that was served June 5, 1970, was made effective on July 6, 1970 and served July 17, 1970, finds, upon consideration of all evidence of record, that the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, over irregular routes, of (1) paper and paper products (except in bulk), and products produced or distributed by manufacturers and converters of paper and paper products, from the plant and storage facilities of Bancroft Bag Co., of West Monroe, La., to points in Illinois (except Chicago, Henry, Lexington, Jacksonville, Piper City, Bushnell, and their respective commercial zones, and except points in Illinois within the commercial zone of St. Louis, Mo.), Indiana (except Greencastle, Jeffersonville, South Bend, and their commercial zones, and except all points in Indiana, other than Roby, Ind., within the Chicago, Ill. commercial zone), Iowa (except Dewitt, Belmond, Conrad, and their commercial zones), Kansas, Mo. (except St. Louis and its commercial zone, and St. Louis County), Nebraska, and Oklahoma, restricted to the transportation of traffic destined to the indicated destinations; and (2) steel cans and their accessories, from the plantsite and storage facilities of Strongheart products Co. at Kansas City, Kans., to the plantsite and storage facilities of Strongheart Products Co. at Greenville, Mass.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief, setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 127689 (Sub-No. 37) (Republication), filed November 24, 1969, published in the FEDERAL REGISTER issue of December 31, 1969, and republished this issue. Applicant: PASCAGOULA DRAYAGE COMPANY, INC., 705 East Pine Street, Post Office Box 987, Hattiesburg, Miss. 39401. Applicant's representative: H. E. West (same address as applicant). The modified procedure has been followed in this proceeding and an order of the Commission, Operating Rights Board, dated June 30, 1970, and served July 17, 1970, finds; that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier, by motor vehicle, over irregular routes, of fiberboard from the plantsite and storage facilities of Kroehler Manufacturing Co., in the Meridian, Miss., commercial zone, to points in Indiana, Kansas, Kentucky, Missouri, North Carolina, Tennessee, and Virginia; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as previously published may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 133133 (Republication), filed August 30, 1968, published in the FEDERAL REGISTER issue of September 26, 1968, and republished this issue. Applicant: FULLER MOTOR DELIVERY CO., a corporation, 820 Plum Street, Cincinnati, Ohio 45202. Applicant's representative: David A. Caldwell, 900 Tri-State Building, Cincinnati, Ohio 45202. A decision and order of the Commission, Review Board No. 1, dated July 8, 1970, and served July 16, 1970, upon consideration of the application, as amended, and the record in this proceeding, including the recommended report and order of the Examiner, finds; that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier*, by motor vehicle, over irregular routes, (1) of sand, gravel, stone, and asphalt between points in Hamilton County, Ohio, on the one hand, and, on the other, points in Boone, Campbell, and Kenton Counties, Ky.; (2) of salt from points in Hamilton County, Ohio, to points in Kentucky, points in Bartholomew, Blackford, Boone, Brown, Clark, Dearborn, Decatur, Delaware, Fayette, Floyd, Franklin, Grant, Hamilton, Hancock, Hendricks, Henry, Howard, Jackson, Jay, Jefferson, Jennings, Johnson, Lawrence, Madison, Marion, Monroe, Morgan, Ohio, Randolph, Ripley, Rush, Scott, Shelby, Switzerland, Tipton, Union, Washington, and Wayne Counties, Ind., and points in Boone, Cabell, Jackson, Kanawha, Lincoln, Logan, Mason, Putnam, Wayne, and Wood Counties, W. Va.; (3) of salt from points in Scioto County, Ohio, to points in Kentucky and West Virginia; (4) of salt from points in Washington County, Ohio, to points in West Virginia on and west of U.S. Highway 219; and (5) of salt from the plantsite of Kentucky Asphalt Sale Terminal in Jefferson County, Ky., to points in Indiana on and south of Indiana Highway 28, and points in Brown, Butler, Clermont, Clinton, Greene, Hamilton, Highland, Montgomery, Preble, and Warren Counties, Ohio; subject to the condition that applicant submit a request in writing for the concurrent cancellation of all its outstanding permits, except the permit issued in No. MC-74857 (Sub-No. 6). Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief, setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 133855 (Sub-No. 1) (Republication), filed February 6, 1970, published in the FEDERAL REGISTER issue of March 12, 1970, and republished this issue. Applicant: GERALD G. WOOD, doing business as WOOD & SONS, Route No. 1, Sun Prairie, Wis. 53590. Applicant's representative: Robert J. Kay, 433 West Washington Avenue, Suite 500, Madison, Wis. 53703. The modified procedure has been followed in this proceeding, and an order of the Commission, Operating Rights Board, dated June 30, 1970, and served July 17, 1970, finds, that operation by applicant, in interstate or foreign commerce, as a *contract carrier* by motor vehicle, over irregular routes,

of livestock (except horses) other than ordinary, between De Forest, Wis., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), under a continuing contract with American Breeders Service, Inc., of De Forest, Wis., will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief, setting forth in detail the precise manner in which it has been so prejudiced.

NOTICE OF FILING OF PETITION

No. MC 97357 (Sub-No. 27) (Notice of filing of petition to Remove Restriction), filed June 26, 1970. Petitioner: ALLYN TRANSPORTATION COMPANY, a corporation, 14011 South Central Avenue, Los Angeles, Calif. 90059. Petitioner's representative: R. Y. Schureman, 1545 Wilshire Boulevard, Suite 606, Los Angeles, Calif. 90017. Petitioner states it presently holds a certificate of public convenience and necessity in No. MC 97357 (Sub-No. 27) as a motor common carrier of property. As here pertinent, a portion of the said certificates reads as follows: "Petroleum road oils and asphaltic emulsions, in bulk, in tank trucks, maximum 6,000 gallons; (a) between points in Nevada; and (b) from points in Modoc, Lassen, Plumas, Sierra, Nevada, Placer, Eldorado, Alpine, and Mono Counties, Calif., to points in Nevada, with no transportation for compensation on return except as otherwise authorized." Petitioner further states that under current service conditions to the shipping public the retention of the 6,000-gallon restriction in its service is administratively undesirable and contrary to the policy of the Commission established in principle in *Ex Parte No. MC-68—Removal of Truckload Restrictions*, 106 M.C.C. 455 (1968), and of the policy of the Commission with respect to unnecessary and inappropriate weight and load restrictions established in *Fox-Smythe Transportation Co., Extension—Oklahoma*, 106 M.C.C. 1. Petitioner alleges that removal of the maximum 6,000-gallon restriction will not alter in any material respect its competitive relationship with any other motor common carrier. By the instant petition, petitioner requests the Commission to remove from its certificate the restriction "maximum 6,000 gallons". Any interested person desiring to participate may file an original and six copies of his written representations, views or argument in support of, or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 134779, filed July 20, 1970. Applicant: JANESVILLE AUTO TRANSPORT COMPANY, a corporation, 1263 South Cherry Street, Post Office Box 959, Janesville, Wis. 53545. Applicant's representatives: Adolph J. Bieberstein, 121 West Doty Street, Madison, Wis. 53703, and Harold G. Hernly, 711 14th Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Automobiles, trucks, chassis, and buses*, in initial movements, in truckaway and driveway service, from Janesville, Wis., to points in Illinois, Indiana, Iowa, the Upper Peninsula of Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin; (2) *automobiles, trucks, chassis, buses, and tractors* (not including farm tractors and crawler or track type tractors), in initial movements, in truckaway and driveaway service; from Janesville, Wis., to points in Colorado, Idaho, Kansas, Wyoming, and the Lower Peninsula of Michigan; (3) *tractors* (not including farm tractors and crawler or track type tractors), in initial movements, in truckaway and driveaway service, from Janesville, Wis., to points in Montana, Nebraska, North Dakota, and South Dakota; (4) *unfinished automobiles, trucks, and chassis*, in initial movements, in truckaway and driveaway service, from Janesville, Wis., to points in the Upper Peninsula of Michigan, Minnesota, Missouri, and Wisconsin;

(5) *Automobiles, trucks, tractors* (not including farm tractors and crawler or track type tractors), *chassis, and buses*, in secondary movements in truckaway and driveaway service, between points in Illinois, Indiana, Iowa, and Upper Peninsula of Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, and Wisconsin; (6) *unfinished automobiles, trucks, and chassis*, in secondary movements, in truckaway and driveaway service, between points in Illinois, Indiana, Iowa, the Upper Peninsula of Michigan, Minnesota, Missouri, and Wisconsin; (7) *automobiles, trucks, tractors* (not including farm tractors and crawler or track type tractors), *chassis, and buses*, in secondary movements, in truckaway and driveaway service, and *vehicle bodies, automobile parts* when accompanying vehicles with which to be used, and *automobile show paraphernalia and displays;* (a) between points in Colorado, Idaho, Kansas, Wyoming, and the Lower Peninsula of Michigan; and (b) between points in Colorado, Idaho, Kansas, Wyoming and the Lower Peninsula of Michigan, on the one hand, and, on the other, points in Illinois, Indiana, Iowa, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wisconsin and the Upper Peninsula of Michigan; (8) *automobile parts*, from Janesville, Wis., to points in Illinois, Indiana, and Iowa; and

(9) *Vehicle bodies, automobile parts* when accompanying vehicles with which to be used, and *automobile show paraphernalia and displays* (except display vehicles), between points in Illinois, Indiana, Iowa, the Upper Peninsula of Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, and Wisconsin. NOTE: This is a matter directly related to MC-F-10777, published in the FEDERAL REGISTER issue of March 18, 1970. Applicant seeks to convert its contract carrier authority to common carrier authority in the identical form in which it now exists in its contract carrier permits, and this application is filed upon the express condition that it be granted only upon the approval by the Commission of the application heretofore filed on March 9, 1970, as supplemented and amended, by National City Lines, Inc. of Denver, Colo., in which said National City Lines, Inc., seeks authority under section 5 of the Interstate Commerce Act to acquire control of Janesville Auto Transport Co. through purchase of its capital stock, which docket has been assigned MC-F-10777. Applicant further states that the requested authority cannot be tacked with it existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-10891. Authority sought for purchase by BAKER INDUSTRIES, INC., 8 Ridgedale Avenue, Cedar Knolls, N.J. 07927, of the operating rights and property of LEONARD DeLUE, D. J. SEBERN, T. W. RINKER, E. L. DeLUE, AND TED P. RINKER, doing business as ARMORED MOTORS SERVICE, 970 Yuma Street, Denver, Colo. 80200, and for acquisition by SOLOMON R. BAKER, 404 North Roxbury Drive, Beverly Hills, Calif., 90210, of control of operating rights and property through the transaction. Applicants' attorney: Francis W. McInerny, 1000 16th Street NW., Washington, D.C. 20036. Operating rights sought to be transferred: *Currency, coin, bonds and securities*, as a *contract carrier* over irregular routes, between El Paso, Tex., on the one hand, and points in Cochise, Pima, and Graham Counties, Ariz., and Otero, Eddy, Grant, Lincoln, Curry, Luna, Lea, De Baca, Chaves, Dona Ana, Quay, Hidalgo, Roosevelt, Guadalupe, Socorro, Sierra, Torrance, and

Catron Counties, N. Mex.; between Helena, Mont., on the one hand, and points in North Dakota, South Dakota, and Sheridan, Johnson, Campbell, Crook, Weston, Big Horn, and Park Counties, Wyo., and points in that part of Yellowstone National Park lying within Wyoming; between Denver, Colo., on the one hand, and points in Union, Harding, San Miguel, Santa Fe, Bernalillo, and Valencia Counties, N. Mex., and points in New Mexico north thereof; between El Paso, Tex., on the one hand, and points in Santa Cruz and Greenlee Counties, Ariz., *coin*, between Chicago, Ill., Dallas, El Paso, Houston, and San Antonio, Tex., Denver, Colo., Helena, Mont., Kansas City and St. Louis, Mo., Little Rock, Ark., Los Angeles and San Francisco, Calif., Louisville, Ky., Minneapolis, Minn., New Orleans, La., Oklahoma City, Okla., Omaha, Nebr., Portland, Oreg., Salt Lake City, Utah, and Seattle, Wash., *bullion*, between Denver, Colo. and San Francisco, Calif., *coin, currency, negotiable and nonnegotiable items, checks, deposit tickets, reports, and computer data*, between Denver, Colo., and Laramie and Cheyenne, Wyo. The operating rights and property acquired by BAKER INDUSTRIES, INC., would be transferred to WELLS FARGO ARMORED SERVICE CORPORATION, a wholly owned subsidiary. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–10896. Authority sought for control by N & K LEASING CO., 2501 Henry Street, Muskegon, Mich., 49441, of CARLSON TRUCK SERVICE, INC., 2501 Henry Street, Muskegon, Mich., 49441, and for acquisition by DOROTHY EBEL, 525 Buena Vista, Spring Lake, Mich., JACOB G. KUIPER, 16193 Dawn View, Spring Lake, Mich., HENRY NEITRING, 1125 North Third Street, Grand Haven, Mich., DOLORES NEITRING ROSEMA, 16187 Harborspoint Drive, Spring Lake, Mich., and J. P. VANDERSYS, 812 Ross Road, Muskegon, MICH., of control of CARLSON TRUCK SERVICE, INC., through the acquisition by N & K LEASING CO. Applicants' attorney: William J. Hirsch, Esquire, 43 Niagara Street, Buffalo, N.Y. 14202. Operating rights sought to be controlled: Authority applied for in pending Docket No. MC–117459 Sub 2, covering the transportation of cement, as a common carrier, over irregular routes, (1) from Oswego, N.Y., to points in Pennsylvania and returned shipments on return; and (2) from Buffalo, N.Y., to points in Pennsylvania (except Bradford, Cameron, Clinton, Crawford, Elk, Erie, Forest, Lackawanna, Lycoming, McKean, Mercer, Potter, Sullivan, Susquehanna, Tioga, Venango, Warren, Wayne, and Wyoming Counties and return shipments on return. N & K LEASING CO., is authorized to operate as a common carrier in Michigan, Indiana, Illinois, and Ohio. Application has not been filed for temporary authority under section 210 (a)(b).

No. MC–F–10897. Authority sought for control by E. L. FARMER & COMPANY, 300 South Grant Street, Odessa, Tex. 79760, of M. A. DAVIS TRANSPORT, INC., 11201 Beaumont Highway, Houston, Tex. 77011, and for acquisition by J. C. FERGUSON, 300 South Grant Street, Odessa, Tex. 79760, of control of M. A. DAVIS TRANSPORT, INC., through the acquisition by E. L. FARMER & COMPANY. Applicants' attorney: Jerry C. Prestridge, Post Office Box 1148, Austin, Tex., 78767. Operating rights sought to be controlled: *Machinery, materials, supplies, and equipment*, incidental to, or used in, the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas petroleum, and incidental thereto, as a *common carrier*, over irregular routes, between points and places in Alabama, Arkansas, Illinois, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas; *heavy machinery and equipment requiring the use of special equipment*, between points and places in Arkansas, Louisiana, and Texas; *oil refining equipment and supplies*, between points and places in Arkansas, Louisiana, and Oklahoma; E. L. FARMER & COMPANY is authorized to operate as a *common carrier* in Texas, Oklahoma, New Mexico, Nevada, Kansas, Arizona, Colorado, Utah, Wyoming, Montana, Alabama, Florida, Louisiana, Arkansas, and Mississippi. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–10898. Authority sought for merger into BRADY MOTORFRATE, INC., 2150 Grand Avenue, Des Moines, Iowa 50312, of the operating rights and properties of BRADY MOTORFRATE, INC., of PA., 2150 Grand Avenue, Des Moines, Iowa 50312, and for acquisition by JOHN J. BRADY, SR., and JOHN J. BRADY, JR., also of 2150 Grand Avenue, Des Moines, Iowa 50312, of control of such rights and properties through the transaction. Applicants' attorney: Homer E. Bradshaw, 11th Floor, Des Moines Building, Des Moines, Iowa 50309. Operating rights sought to be merged: *General commodities*, excepting, among others, household goods and commodities in bulk, as a *common carrier*, over regular routes, between Pittsburgh, Pa., and Baltimore, Md., serving all intermediate points between Frederick, Md., and Baltimore, Md. (for operating convenience only), serving no intermediate points; between Pittsburgh, Pa., and New York, N.Y., serving all intermediate points between Pittsburgh and Armagh, Pa., including Armagh, and all intermediate points in New Jersey, with restriction; between Somerville, N.J., and Newark, N.J., serving all intermediate points, with restriction; between Breezewood, Pa., and Harrisburg, Pa. (for operating convenience only), not serving Harrisburg or the intermediate points; between Chambersburg, Pa., and Elizabeth, N.J., serving all intermediate points in New Jersey, with no service at Chambersburg, with restriction; between Philadelphia, Pa., and Newark, N.J., serving all intermediate points in New Jersey, with no service at Philadelphia, with restriction; between Pittsburgh, Pa., and Albany, N.Y., serving all intermediate points in New York and certain off-route points, between Silver Creek, N.Y., and Albany, N.Y.;

Between Frederick, Md., and Baltimore, Md., serving all intermediate points, with restriction, between Armagh, Pa., and Bedford, Pa., serving all intermediate points, between Harrisburg, Pa., and Baltimore, Md. (for operating convenience only), not serving Harrisburg or the intermediate points, between Westfield, N.Y., and Troy, N.Y., serving all intermediate points, and the off-route point of Hammondsport, N.Y., between Pittsburgh, Pa., and Chicago, Ill., serving no intermediate points, between Fremont, Ohio, and Chicago, Ill. (for operating convenience only), not serving Fremont or the intermediate points, between Pittsburgh, Pa., and Chicago, Ill., serving no intermediate points, between Pittsburgh, Pa., and Deerfield, Ohio (for operating convenience only), not serving Deerfield or the intermediate points, between Akron, Ohio, and Van Wert, Ohio (for operating convenience only), not serving the termini or the intermediate points, between Jersey City, N.J., and Albany, N.Y., serving all intermediate points, with restriction; between New York, N.Y., and Albany, N.Y., serving all intermediate points, with restriction, between Lewiston, Pa., and Syracuse, N.Y., serving all intermediate points in New York, with no service at Lewistown, between Binghamton, N.Y., and Utica, N.Y., serving all intermediate points, between Hollidaysburg, Pa., and Waverly, N.Y., not serving Hollidaysburg or the intermediate points, between Horsehead, N.Y., and Cortland, N.Y.;

Between Jasper, N.Y., and East Avon, N.Y., serving all intermediate points, between Butler, Pa., and Ebensburg, Pa., serving all intermediate points between Butler and Indiana, Pa., including Indiana, with no service at Ebensburg (operations are authorized over irregular routes, in connection with the foregoing regular-route operations, serving all points as intermediate or off-route points (except authorized points on the regular routes), within certain specified areas), between Chicago, Ill., and Kankakee, Ill., serving all intermediate points; over numerous alternate routes for operating convenience only; *general commodities*, except those of unusual value, and except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, liquor, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Philadelphia, Pa., and Trenton, N.J., serving all intermediate and off-route points in Pennsylvania within 10 miles of Philadelphia; *general commodities*, during the season extending from the 1st day of May to the 30th day of September, inclusive, between McConnellsville, N.Y., and North Bay and Sylvan Beach, N.Y., serving all intermediate points;

*General commodities*, with no seasonal restriction, between Camden, N.Y., and Utica, N.Y., serving all intermediate and the off-route points of Florence, N.Y., and C.C.C. Camp No. S–113, located 6

miles southeast of Camden; *general commodities,* excepting, among others, household goods and commodities in bulk, over irregular routes between points in Oneida County, N.Y., between points in Oneida County, on the one hand, and, on the other, certain specified points in New York, between Chicago, Ill., and Chicago Heights, Ill.; *canned, preserved and prepared foodstuffs, and beans,* in bags, from certain specified points in New Jersey, points in New York, and certain specified points in Maryland with exceptions to Pittsburgh, Pa., and points in Pennsylvania within 50 miles of The Point Bridge in Pittsburgh; *canned and preserved foodstuffs,* from Hammonton, N.J., and certain specified points in Delaware, to Pittsburgh, Pa., and points within 25 miles of The Point Bridge in Pittsburgh; *copper wire,* from Camden, N.Y., to certain specified points in Rhode Island, New York, N.Y., Newark, N.J., Worcester and Springfield, Mass., and Bridgeport and New Haven, Conn.; *empty reels and spools,* from the above destination points to Camden, N.Y.; *copper rods,* from Elizabeth, N.J., and certain specified points in Connecticut, to Camden, N.Y.; *steel wire,* from Bridgeport and New Haven, Conn., to Camden, N.Y.; and

*Meat, meat products, and meat byproducts, and articles distributed by meat packinghouse,* as described in sections A and C of appendix I to the report in *Descriptions in Motor Carriers Certificates* 61 M.C.C. 209 and 766, except hides and commodities in bulk, from the plantsite and storage facilities utilized by Wilson & Co., Inc., at or near Logansport, Ind., to points in New Jersey, New York, and Pennsylvania. BRADY MOTORFRATE, INC., is authorized to operate as a *common carrier* in Missouri, Minnesota, Illinois, Nebraska, Iowa, Ohio, Indiana, Kansas, South Dakota, Kentucky, Michigan, North Dakota, Wisconsin, Maryland, New Jersey, New York, Pennsylvania, West Virginia, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b). NOTE: BRADY MOTORFRATE, INC., controls BRADY MOTORFRATE, INC., (PA.) formerly (SCHREIBER TRUCKING CO., INC.), through ownership of capital stock pursuant to authority granted January 12, 1968, and consummated March 22, 1968, in Docket No. MC–F–9734.

No. MC–F–10899. Authority sought for purchase by TROJAN FREIGHT LINES, INC., 909 Keowee Street, Dayton, Ohio 45404, of a portion of the operating rights of ATKINSON LINES, INC., 11 Heid Avenue, Dayton, Orio 45404, and for acquisition by NED E. MARTINDALE, and ROSEMARY HENRY, both also of 909 Keowee Street, Dayton, Ohio 45404, of control of such rights through the purchase. Applicants' attorney: A. Charles Tell, 100 East Broad Street, Columbus, Ohio 43215. Operating rights sought to be transferred: Under a certificate of registration in Docket No. MC–120247 Sub-1, covering the transportation of *livestock,* as a *common carrier,* in interstate commerce, between Montgomery County, Ohio, and points in Ohio; general property, between specified points in Montgomery County and points in Ohio. Vendee is authorized to operate as a *common carrier* in Ohio and Indiana. Application has been filed for temporary authority under section 210a(b).

No. MC–F–10901. Authority sought for purchase by NORTH PENN TRANSFER, INC., Routes 202 and 63, Box 230, Lansdale, Pa. 19446, of a portion of the operating rights of EASTON MOTOR FREIGHT, INC., Lehigh and Apples Streets, Easton, Pa. 18042, and for acquisition by ARTHUR N. ANDERS, Box 230, Lansdale, Pa. 19446, of control of such rights through the purchase. Applicants' attorney: John W. Frame, Post Office Box 626, 2207 Old Gettysburg Road, Camp Hill, Pa. 18042. Operating rights sought to be transferred: *General commodities,* excepting, among others, class A and B explosives, household goods and commodities in bulk, as a *common carrier* over regular routes, between Easton, Pa., and New York, N.Y., serving certain intermediate points and the off-route points in New Jersey on and north of New Jersey Highway 28 and within 15 miles of Newark, and those in Lehigh and Northampton Counties, Pa., over one alternate route for operating convenience only, with restriction; *iron and steel foundry products,* from High Bridge, N.J., to points in Lehigh and Northampton Counties, Pa., and points in the New York, N.Y., commercial zone, as defined by the Commission; and *iron and steel* used in the manufacture of iron and steel foundry products, from points in Lehigh and Northampton Counties, Pa., and points in the New York, N.Y., commercial zone, as defined by the Commission to High Bridge, N.J.; *such merchandise* as is dealt in by retail department stores, in parcels or packages none of which exceeds 100 pounds in weight, in a retail delivery service, from Easton, Pa., to Phillipsburg, N.J., and points in New Jersey within 20 miles thereof, with restriction. Vendee is authorized to operate as a *common carrier* in Pennsylvania, the District of Columbia, Delaware, Maryland, New York, New Jersey, Massachusetts, Rhode Island, Connecticut, Virginia, North Carolina, Ohio, Alabama, Georgia, Florida, South Carolina, Kentucky, Tennessee, and West Virginia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–10902. Authority sought for purchase by ST. JOHNSBURY TRUCKING COMPANY, INC., 38 Main Street, St. Johnsbury, Vt. 05819, of a portion of the operating rights of INTERSTATE TRANSFER, INC., Summit Street, Peabody, Mass. 01960, and for acquisition by HARRY D. ZABARSKY, 38 Main Street, St. Johnsbury, Vt. 05819, MILTON J. ZABARSKY; MAURICE ZABARSKY; and MARTIN N. ZABARSKY, all of 40 Erie Street, Cambridge, Mass. 02139, of control of such rights through the purchase. Applicants' attorneys: Francis E. Barrett, 60 Adams Street, Milton, Mass. 02187 and Kenneth B. Williams, 111 State Street, Boston, Mass. 02109. Operating rights sought to be transferred: Under a certificate of registration in Docket No. MC 30967 Sub-4, covering the transportation of *general commodities,* as a *common carrier,* in interstate commerce, solely within the State of Massachusetts. Vendee is authorized to operate as a common carrier in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania and Delaware. Application has been filed for temporary authority under section 210a(b). NOTE: No. MC 108473 Sub-33, is a matter directly related.

MOTOR CARRIERS OF PASSENGERS

No. MC–F–10900. Authority sought for control by WESTOURS, INC., a noncarrier, 900 IBM Building, Seattle, Wash. 98101, of BREMERTON—TACOMA STAGES, INC., 1936 Westlake Avenue, Seattle, Wash. 98101, and for acquisition by CHARLES B. WEST, 900 IBM Building, Seattle, Wash. 98101, of control of BREMERTON—TACOMA STAGES, INC., through the acquisition by WESTOURS, INC. Applicants' attorney: Arthur T. Wendells, 3933 Seattle-First National Bank Building, Seattle, Wash. 98101. Operating rights sought to be controlled: Passengers and their baggage and express, mail and newspapers in the same vehicle with passengers, as a *common carrier* over regular routes, between Pleasant Valley Junction, Wash., serving all intermediate points. WESTOURS, INC., holds no authority from this Commission. However it is affiliated with (1) WESTOURS MOTOR COACHES, INC., 900 IBM Building, Seattle, Wash. 98101, MC 118832, which is authorized to operate as a *common carrier* in Washington; and (2) WEST HIGHWAY HOLIDAYS, INC., 900 IBM Building, Seattle, Wash. 98101, MC–12819, which is authorized to operate as a *broker* in Arizona, California, Colorado, Idaho, Montana, Oregon, Nevada, New Mexico, Utah, Wyoming, and Washington. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[F.R. Doc. 70–9748; Filed, July 28, 1970; 8:47 a.m.]

## NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

JULY 24, 1970.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by § 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or

other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

State Docket No. 2395, filed June 24, 1970. Applicant: CURRY MOTOR FREIGHT LINES, INC., 700 Northeast Third Street, Amarillo, Tex. Applicant's representative: Grady L. Fox, 222 Amarillo Building, Amarillo, Tex. Certificate of public convenience and necessity sought to operate as a freight service as follows: Transportation of *general commodities* in interstate, intrastate and foreign commerce, to, from, and between the following points, Stonewall, Tex., and Austin, Tex., via U.S. Highway 290, serving all intermediate points and coordinating this authority with all other authority now held by applicant.

*HEARING:* Not yet assigned for hearing. Request for procedural information, including the time for filing protests concerning this application should be addressed to Railroad Commission of Texas, Capitol Station, Post Office Drawer EE, Austin, Tex. 78711, and should not be directed to the Interstate Commerce Commission.

State Docket No. MC 4081 Sub 1, filed July 13, 1970. Applicant: GALLATIN PORTLAND FREIGHT LINES, INC., Post Office Box 124, Gallatin, Tenn. 37066. Applicant's representative: Walter Harwood, 1822 Parkway Towers, Nashville, Tenn. 37219. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities*, except household goods, classes A and B explosives, commodities in bulk, and articles because of size or weight require special equipment between Portland and Westmoreland, Tenn., over Tennessee Highway 52, serving all intermediate points, and between Gallatin, Tenn., and junction U.S. Highway 31E and Tennessee Highway 52, serving all intermediate points, said authority to be tacked with all of applicant's existing authority. Between Gallatin, Tenn., and Nashville, Tenn., via Tennessee Highway 109 from Gallatin to junction with Interstate Highway 40 thence via Interstate Highway 40 to Nashville and return over same route, as an alternate route for operating convenience only. Both interstate and intrastate authority is sought.

*HEARING:* Friday September 25, 1970, at the Commission's Court Room C–1 Cordell Hull Building, Nashville, Tenn., at 9:30 a.m. Request for procedural information, including the time for filing protests, concerning this application should be adressed to Tennessee Public Service Commission, Cordell Hull Building, Nashville, Tenn. 37219, and should not be directed to the Interstate Commerce Commission.

State Docket No. MC 5441 filed July 13, 1970. Applicant: NASHVILLE-CLARKSVILLE EXPRESS, INC., 500 Court Square Building, Nashville, Tenn. 37201. Applicant's representative: Robert L. Baker, 500 Court Square Building, Nashville, Tenn. 37201. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities*, except household goods, class A and B explosives, commodities in bulk and commodities requiring special equipment, between Nashville, Tenn., and Clarksville, Tenn., as follows: From Nashville over U.S. Highway 41 alternate to Clarksville, and return over the same route, serving all intermediate points, and the off-route point of Cumberland City. Both intrastate and interstate authority sought.

*HEARING:* Tuesday, September 15, 1970, at the Commission's Court Room, C–1 Cordell Hull Building, Nashville, Tenn., at 9:30 a.m. Requests for procedural information, including the time for filing protests concerning this application should be addressed to the Tennessee Public Service Commission, Cordell Hull Building, Nashville, Tenn. 37219, and should not be directed to the Interstate Commerce Commission.

State Docket No. T–6728 Sub 3, filed July 14, 1970. Applicant: HUMANSVILLE TRUCK LINE, INC., Route 2, Box 8, Humansville, Mo. 65674. Applicant's representative: Herman W. Huber, 101 East High Street, Jefferson City, Mo. 65101. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities;* (1) from Humansville, Mo., over Missouri Highway 13 to Clinton, Mo., and return; (2) from El Dorado Springs, Mo., over Missouri Highway 82 to the junction of Missouri Highway 82 and Missouri Highway 83, and return; (3) from Clinton, Mo., over Missouri Highway 7 to Warsaw, Mo., and return; (4) from Clinton, Mo., over Missouri Highway 52 to Windsor, Mo., thence over Missouri Highway 52 to its junction with U.S. Highway 65, thence south over U.S. Highway 65 to Warsaw, Mo., and return; (5) from Collins, Mo., over U.S. Highway 54 to Weableau, Mo., and return; (6) from the junction of Missouri Highway 52 and County Route ZZ in Pettis County over Route ZZ to its junction with County Route P in Benton County, thence over Route P to its junction with U.S. Highway 65 and return; with authority to serve between Humansville, Collins, Weableau, Vista, Osceola, Lowry City, Deepwater, Clinton, Lewis, Calhoun, Windsor, Ionia, Lincoln, Warsaw, Coal, Harper, the Boy Scout Camp at or near Osceola, Roscoe, and El Dorado Springs, and the commercial zones of said points, and all intermediate points on the above-described regular routes. Applicant states that it seeks to join the above-described routes with its presently authorized regular routes and provide through service, at rates prescribed by this Commission, between all points sought to be served herein and all points applicant is presently authorized to serve over its presently authorized regular routes. Both intrastate and interstate authority sought.

*HEARING:* Monday, September 21, 1970 at 10 a.m., Public Service Commission, 100 East Capitol Avenue, Jefferson City, Mo. 65101. Requests for procedural information including the time for filing protests, concerning this application should be addressed to the Missouri Public Service Commission, 100 East Capitol Avenue, Jefferson City, Mo. 65101, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[F.R. Doc. 70–9751; Filed, July 28, 1970; 8:47 a.m.]

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[Notice 120]

## MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JULY 23, 1970.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC–67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

### MOTOR CARRIERS OF PROPERTY

No. MC 104430 (Sub-No. 33 TA), filed July 17, 1970. Applicant: CAPITAL TRANSPORT COMPANY, INC., Post Office Box 408, Highway 24 West, McComb, Miss. 39648. Applicant's representative: Donald B. Morrison, Deposit Guaranty Bank Building, Jackson, Miss. 39201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, in tank vehicles, from Deer Park, Tex., to Columbus, Miss., and Jackson, Miss., for 150 days. Supporting shipper: Shell Oil Co., Box 2099, Houston, Tex. 77001. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 212, 145 East Amite Building, Jackson, Miss. 39201.

No. MC 107295 (Sub-No. 418 TA), filed July 17, 1970. Applicant: PRE-FAB TRANSIT CO., Post Office Box 146, Farmer City, Ill. 61842. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Stoves and ranges (cooking)*; from Cleveland, Tenn., to Ironwood, Mich., for 180 days. Supporting shipper: Schult Mobile Home, Inc., Ironwood, Mich.

Send protests to: Harold Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 476, 325 West Adams Street, Springfield, Ill. 62704.

No. MC 110420 (Sub-No. 617 TA), filed July 16, 1970. Applicant: QUALITY CARRIERS, INC., 100 South Calumet Street, Burlington, Wis. 53105. Applicant's representative: A. Bryant Torhorst (same address above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid sweeteners*, in bulk, from Harbor Beach, Mich., to Chicago, Skokie, and Waukegan, Ill., for 180 days. Supporting shipper: Dawe's Laboratories, Inc., 450 State Street, Chicago Heights, Ill. 60411 (J. Hansen). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 110525 (Sub-No. 982 TA), filed July 17, 1970. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, Pa. 19335. Applicant's representative: Thomas J. O'Brien (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fuel oil*, in bulk, in tank vehicles, from Rutland, Vt., to Schenectady, N.Y., for 180 days. Supporting shipper: General Electric Co., 1 River Road, Schenectady, N.Y. 12305. Send protests to: Peter R. Guman, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 900 U.S. Customhouse, Second and Chestnut Streets, Philadelphia, Pa. 19106.

No. MC 111729 (Sub-No. 299 TA), filed July 9, 1970. Applicant: AMERICAN COURIER CORPORATION, 2 Nevada Drive, Lake Success, N.Y. 11040. Applicant's representative: John M. Delany (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Business papers, records and audit and accounting media of all kinds, and advertising material moving therewith*, (a) between Davers, Mass., and Cumberland, R.I.; (b) between Norfolk, Va., on the one hand, and, on the other, Charlotte, and Durham, N.C.; (c) between West Bridgewater, Mass., on the one hand, and, on the other, Gilford, Keene, and Somersworth, N.H.; Augusta, Bangor, Brunswick, Lewiston, Portland, Rockland, Rumford, Scarboro and Waterville, Maine; Bristol, East Hartford, and North Haven, Conn.; East Providence, Johnston, North Smithfield, and Providence, R.I.; and Bel Air, Md.; (d) between West Bridgewater, Mass., on the one hand, and, on the other, Logan International Airport, Boston, Mass., restricted to traffic having an immediately prior or subsequent movement by air; (e) between Philadelphia, Pa., on the one hand, and, on the other, points in Hunterdon County, N.J.; (f) between Cincinnati, Ohio, on the one hand, and, on the other, points in Indiana. (2) *Exposed and processed film and prints, complimentary replacement film, incidental dealer handing supplies and advertising literature moving therewith* (except motion picture film used primarily for commercial theater and television exhibition), (a) between Chamblee, Ga., on the one hand, and, on the other, points in Autauga, Baldwin, Barbour, Bibb, Bullock, Butler, Chambers, Chilton, Choctaw, Clarke, Coffee, Conecuh, Coosa; Covington, Crenshaw, Dale, Dallas, Elmore, Escambia, Geneva, Greene, Hale, Henry, Houston, Lee, Lowndes, Macon, Marengo, Mobile, Monroe, Montgomery, Perry, Pike, Russell, Sumter, Tallapoosa, Washington, and Wilcox Counties, Ala.; and points in Alachua, Baker, Bay, Bradford, Calhoun, Citrus, Clay, Columbia, Dixie, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Marion, Nassau, Okaloosa, Putnam, St. Johns, Santa Rosa, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington Counties, Fla.;

(b) between points in Autauga, Baldwin, Barbour, Bibb, Bullock, Butler, Chambers, Chilton, Choctaw, Clarke, Coffee, Conecuh, Coosa, Covington, Crenshaw, Dale, Dallas, Elmore, Escambia, Geneva, Greene, Hale, Henry, Houston, Lee, Lowndes, Macon, Marengo, Mobile, Monroe, Montgomery, Perry, Pike, Russell, Sumter, Tallapoosa, Washington, and Wilcox Counties, Ala., on traffic having an immediately prior or subsequent movement by air; (c) between points in Alachua, Baker, Bay, Bradford, Calhoun, Citrus, Clay, Columbia, Dixie, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Marion, Nassau, Okaloosa, Putnam, St. Johns, Santa Rosa, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington Counties, Fla., on traffic having an immediately prior or subsequent movement by air; (d) between Chamblee, Ga., on the one hand, and, on the other, points in Tennessee, east of the westerly crossing of the Tennessee River, bounded on the north by Kentucky and Virginia, on the east by North Carolina, and on the south by Georgia and Alabama; (e) between Akron, Columbus and Dayton, Ohio, on the one hand, and, on the other, points in Illinois, Indiana, Kentucky, and Michigan. (3) *Laboratory samples, blood drawing material, blood specimens and serum specimens, and related documents and records, such as specimen and medical reports*, (a) between points in Bergen County, N.J., on the one hand, and, on the other, points in Connecticut, Massachusetts, New Hampshire, New York, Pennsylvania, and Rhode Island; (b) between points in Middlesex County, Mass., on the one hand, and, on the other, points in Cheshire, Grafton, Hillsboro, Merrimack, Rockingham, Strafford, and Sullivan Counties, N.H.; Bristol, Kent, Newport, Providence, and Washington Counties; R.I.; Cumberland, Penobscot, Sagadohoc and York Counties, Maine, for 180 days. NOTE: Applicant intends to tack with its existing authority. Supporting shippers: There are approximately 10 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission, in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Anthony Chiusano, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 113974 (Sub-No. 41 TA), filed July 16, 1970. Applicant: PITTSBURGH & NEW ENGLAND TRUCKING CO., 211 Washington Avenue, Post Office Box 67, Dravosburg, Pa. 15034. Applicant's representative: W. H. Schlottman (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the plantsites of Jones & Laughlin Steel Corp. at Pittsburgh and Aliquippa, Pa., to points in Indiana, Illinois, and the Lower Peninsula of Michigan, for 180 days. Supporting shipper: Jones & Laughlin Steel Corp., 3 Gateway Center, Pittsburgh, Pa. 15230. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pa. 15222.

No. MC 115353 (Sub-No. 12 TA) (correction), filed June 24, 1970, published in the FEDERAL REGISTER issue of July 8, 1970, and republished as corrected this issue. Applicant: LOUIS J. KENNEDY TRUCKING COMPANY, 342 Schuyler Avenue, Kearny, N.J. 07032. Applicant's representative: Bert Collins, 140 Cedar Street, New York, N.Y. 10006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Building materials, gypsum and gypsum products*, except in bulk, from the plant and warehouse sites of the United States Gypsum Co. at Staten Island (Richmond County, N.Y.), to points in Massachusetts and Rhode Island; *returned shipments* in the reverse direction. Restriction: The proposed service to be under contract with United States Gypsum Co., for 180 days. NOTE: The purpose of this republication is to include the destination points, which were inadvertently omitted in previous publication. Supporting shipper: United States Gypsum Co., 600 Madison Avenue, New York, N.Y. 10002. Send protests to: District Supervisor W. J. Grossmann, Interstate Commerce Commission, Bureau of Operations, 970 Broad Street, Newark, N.J. 07102.

No. MC 115771 (Sub-No. 13 TA), filed July 16, 1970. Applicant: PENBROOK HAULING COMPANY, INC., Post Office Box 4213, Harrisburg, Pa. 17111. Applicant's representative: James W. Hagar, 100 Pine Street, Harrisburg, Pa. 17108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel reinforcing bars*, from Woodbridge, Va., to Washington, D.C., and its commercial zone, for 180 days. Supporting shipper: Bethlehem Steel Corp., Bethlehem, Pa. 18016. Send protests to: Robert W. Ritenour, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 508 Federal Building, Post Office Box 869, Harrisburg, Pa. 17108.

No. MC 116073 (Sub-No. 127 TA), filed July 16, 1970. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., Post Office Box 919, Moorhead, Minn. 56560. Applicant's representative: Robert G. Tessar (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, in initial movements, from Jamestown, N. Dak., to points in Minnesota, Iowa, South Dakota, Nebraska, Montana, Idaho, Wyoming, Washington, and Colorado, for 180 days. Supporting shipper: Rollohome Corp. of Jamestown, Post Office Box 1764, Jamestown, N. Dak. 58401. Send protests to: J. H. Ambs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Post Office Box 2340, Fargo, N. Dak. 58102.

No. MC 117765 (Sub-No. 107 TA), filed July 16, 1970. Applicant: HAHN TRUCK LINE, INC., 5315 Northwest Fifth, Post Office Box 75267, Oklahoma City, Okla. 73107. Applicant's representative: R. E. Hagan (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gas grills, gas lights, and accessories*, from Bristol, Wis., to points in Arkansas, Kansas, Missouri, and Oklahoma, for 180 days. Supporting shipper: A–Z Supply Co., 301 South Clifton, Wichita, Kans. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240 Old Post Office and Courthouse Building, 215 Northwest Third Street, Oklahoma City, Okla. 73102.

No. MC 124230 (Sub-No. 12 TA), filed July 16, 1970. Applicant: C. B. JOHNSON, INC., Post Office Drawer S, Cortez, Colo. 81321. Applicant's representative: Leslie R. Kehl, 420 Denver Club Building, Denver, Colo. 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ores and concentrates* (except Uranium and Vanadium) in bulk, from the mill of Federal Resources Corp. located at Camp Bird, Ouray County, Colo., to Montrose, Colo., and Tooele, Utah, for 150 days. Supporting shipper: Federal Resources Corp., Camp Bird, Colo. Send protests to: District Supervisor Herbert C. Ruoff, Interstate Commerce Commission, Bureau of Operations, 2022 Federal Building, Denver, Colo. 80202.

No. MC 133038 (Sub-No. 6 TA), filed July 16, 1970. Applicant: FIRST SCOTT STREET CORPORATION, 3900 Orleans Street, Detroit, Mich. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts*, from Quincy, Mich., to points in Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Arizona, California, Colorado, Nevada, New Mexico, Oregon, Utah, and Washington, for 180 days. Supporting shipper: Great Markwestern Packing Co., Detroit, Mich. Send protests to: District Supervisor Gerald J. Davis, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower, 10 Witherell, Detroit, Mich. 48226.

No. MC 134329 (Sub-No. 1 TA), filed July 16, 1970. Applicant: FISCUS MOTOR FREIGHT, INC., 1121 South 29th Avenue, Yakima, Wash. 98901. Applicant's representative: Charles C. Flower, 303 East D Street, Yakima, Wash. 98901. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Zinc sulphate and zinc products*, in sacks, bulk or liquid, from Yakima and Tacoma, Wash., to points in Colorado, Montana, Idaho, Oregon, and California, for 180 days. Supporting shipper: Bay Zinc Co., Inc., 4110 East 11th Street, Tacoma, Wash. 98421. Send protests to: District Supervisor W. J. Huetig, Interstate Commerce Commission, Bureau of Operations, 450 Multnomah Building, 120 Southwest Fourth Avenue, Portland, Oreg. 97204.

No. MC 134773 TA, filed July 17, 1970. Applicant: JOHN W. MILLS, Post Office Box 44, Montvale, Va. 24122. Applicant's representative: E. Griffith Dodson, Jr., Post Office Box 1045, Roanoke, Va. 24005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Automotive parts and supplies*, from Roanoke, Va., to points in North Carolina, Tennessee, and West Virginia, for 180 days. Supporting shipper: NAPA Distribution Center, 3488 Aerial Way Drive SW., Roanoke, Va. 24018. Send protests to: Clatin M. Harmon, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 215 Campbell Avenue SW., Roanoke, Va. 24011.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[F.R. Doc. 70-9749; Filed, July 28, 1970; 8:47 a.m.]

[Notice 121]

## MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JULY 24, 1970.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC–67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 3560 (Sub-No. 39 TA), filed July 17, 1970, Applicant: GENERAL EXPRESSWAYS, INC., 1205 South Platte River Drive, Denver, Colo. 80223. Applicant's representative: David N. Inwood (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prefabricated steel buildings, knocked down, including parts and accessories and iron and steel articles*, from the plantsites of Inland-Ryerson Construction Products Co., Milwaukee, Wis., to Calvert Cliffs in Calvert County near Prince Frederick, Md., for 150 days. Supporting shipper: Inland-Ryerson Construction Products Co., Box 393, Milwaukee, Wis. 53201. Send protests to: District Supervisor C. W. Buckner, Interstate Commerce Commission, Bureau of Operations, 2022 Federal Building, Denver, Colo. 80202.

No. MC 11592 (Sub-No. 11 TA), filed July 16, 1970. Applicant: BEST REFRIGERATED EXPRESS, INC., 1402 Pacific Street, Omaha, Nebr. 68108. Applicant's representative: Charles J. Kimball, Post Office Box 2028, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts and articles distributed by meat packinghouses*, as described in sections A and C, appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides, and commodities in bulk, in tank vehicles), from the plantsite and storage facilities of American Beef Packers, Inc., at or near Fort Morgan, Colo., to points in Illinois, Indiana, Michigan, Ohio, Wisconsin, Pennsylvania, New York, Massachusetts, Connecticut, New Jersey, Maryland, Kentucky, and Washington, D.C., for 150 days. Supporting shipper: American Beef Packers, Inc., Post Office Box 6234, Elmwood Park Station, Omaha, Nebr. 68106 (Ralph L. McGee). Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 705 Federal Office Building, Omaha, Nebr. 68102.

No. MC 76025 (Sub-No. 20 TA), filed July 16, 1970. Applicant: OVERLAND EXPRESS, INC., 651 First Street SW., New Brighton, Minn. 55112. Applicant's representative: James F. Sexton (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and/or cold storage facilities utilized by Wilson Sinclair Co., at Albert Lea, Minn., to Chicago, Ill., and

points in the Chicago commercial zone; restricted to traffic originating at the above-specified plantsite and/or cold storage facilities and destined to the above-specified destinations, for 180 days. Supporting shipper: Wilson-Sinclair Co., Chicago, Ill. Send protests to: District Supervisor A. E. Rathert, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minn. 55401.

No. MC 93980 (Sub-No. 53 TA), filed July 20, 1970. Applicant: VANCE TRUCKING COMPANY, INCORPORATED, Raleigh Road, Post Office Box 1119, Henderson, N.C. 27536. Applicant's representative: Henry M. Strause (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Boards or sheets*, flat, made from wood chips, wood shavings, sawdust, or ground wood compressed with added resin binder, from the plantsite of U.S. Plywood, Champion Paper, Inc., near South Boston, Va., to points in Virginia, West Virginia, District of Columbia, Maryland, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine, for 180 days. Supporting shipper: George R. Johansen, Traffic Analyst, U.S. Plywood-Champion Papers, Inc., Knightsbridge Drive, Hamilton, Ohio 45011. Send protests to: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Post Office Box 26896, Raleigh, N.C. 27611.

No. MC 113024 (Sub-No. 93 TA), filed July 17, 1970. Applicant: ARLINGTON J. WILLIAMS, INC., Rural Delivery No. 2, Smyrna, Del. 19977. Applicant's representative: Samuel W. Earnshaw, 833 Washington Building, Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Luggage, handbags, and hangers*, in cartons, from Clayton, Del., to points in Cook, Du Page, Lake, and Kane Counties, Ill., and Lake County, Ind., for account of Leeds Travelwear Division, Rapid-American Corp., for 180 days. Supporting shipper: Leeds Travelwear Division of Rapid-American Corp., Bassett Street, Clayton, Del. 19938, Andrew N. Nowak, Manager, Customer Service. Send protests to: Paul J. Lowry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 206 Old Post Office Building, 129 East Main Street, Salisbury, Md. 21801.

No. MC 116254 (Sub-No. 114 TA), filed July 20, 1970. Applicant: CHEM-HAULERS, INC., 1510 Martin Avenue, Post Office Box 245, Sheffield, Ala. 35660. Applicant's representative: L. Winston Biggs (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid aluminum sulphate*, in tank vehicles, from Counce, Tenn., to points in Indiana and Kentucky, for 180 days. Supporting shipper: Stauffer Chemical Co., Suite 300, South, 6910 Fannin Street, Houston, Tex. 77023. Send protests to: Clifford W. White, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 814, No. 2121 Building, Birmingham, Ala. 35203.

No. MC 125826 (Sub-No. 7 TA), filed July 20, 1970. Applicant: BARTLESON BROTHERS, INC., Courses Landing Road, Penns Grove, N.J. 08069. Applicant's representative: Bert Collins, 140 Cedar Street, New York, N.Y. 10006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Carbon dioxide*, solidified (dry ice), and liquefied, from Philadelphia, Pa., to points in Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Ohio, Delaware, Maryland, and Pennsylvania, for 180 days. Supporting shipper: Thermice Corp., 1429 Walnut Street, Philadelphia, Pa. 19102. Send protests to: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 410 Post Office Building, Trenton, N.J. 08608.

No. MC 126104 (Sub-No. 6 TA), filed July 17, 1970. Applicant: WEBER TRUCKING CORPORATION, 2370 South 1900 West Street, Ogden, Utah 84401. Applicant's representative: William J. M. Dalgliesh, 419 Judge Building, Salt Lake City, Utah 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Flattened automobile bodies*, from points in Weber, Salt Lake, Davis, and Utah Counties, Utah, to National City, Calif., for 180 days. Supporting shipper: Pomona Iron & Metal, 1432 East First Street, Pomona, Calif. (Alex Polesetsky, Owner). Send protests to: John T. Vaughan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6201 Federal Building, Salt Lake City, Utah 84111.

No. MC 134664 (Sub-No. 1 TA), filed July 15, 1970. Applicant: GILLES ROBERT, INC., 298 Bernier Street, Post Office Box 21, St. Luc, Province of Quebec, Canada. Applicant's representative: Adrien Paquette, 200, rue St. Jacques, Suite 1010, Montreal, Province of Quebec, Canada. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and wood products*, from the ports of entry on the international boundary line between the United States and Canada at Champlain, N.Y., Highgate Springs and North Mills, Vt., to points in Massachusetts, Pennsylvania, New York, Maine, New Hamphire, Vermont, Connecticut, Rhode Island, Maryland, New Jersey, and Michigan, for 180 days. Supporting shippers: Stanfine Forest Products, Ltd., 328 Victoria Street, Westmount, Montreal 215, Province of Quebec, Canada; Neos Forest Products, Ltd., 354 Henri-Bourassa Boulevard West, Montreal, Province of Quebec, Canada; Emilien Morin Ltee, 900 Rockland Avenue, Outremont, Montreal, Province of Quebec, Canada; Harvay McLean, 1554 Viel Street, Laurent, Montreal, Province of Quebec, Canada. Send protests to: Martin P. Monaghan, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 52 State Street, Room 5, Montpelier, Vt. 05602.

No. MC 134763 (Sub-No. 1 TA), filed July 17, 1970. Applicant: WINCO TRANSPORT, INC., 1225 Constitution Road SE., Atlanta, Ga. 30316. Applicant's representative: Robert B. Pepper, 297 Academy Street, Jersey City, N.J. 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic bags, plastic tubing and sheeting, and new burlap* in compressed rolls, from plantsite of Packaging Products & Design Corp., Newark, N.J. to points in Alabama, California, Georgia, Louisiana, Mississippi, North Carolina, Tennessee, Texas, and South Carolina, for 180 days. Supporting shipper: Packaging Products & Design Corp., 574 Ferry Street, Newark, N.J. 07105. Send protests to: District Supervisor William L. Scroggs, Interstate Commerce Commission, Bureau of Operations, Room 309, 1252 West Peachtree Street NW., Atlanta, Ga. 30309.

No. MC 134774 TA, filed July 17, 1970. Applicant: John E., Marion P., and Louise L. Harrison, doing business as HARRISON ENTERPRISES, Post Office Box 144, Glendale, Ariz. 85301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mobile homes*, from points in Orange, Los Angeles, Riverside, and San Bernardino Counties, Calif., to points in Arizona, for 180 days. Supporting shippers: Frontier City Trailer Sales, Inc., 4220 East Van Buren, Phoenix, Ariz. 85008; Sun Trailer Sales, 3000 East Van Buren, Phoenix, Ariz. 85008; Oracle Mobile Homes, 3332 North Oracle Road, Tucson, Ariz. 85008; Phoenix Trailer Sales, 3500 East Van Buren, Phoenix, Ariz. 85008; Customline Mobile Homes, 3500 East Van Buren, Phoenix, Ariz. 85008; Del Buckles Mobile Homes, 3939 East Van Buren, Phoenix, Ariz. 85008; Sun Valley Mobile Home Sales, 1860 East Main Street, Mesa, Ariz. 85201; Arileo Mobile Homes, 3428 East Van Buren, Phoenix, Ariz. 85008; Parkwood Mobile Homes Sales, 3033 North Central, Phoenix, Ariz. 85012. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 3427 Federal Building, Phoenix, Ariz. 85025.

No. MC 134775 TA, filed July 16, 1970. Applicant: TECH TRANSPORTATION, INC., 10221 13th Avenue South, Seattle, Wash. 98168. Applicant's representative: George R. LaBissoniere, 1424 Washington Building, Seattle, Wash. 98101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fiberglass and aluminum cargo containers, main landing gear and fuselage fairing components and interior furnishings*, from Kent, Wash., to San Francisco, Palmdale, and Burbank, Calif., for Heath Tecna only, for 180 days. Supporting shipper: Heath Plastics Division, Heath Tecna Corp., 19819 84th Avenue South, Kent, Wash. 98031. Send protests to: E. J. Casey, District Supervisor, Interstate Commerce

Commission, Bureau of Operations, 6130 Arcade Building, Seattle, Wash. 98101.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
*Acting Secretary.*

[F.R. Doc. 70-9750; Filed, July 28, 1970; 8:47 a.m.]

## RAYMOND R. MANION

### Statement of Changes in Financial Interests

Pursuant to subsection 302(c), Part III, Executive Order 10647 (20 F.R. 8769) "Providing for the Appointment of Certain Persons under the Defense Production Act of 1950, as amended," I hereby furnish for filing with the Office of the Federal Register for publication in the FEDERAL REGISTER the following information showing any changes in my financial interests and business connections as heretofore reported and published (30 F.R. 8809; 31 F.R. 930; 31 F.R. 13405; 32 F.R. 769; 32 F.R. 10786; 33 F.R. 522; 33 F.R. 10544; 33 F.R. 20067; 34 F.R. 11341; and 35 F.R. 131) for the 6 months' period ended July 3, 1970.

No change since last statement dated December 24, 1969.

[SEAL] R. R. MANION.

JULY 8, 1970.

[F.R. Doc. 70-9752; Filed, July 28, 1970; 8:48 a.m.]

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PART II

## Department of Health, Education, and Welfare

### Social and Rehabilitation Service

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## PUBLIC ASSISTANCE PROGRAMS

### Grants to States and Practice and Procedure for Hearings on Conformity of Public Assistance Plans to Federal Requirements

# Title 45—PUBLIC WELFARE

## Chapter II—Social and Rehabilitation Service (Assistance Programs), Department of Health, Education, and Welfare

## PART 201—GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

## PART 213—PRACTICE AND PROCEDURE FOR HEARINGS TO STATES ON CONFORMITY OF PUBLIC ASSISTANCE PLANS TO FEDERAL REQUIREMENTS

The regulations set forth below amend Chapter II, Title 45 of the Code of Federal Regulations pertaining to the programs of financial assistance and medical assistance authorized under titles I, IV (Part A), X, XIV, XVI, and XIX of the Social Security Act, by revising Part 201 thereof and by adding a new Part 213. The amendments to Part 201 are made to reflect the current provisions of the Social Security Act, the current organization of the Social and Rehabilitation Service (34 F.R. 1279, Jan. 25, 1969, as amended by 34 F.R. 18561, Nov. 21, 1969, and 35 F.R. 4660, Mar. 17, 1970), and current Federal administrative procedures. The new Part 213 is added to set forth rules of procedure to govern the practice for hearings afforded by the Department to States on conformity of State plans to Federal requirements under such titles of the Act, and the practice relating to decisions upon such hearings.

These amendments shall be effective upon their publication in the FEDERAL REGISTER. Notice of proposed rule making has been dispensed with, since the regulations constitute rules of agency organization, procedure, or practice, and since notice and public procedure thereon are impracticable. Hearings with respect to the conformity of the plans of a number of States, as provided for under § 201.6 of Chapter II, have been scheduled on various days in August and September 1970 and it is urgent that the parties to such hearings know forthwith the rules of procedure and practice that are applicable to the conduct of such hearings. The regulations in the new Part 213 reflect the decision of the U.S. Court of Appeals for the District of Columbia in the case of National Welfare Rights Organization v. Finch (Nos. 23,787 and 23,890, decided June 9, 1970), and are adopted without prejudice to the right of the United States to seek further appellate review of the decision in such case.

Notwithstanding the immediate adoption and applicability of these regulations, comments, suggestions, or objections thereto are invited to be submitted in writing to the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington, D.C. 20201, within a period of 30 days from date of publication of these regulations in the FEDERAL REGISTER. The regulations will be reviewed in the light of the views presented by interested persons and experience at the hearings held in accordance with the regulations.

Chapter II of Title 45 of the Code of Federal Regulations is amended as follows:

1. Part 201 is revised to read as set forth below:

Sec.



AUTHORITY: The provisions of this Part 201 issued under sec. 1102, 49 Stat. 647, 42 U.S.C. 1302.

### § 201.1 General definitions.

When used in this chapter, unless the context otherwise indicates:

(a) "Act" means the Social Security Act, and titles referred to are titles of that Act;

(b) "Department" means the Department of Health, Education, and Welfare;

(c) "Administrator" means the Administrator, Social and Rehabilitation Service;

(d) "Secretary" means the Secretary of Health, Education, and Welfare;

(e) "Service" means the Social and Rehabilitation Service in the Department;

(f) "Regional Commissioner" means the Regional Commissioner of the Social and Rehabilitation Service;

(g) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam;

(h) "State agency" means the State agency administering or supervising the administration of the State plan under title I, IV–A, X, XIV, XVI, or XIX of the Act;

(i) The terms "regional office" and "central office" refer to the regional offices and the central office of the Social and Rehabilitation Service, respectively.

## Subpart A—Approval of State Plans and Certification of Grants

### § 201.2 General.

The State plan is a comprehensive statement submitted by the State agency describing the nature and scope of its program and giving assurance that it will be administered in conformity with the specific requirements stipulated in the pertinent title of the Act, the regulations in Subtitle A and this chapter of this title, and other applicable official issuances of the Department. The State plan contains all information necessary for the Service to determine whether the plan can be approved, as a basis for Federal financial participation in the State program.

### § 201.3 Approval of State plans and amendments.

The State plan consists of written documents furnished by the State to cover each of its programs under the Act: Old-age assistance (title I); aid and services to needy families with children (part A of title IV); aid to the blind (Title X); aid to the permanently and totally disabled (title XIV); aid to the aged, blind or disabled (title XVI); or medical assistance (title XIX). The State may submit the common material on more than one program as an integrated plan. However, it must identify the provisions pertinent to each title since a separate plan must be approved for each public assistance title. A plan submitted under title XVI encompasses, under a single plan, the programs otherwise covered by three separate plans under titles I, X, and XIV. After approval of the original plan by the Service, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that the Service may determine whether the plan continues to meet Federal requirements and policies.

(a) *Submittal.* State plans and revisions of the plans are submitted first to the State governor or his designee for review in accordance with § 204.1 of this chapter, and then to the regional office. The States are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(b) *Review.* Staff in the regional offices are responsible for review of State plans and amendments. They also initiate discussion with the State agency on clarification of signficant aspects of the plan which come to their attention in the course of this review. State plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the State agency.

(c) *Action.* The Regional Commissioner exercises delegated authority to take affirmative action on State plans and amendments thereto on the basis of policy statements or precedents previously approved by the Administrator. The Administrator retains authority for determining that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval, except that a final determination of disapproval may not be made without prior consultation and discussion by the Administrator with the Secretary. The Regional Commissioner or the Administrator formally notifies

the State agency of the actions taken on State plans or revisions.

(d) *Basis for approval.* Determinations as to whether State plans (including plan amendments and administrative practice under the plans) originally meet, or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations. Guidelines are furnished to assist in the interpretation of the regulations.

(e) *Prompt approval of State plans.* Pursuant to section 1116 of the Act, the determination as to whether a State plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 90th day following the date on which the plan submittal is received in the regional office, unless the Regional Commissioner has secured from the State agency a written agreement to extend that period.

(f) *Prompt approval of plan amendments.* Any amendment of an approved State plan may, at the option of the State, be considered as a submission of a new State plan. If the State requests that such amendment be so considered, the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 90th day following the date on which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Commissioner has secured from the State agency a written agreement to extend that period. In absence of request by a State that an amendment of an approved State plan shall be considered as a submission of a new State plan, the procedures under § 201.6 (a) and (b) shall be applicable.

(g) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted, and, with respect to expenditures for assistance under such plan, may not be earlier than the first day on which the plan is in operation on a statewide basis. The same applies with respect to plan amendments that provide additional assistance or services to persons eligible under the approved plan or that make new groups eligible for assistance or services provided under the approved plan. For other plan amendments the effective date shall be as specified in other sections of this chapter.

### § 201.4 Administrative review of certain administrative decisions.

Pursuant to section 1116 of the Act, any State dissatisfied with a determination of the Administrator pursuant to § 201.3 (e) or (f) with respect to any plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Regional Commissioner asking the Administrator for reconsideration of the issue of whether such plan or amendment conforms to the requirements for approval under the Act and pertinent Federal requirements. Within 30 days after receipt of such a petition, the Administrator shall notify the State of the time and place at which the hearing for the purpose of reconsidering such issue will be held. Such hearing shall be held not less than 30 days nor more than 60 days after the date notice of such hearing is furnished to the State, unless the Administrator and the State agree in writing on another time. For hearing procedures, see Part 213 of this chapter. A determination affirming, modifying, or reversing the Administrator's original decision will be made within 60 days of the conclusion of the hearing. Action pursuant to an initial determination by the Administrator described in such § 201.3 (e) or (f) that a plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Administrator subsequently determines that his original decision was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

### § 201.5 Grants.

To States with approved plans, grants are made each quarter for expenditures under the plan for assistance, services, training and administration. The determination as to the amount of a grant to be made to a State is based upon documents submitted by the State agency containing information required under the Act and such other pertinent facts as may be found necessary.

(a) *Form and manner of submittal.* (1) Time and place: The estimates for public assistance grants for each quarterly period must be forwarded to the regional office 45 days prior to the period of the estimate. They include a certification of State funds available and a justification statement in support of the estimates. A statement of quarterly expenditures and any necessary supporting schedules must be forwarded to the Department of Health, Education, and Welfare, Social and Rehabilitation Service, Attention: Finance Division, Washington, D.C. 20201, not later than 30 days after the end of the quarter.

(2) Description of forms: "State Agency Expenditure Projection—Quarterly Projection by Program" represents the State agency's estimate of the total amount and the Federal share of expenditures for assistance, services, training, and administration to be made during the quarter for each of the public assistance programs under the Act. From these estimates the State and Federal shares of the total expenditures are computed. The State's computed share of total estimated expenditures is the amount of State and local funds necessary for the quarter. The Federal share is the basis for the funds to be advanced for the quarter. The State agency must also certify, on this form or otherwise, the amount of State funds (exclusive of any balance of advances received from the Federal Government) actually on hand and available for expenditure; this certification must be signed by the executive officer of the State agency submitting the estimate or a person officially designated by him, or by a fiscal officer of the State if required by State law or regulation. (A form "Certificate of Availability of State Funds for Assistance and Administration during Quarter" is available for submitting this information, but its use is optional.) If the amount of State funds (or State and local funds if localities participate in the program), shown as available for expenditures is not sufficient to cover the State's proportionate share of the amount estimated to be expended, the certification must contain a statement showing the source from which the amount of the deficiency is expected to be derived and the time when this amount is expected to be made available.

(3) The State agency must also submit a quarterly statement of expenditures for each of the public assistance programs under the Act. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditures also shows the share of the Federal Government in any recoupment, from whatever source, of expenditures claimed in any prior period, and also in expenditures not properly subject to Federal financial participation which are acknowledged by the State agency or have been revealed in the course of an audit.

(b) *Reveiw.* The State's estimates are analyzed by the regional office staff and are forwarded with recommendations as required to the central office. The central office reviews the State's estimate, other relevant information, and any adjustments to be made for prior periods, and computes the grant.

(c) *Grant award.* The grant award computation form shows, by program, the amount of the estimate for the ensuing quarter, and the amounts by which the estimate is reduced or increased because of over- or under-estimate for the prior quarter and for other adjustments. This form is transmitted to the State agency to draw the amount of the grant award, as needed, to meet the Federal share of disbursements. The draw is through a commercial bank and the Federal Reserve system against a continuing letter of credit certified to the Secretary of the Treasury in favor of the State payee. A copy of the grant award notice is sent to the State Central Information Reception Agency in accord with section 201 of the Intergovernmental Cooperation Act of 1968.

(d) *Letter of credit payment system.* The letter of credit system for payment of advances of Federal funds was established pursuant to Treasury Department regulations (Circular No. 1075), published in the FEDERAL REGISTER on July 11, 1967 (32 F.R. 10201). The HEW "Instructions to Recipient Organizations for Use of Letter of Credit" was transmitted to all grantees by memorandum from the Assistant Secretary-Comptroller on January 15, 1968.

**§ 201.6 Withholding of payment; reduction of Federal financial participation in the costs of social services and training.**

(a) *When withheld.* Further payments to a State are withheld in whole or in part if the Administrator, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of an approved plan, finds:

(1) That the plan no longer complies with the provisions of section 2, 402, 1002, 1402, 1602, or 1902 of the Act; or

(2) That in the administration of the plan there is failure to comply substantially with any such provision.

A question of noncompliance of a State plan may arise from an unapprovable change in the approved State plan, the failure of the State to change its approved plan to conform to a new Federal requirement for approval of State plans, or the failure of the State in practice to comply with a Federal requirement, whether or not its State plan has been amended to conform to such requirement.

(b) *When the rate of Federal financial participation is reduced.* Under title I, X, XIV, or XVI of the Act, Federal financial participation in the costs of social services and training approved at the rate of 75 per centum is reduced to 50 per centum if the Administrator, after reasonable notice and opportunity for a hearing to the State agency, finds:

(1) That the plan provision under such title for prescribed services no longer complies with the Federal requirements with respect to such prescribed services; or

(2) That in the administration of the plan there is a failure to comply substantially with such plan provision.

(c) *Information discussions.* Hearings with respect to matters under paragraph (a) or (b) of this section are generally not called, however, until after reasonable effort has been made by the Service to resolve the questions involved by conference and discussion with State officials. Formal notification of the date and place of hearing does not foreclose further negotiations with State officials.

(d) *Conduct of hearings.* For hearing procedures, see Part 213 of this chapter.

(e) *Notification of withholding.* If the Administrator makes a finding of noncompliance with respect to a matter under paragraph (a) of this section, the State agency is notified that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the plan not affected by such failure), until the Administrator is satisfied that there will no longer be any such failure to comply. Until he is so satisfied, no further payments will be made to the State (or will be limited to categories under or parts of the plan not affected by such failure).

(f) *Notification of reduction in the rate of Federal financial participation.* If the Administrator makes a finding of noncompliance with respect to a matter under paragraph (b) of this section, the State agency is notified that further payments will be made to the State at the rate of 50 per centum of the costs of services and training, until the Administrator is satisfied that there will no longer be any failure to comply.

**§ 201.7 Judicial review.**

Any State dissatisfied with a final determination of the Secretary pursuant to § 201.4 or § 201.6(a) may, within 60 days after it has been notified of such determination, file with the U.S. Court of Appeals for the circuit in which such State is located a petition for review of such determination. After a copy of the petition is transmitted by the clerk of the court to the Secretary, the Secretary thereupon shall file in the court the record of proceedings upon which such determination was based as provided in section 2112 of title 28, United States Code. The court is bound by the Secretary's findings of fact, if supported by substantial evidence. The court has jurisdiction to affirm the Secretary's decision, or set it aside in whole or in part, or, for good cause, to remand the case for additional evidence. If the case is remanded, the Secretary may thereupon make new or modified findings of fact, and may modify his previous determination. The Secretary shall certify to the court the transcript and record of the further proceedings. The judgment of the court is subject to review by the Supreme Court of the United States upon certiorari or certification as provided in 28 U.S.C. 1254.

## Subpart B—Review and Audits

**§ 201.10 Review of State and local administration.**

(a) In order to provide a basis for determining that State agencies are adhering to Federal requirements and to the substantive legal and administrative provisions of their approved plans, the Service conducts a review of State and local public assistance administration. This review includes analysis of procedures and policies of State and local agencies and examination of case records of individual recipients.

(b) Each State agency is required to carry out a continuing quality control program primarily covering determination of eligibility in statistically selected samples of individual cases. The Service conducts a continuing observation of these State systems.

(c) Adherence to other Federal requirements set forth in the pertinent titles of the Act and the regulations in this title is evaluated through review of selected case records and aspects of agency operations.

**§ 201.11 Personnel merit system review.**

A personnel merit system review is carried out by the Office of State Merit Systems of the Office of the Assistant Secretary for Administration of the Department. The purpose of the review is to evaluate the effectiveness of the State merit system relating to the public assistance programs and to determine whether there is compliance with Federal requirements in the administration of the merit system plan. See Part 70 of this title.

**§ 201.12 Public assistance audits.**

(a) Annually, or at such frequencies as are considered necessary and appropriate, the operations of the State agency are audited by representatives of the Audit Agency of the Department. Such audits are made to determine whether the State agency is being operated in a manner that

(1) Encourages prudent use of program funds, and

(2) Provides a reasonable degree of assurance that funds are being properly expended, and for the purposes for which appropriated and provided for under the related Act and State plan, including State laws and regulations.

(b) Reports of these audits are released by the Audit Agency simultaneously to program officials of the Department, and to the cognizant State officials. These audit reports relate the opinion of the Audit Agency on the practices reviewed and the allowability of costs audited at the State agency. Final determinations as to actions required on all matters reported are made by cognizant officials of the Department.

**§ 201.13 Action on audit and review findings.**

(a) If the audit results in no exceptions, the State agency is advised by letter of this result. The general course for the disposition of proposed exceptions resulting from audits involves the submittal of details of these exceptions to the State agency which then has an opportunity to concur in the proposed exceptions or to assemble and submit additional facts for purposes of clearance. Provision is made for the State agency to appeal proposed audit exceptions in which it has not concurred and which have not been deleted on the basis of clearance material. After consideration of a State agency's appeal by the Administrator, the Service advises the State agency of any expenditures in which the Federal Government may not participate and requests it to include the amount as adjustments in a subsequent statement of expenditures. Expenditures in which it is found the Federal Government may not participate and which are not properly adjusted through the State's claim will be deducted from subsequent grants made to the State agency.

(b) If the Federal or State reviews reveal serious problems with respect to compliance with any Federal requirement, the State agency is required to correct its practice so that there will be no recurrence of the problem in the future.

2. A new Part 213 is added to read as set forth below:

### Subpart A—General

Sec.
213.1 Scope of rules.
213.2 Records to be public.
213.3 Use of gender and number.
213.4 Suspension of rules.
213.5 Filing and service of papers.

Subpart B—Preliminary Matters-Notice and Parties



Subpart C—Hearing Procedures



Subpart D—Posthearing Procedures, Decisions



AUTHORITY: The provisions of this Part 213 issued under sec. 1102, 49 Stat. 647, 42 U.S.C. 1302.

## Subpart A—General

### § 213.1 Scope of rules.

(a) The rules of procedure in this part govern the practice for hearings afforded by the Department to States pursuant to § 201.4 or § 201.6 (a) or (b) of this chapter, and the practice relating to decisions upon such hearings. These rules may also be applied to hearings afforded by the Department to States in other Federal-State programs for which Federal administrative responsibility has been delegated to the Service.

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing, to resolve the issues which are, or otherwise would be, considered at the hearing. Such negotiations and resolution of issues are not part of the hearing, and are not governed by the rules in this part, except as expressly provided herein.

### § 213.2 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the SRS Hearing Clerk. Inquires may be made at the Central Information Center, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington, D.C. 20201.

### § 213.3 Use of gender and number.

As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing the masculine gender may be applied to females or organizations.

### § 213.4 Suspension of rules.

Upon notice to all parties, the Administrator or the presiding officer, with respect to matters pending before them, may modify or waive any rule in this part upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

### § 213.5 Filing and service of papers.

(a) All papers in the proceedings shall be filed with the SRS Hearing Clerk, in an original and two copies. Originals only of exhibits and transcripts of testimony need be filed.

(b) All papers in the proceedings shall be served on all parties by personal delivery or by mail. Service on the party's designated attorney will be deemed service upon the party.

## Subpart B—Preliminary Matters—Notice and Parties

### § 213.11 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Administrator to the State. The notice shall state the time and place for the hearing, and the issues which will be considered, and shall be published in the FEDERAL REGISTER.

### § 213.12 Time of hearing.

The hearing shall be held not less than 30 days nor more than 60 days after the date notice of the hearing is furnished to the State, unless the Administrator and the State agree in writing to holding the hearing at another time.

### § 213.13 Place.

The hearing shall be held in the city in which the regional office of the Department is located or in such other place as is fixed by the Administrator in light of the circumstances of the case, with due regard for the convenience and necessity of the parties or their representatives.

### § 213.14 Issues at hearing.

(a) The Administrator may, prior to a hearing under § 201.6 (a) or (b) of this chapter, notify the State in writing of additional issues which will be considered at the hearing, and such notice shall be published in the FEDERAL REGISTER. If such notice is furnished to the State less than 20 days before the date of the hearing, the State or any other party, at its request, shall be granted a postponement of the hearing to a date 20 days after such notice was furnished, or such later date as may be agreed to by the Administrator.

(b) If, as a result of negotiations between the Department and the State, the submittal of a plan amendment, a change in the State program, or other actions by the State, any issue is resolved in whole or in part, but new or modified issues are presented, as specified by the Administrator, the hearing shall proceed on such new or modified issues.

(c) (1) If at any time, whether prior to, during, or after the hearing, the Administrator finds that the State has come into compliance with Federal requirements on any issue, he shall remove such issue from the proceedings. If all issues are so removed, he shall terminate the hearing.

(2) Prior to the removal of any issue from the hearing, the Administrator shall provide all parties other than the Department and the State (see § 213.15(b)) with the statement of his intention, and the reasons therefor, and a copy of the proposed State plan provision on which the State and he have settled, and the parties shall have opportunity to submit in writing within 15 days, for the Administrator's consideration and for the record, their views as to, or any information bearing upon, the merits of the proposed plan provision and the merits of the Administrator's reasons for removing the issue from the hearing.

(d) The issues considered at the hearing shall be limited to those issues of which the State is notified as provided in § 213.11 and paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section, and shall not include issues removed from the proceedings pursuant to paragraph (c) of this section.

### § 213.15 Request to participate in hearing.

(a) The Department and the State are parties to the hearing without making a specific request to participate.

(b) (1) Other individuals or groups may be recognized as parties, if the issues to be considered at the hearing have caused them injury and their interest is within the zone of interests to be protected by the governing Federal statute.

(2) Any individual or group wishing to participate as a party shall file a petition with the SRS Hearing Clerk within 15 days after notice of the hearing has been published in the FEDERAL REGISTER. Such petition shall concisely state (i) petitioner's interest in the proceeding, (ii) who will appear for petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) whether petitioner intends to present witnesses.

(3) The presiding officer shall promptly determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the presiding officer may request all such petitioners to designate a single representative, or he may recognize one or more of such petitioners to represent all such petitioners. The presiding officer shall give each petitioner written notice of the decision on his petition, and if the petition is denied, he shall briefly state the grounds for denial. The presiding officer shall give written notice to each party of each petition granted.

(c) (1) Any interested person or organization wishing to participate as amicus curiae shall file a petition with the SRS Hearing Clerk before the commencement of the hearing. Such petition shall concisely state (i) the petitioner's interest in the hearing, (ii) who will represent the petitioner, and (iii) the issues on which petitioner intends to present argument. The presiding officer may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome

and may contribute materially to the proper disposition of the issues. An amicus curiae is not a party but may participate as provided in this paragraph.

(2) An amicus curiae may present a brief oral statement at the hearing, at the point in the proceedings specified by the presiding officer. He may submit a written statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. He may also submit a brief or written statement at such time as the parties submit briefs, and shall serve a copy on each party.

## Subpart C—Hearing Procedures

### § 213.21 Who presides.

(a) The presiding officer at a hearing shall be the Administrator or, at his discretion a hearing examiner assigned under 5 U.S.C. 3105 or 3344.

(b) The designation of the presiding officer shall be in writing. A copy of the designation shall be served on all parties.

### § 213.22 Authority of presiding officer.

(a) The presiding officer shall have the duty to conduct a fair hearing, to avoid delay, maintain order, and make a record of the proceedings. He shall have all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon due notice to the parties.

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(4) Administer oaths and affirmations.

(5) Rule on motions and other procedural items on matters pending before him.

(6) Regulate the course of the hearing and conduct of counsel therein.

(7) Examine witnesses.

(8) Receive, rule on, exclude or limit evidence.

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(10) If the presiding officer is the Administrator, make a final decision.

(11) If the presiding officer is a hearing examiner, certify the entire record including his recommended findings and proposed decision to the Administrator.

(12) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551–559.

(b) The presiding officer does not have authority to compel by subpena the production of witnesses, papers or other evidence.

(c) If the presiding officer is a hearing examiner, his authority pertains to the issues of compliance by a State with Federal requirements which are to be considered at the hearing, and does not extend to the question of whether, in case of any noncompliance, Federal payments will not be made in respect to the entire State plan or will be limited to categories under or parts of the State plan affected by such noncompliance.

### § 213.23 Rights of parties.

All parties may:

(a) Appear by counsel or other authorized representative, in all hearing proceedings.

(b) Participate in any prehearing conference held by the presiding officer.

(c) Agree to stipulations as to facts which will be made a part of the record.

(d) Make opening statements at the hearing.

(e) Present relevant evidence on the issues at the hearing.

(f) Present witnesses who then must be available for cross-examination by all other parties.

(g) Present oral arguments at the hearing.

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

### § 213.24 Evidentiary purpose.

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what he intends to prove, may be made at hearings.

### § 213.25 Evidence.

(a) *Testimony.* Testimony shall be given orally under oath or affirmation by witnesses at the hearing. Witnesses shall be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, shall be exchanged at the prehearing conference or otherwise prior to the hearing if the presiding officer so requires.

(c) *Rules of evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

### § 213.26 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

### § 213.27 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

### § 213.28 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

### § 213.29 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

## Subpart D—Posthearing Procedures, Decisions

### § 213.31 Posthearing briefs.

The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs.

### § 213.32 Decisions following hearing.

(a) If the Administrator is the presiding officer, he shall, when the time for submission of posthearing briefs has expired, issue his decision within 60 days.

(b) (1) If a hearing examiner is the presiding officer, he shall, when the time for submission of posthearing briefs has expired, certify the entire record, including his recommended findings and proposed decision, to the Administrator. A copy of the recommended findings and proposed decision shall be served upon all parties, and amici, if any.

(2) Any party may, within 20 days, file with the Administrator exceptions to the recommended findings and proposed decision and a supporting brief or statement.

(3) The Administrator shall thereupon review the recommended decision and, within 60 days of its issuance, issue his own decision.

(c) If the Administrator concludes that a State plan does not comply with Federal requirements, he shall also specify whether further payments will

not be made to the State or whether, in the exercise of his discretion, payments will be limited to categories under or parts of the State plan not affected by such noncompliance. The Administrator may ask the parties for recommendations or briefs or may hold conferences of the parties on this question.

(d) The decision of the Administrator under this section shall be the final decision of the Secretary and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 and a "final determination" within the meaning of section 1116(a)(3) of the Act and § 213.7. The Administrator's decision shall be promptly served on all parties, and amici, if any.

*Effective date.* These amendments shall be effective on the date of their publication in the FEDERAL REGISTER.

Dated: July 17, 1970.

JOHN D. TWINAME,
*Administrator, Social and Rehabilitation Service.*

Approved: July 23, 1970.

ELLIOT L. RICHARDSON,
*Secretary.*

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